2015 IL App (1st) 140090-U

No. 1-14-0090

Filed June 30, 2015

FIFTH DIVISION



IN THE APPELLATE COURT

OF ILLINOIS

FIRST JUDICIAL DISTRICT

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| AIRRION BLAKE, | ) | Appeal from the |
| | ) | Circuit Court |
| Plaintiff and Counterdefendant-Appellant, | ) | of Cook County |
| | ) | |
| v. | ) | No. 12 M1 15870 |
| | ) | |
| ALLY BANK, | ) | Honorable |
| | ) | Leon Wool, |
| Defendant and Counterplaintiff-Appellee. | ) | Judge Presiding. |

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held*: Plaintiff's appeal from the trial court's order granting summary judgment to defendant on its breach of contract counterclaim was untimely. We, therefore, grant defendant's motion to dismiss plaintiff's appeal from that order. We deny defendant's motion to dismiss plaintiff's appeal from the court's orders denying his section 2-1401(f) petition to vacate the grant of summary judgment to defendant on the counterclaim and to reconsider that judgment but find our consideration of the orders barred by *res judicata*.

¶ 2 This *pro se* appeal arises from the trial court's entry of summary judgment in favor of defendant and counterplaintiff Ally Bank (Ally) on Ally's counterclaim against plaintiff and counterdefendant Airrion Blake (Blake) for breach of a car lease agreement. Blake argues (1) the trial court's order granting summary judgment to Ally on Ally's counterclaim and all the court's subsequent orders are void as Ally filed its counterclaim before it was a named party, (2) the court denied Blake due process by considering the counterclaim filed by "non named party," (3) the court had no authority or personal jurisdiction to grant relief on the "ex parte" counterclaim, (4) the court issued orders based on nullities (Ally's filings, answer and counterclaim) and (5) the court abused its discretion in denying his section 2-1401(f) (735 ILCS 5/2-1401(f) (West 2012)) petition to vacate the grant of summary judgment as void "without responsive pleadings," "a proper hearing" or clarifying why it found Blake's issues to be frivolous. Ally filed a motion to dismiss the appeal for lack of jurisdiction, which we has taken with the case. We now grant Ally's motion and dismiss the appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 In October 2012, Blake filed a *pro se* small claims complaint against "GMAC." He alleged GMAC failed to deliver title to a 2006 Pontiac Torrent automobile (Pontiac or vehicle) to him once the debt for the vehicle had been discharged. He alleged the agreement between the parties was unavailable but his credit reports showed that GMAC's "debt claim" had been "deleted" from his credit file. Blake stated he had requested a copy of the title multiple times but that GMAC had ceased operations and was no longer "an ongoing business concern." Blake requested a court order removing

GMAC as lienholder on the title and $250 from GMAC to pay for the cost of the title and registration fees. In an affidavit attached to the complaint, Blake averred that a copy of the contract between GMAC and "Airrion Blake/ASBII Inc" was unavailable, he did not owe GMAC "money for payment" of the vehicle and he did not have "any liens pending from GMAC."

¶ 5 Ally's counsel filed an appearance for "Ally Bank, improperly sued as GMAC." Ally filed a verified answer and counterclaim, identifying itself as "Ally Bank, improperly sued as GMAC." It denied that GMAC was a proper party to the action and stated Ally was the proper party. Ally asserted that, on January 14, 2006, Blake entered into a valid and enforceable lease agreement for the Pontiac, the lease agreement was assigned to Ally shortly thereafter and, as of January 13, 2010, Blake was improperly in possession of the vehicle. In Ally's counterclaim, it sought $19,857.69 plus interest, fees and costs from Blake and "ASBII, INC." (collectively lessees) for the lessees' breach of the lease agreement for the Pontiac Torrent.

¶ 6 Ally alleged that, on January 14, 2006, the lessees had entered into a four-year lease agreement for the Pontiac with Grossinger Autoplex (Grossinger). On February 14, 2006, "GMACAB, k/n/a Ally Bank," sent the lessees a letter informing them the lease had been assigned to GMACAB and not to GMAC as originally indicated in the lease. The letter provided that it would "serve to correct" the lease and it was not necessary to sign a new lease agreement.[1] Ally asserted that, as the "legal and proper

[1] A copy of a "GMAC Smartlease" agreement between lessor Grossinger, "lessee" "ASBII INC" and "co-lessee" "Airrion Blake" is attached to the counterclaim. It shows an "x" marked next to a provision that Grossinger "will assign the lease and sell the vehicle to General Motors Acceptance Corporation ('GMAC')" has been scratched out and an "x" marked next to a provision that Grossinger "will assign the lease and sell

holder of the Lease," it had performed its obligations under the lease and the conditions precedent for the relief sought in the counterclaim had occurred. The lease was scheduled to run from January 14, 2006, through January 13, 2010. It required the lessees to remit a $617.14 payment each month for 47 months and to return the Pontiac at the end of the lease term unless they purchased it for a specified sum. The lease provided a breach of any provision in the lease was a "default" under the lease and a failure to remit a timely payment was a "default" under the lease.

¶ 7 Ally asserted the lessees "repeatedly defaulted" under the lease by failing to make the required monthly payments. It also asserted the lessees failed to return the vehicle at the end of the lease term, owed a remaining balance of $19,857.69 plus interest to Ally under the lease and had failed to pay the remaining balance despite repeated demands by Ally. Ally argued that, in violation of the lease, the lessees retained possession of the vehicle without purchasing it and their failure to return the vehicle after the expiration of the lease was a default and material breach of the lease. Although written modifications of the lease could be made in writing, Ally was unaware of any written agreement modifying the lease beyond a correction of the name of the assignee on the lease. It claimed it suffered and continued to suffer damages as a direct and proximate results of the lessees' breach of the lease and, therefore, requested the court award them the balance due on the lease plus interest and attorney fees and costs.

¶ 8 Blake filed a response to the answer and counterclaim, denying most of Ally's allegations. He denied receiving the February 2006 letter notifying him that the lease

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the vehicle to GMACAB."

would be assigned to GMACAB. He disputed that a debt was owed, that he received notifications from Ally regarding the debt and that Ally was entitled to any monies under the lease. He asserted Ally offered no evidence as to why it, rather than GMAC, was the proper party and Ally acted in bad faith in interjecting itself into the action. Blake argued he named GMAC as the defendant as "it was the entity in which a contract was created not Ally Bank or GMACAB" and Ally "deceptively did business under the acronym GMACAB so that Blake would believe that the original contract was still valid and unaltered." As an affirmative defense, Blake asserted the lease was null and void and Ally was barred from receiving monies under the lease as the terms of his lease agreement with Grossinger were modified by changing the assignee from GMAC to GMACAB without his approval or signature in violation of the lease. He argued that, as a result of the modification, he "was deceived into making payments outside of the agreement." and requested "all monies paid in error to Ally should be returned to Plaintiff up to $9,999.99," stating he would return the Pontiac in exchange for the original unaltered note given for value to Grossinger to be assigned to GMAC.

¶ 9 Blake moved to strike Ally's counterclaim for lack of standing. He asserted Ally had no standing to assert the counterclaim as his action was against GMAC, not Ally, and Ally presented no evidence regarding how/when it became the holder of the lease agreement by assignment. He also asserted the lease agreement was void as it was modified without Blake's signature, Ally provided no evidence of a debt, Blake had a superior claim to the vehicle and Ally was not licensed to do business in Illinois.

¶ 10 On November 27, 2012, the trial court entered an order finding Ally was "a proper party-defendant" and granting Blake leave to file an amended complaint.

¶ 11 The court struck Blake's motion to join the law firm representing Ally as a party defendant, found the motion improper and barred Blake from refiling a similar motion. Blake then filed a second motion to join the law firm as a defendant.

¶ 12 Blake also filed a *pro se* amended complaint naming both Ally and the law firm as defendants. In count I, he requested the court issue an order of replevin against Ally for release of the title to "plaintiff's personal property," the Pontiac, or, in lieu thereof, judgment against Ally "for the value of the claim against the property $55,460.78." He alleged Ally voided the lease agreement by making changes without his signature or knowledge, committed fraud by assuming the name "GMACAB" in order to deceive him "into mistakenly making monthly payments to Ally" and violated the terms of the lease by its "seizure of Plaintiff's property." Blake asserted he had the only perfected claim to the vehicle, was the owner of or legally entitled to immediate possession of the title wrongfully detained by Ally and had been "substantially injured" by Ally's "hiding" their identity and relationship to the agreement. He also claimed he was substantially injured as he had been deprived of the right to use and enjoy his property since February 14, 2006, the date of Ally's "voidance and conversion of Plaintiff's unilateral agreement." In count II, Blake requested the court enter judgment against the law firm "for violation of the Fair Debt Practices Act 15 U.S.C.§ 1692 et seq." He claimed the law firm, by filing the counterclaim, acted as a "collection agency" as defined under the Fair Debt Practices Act and violated the act in assorted ways.

¶ 13 Ally moved to dismiss the complaint, arguing the complaint failed to allege facts sufficient to state a claim for either fraud or replevin against Ally. Blake requested leave to file a second amended complaint, claiming he was unaware of the court's order

barring him from joining the law firm at the time he filed the amended complaint.

¶ 14 On January 3, 2013, the court entered an order granting Ally's motion to dismiss the amended complaint, dismissing Blake's amended complaint and denying Blake's motion for leave to file a second amended complaint. In the order, the court stated it found Blake had no proprietary interest in the lease vehicle. It ordered that the December 6, 2012, order barring Blake from joining the law firm "stands and Ally Bank's law firm is not a proper party in this action." The court gave Blake 30 days to respond to Ally's counterclaim. The court subsequently denied Blake's two motions for clarification, in which he had reiterated the arguments he made in his amended complaint and sought "clarification in writing" from the court as to the case law and/or statutes the court used in enjoining him from seeking relief against the law firm. The court again ordered that the law firm was not a proper party defendant and Blake must answer or otherwise respond to the counterclaim.

¶ 15 On January 31, 2013, Blake filed a notice of appeal from the January 3, 2013, order granting Ally's motion to dismiss Blake's amended complaint, appeal No. 1-13-0418. Ally moved to dismiss the appeal, arguing the appeal was premature as the counterclaim remained pending and the January 3, 2013, order was, therefore, not a final order. This court dismissed the appeal on Ally's motion on October 11, 2013.

¶ 16 On February 21, 2013, Blake filed his answer to Ally's counterclaim, denying the majority of Ally's allegations and reiterating the arguments in his assorted complaints. He stated he never agreed to make payments to Ally and that he had reported Ally to the Internal Revenue Service (IRS) for an unspecified "offense."[2] Blake also filed an

[2] A copy of a completed IRS form 3949A attached to the answer shows Blake

"affidavit of revocation of power of attorney and recession of signature" in which he purported to rescind any signatures or marks implying consent that he might have placed on any forms, documents or contracts as of January 14, 2006, "cancel[led]" the lease agreement "for cause" and demanded the return of any monies he paid under the agreement in exchange for his return of the vehicle.

¶ 17 Blake then moved for summary judgment on Ally's counterclaim for breach of the lease agreement. He averred he was the president of ASBII INC and on, January 14, 2006, had executed the lease agreement and received the Pontiac under the lease. He argued that Ally admitted changing the terms of the lease agreement by "correcting" the name of the assignee without his knowledge or agreement and, therefore, knowingly violated the lease. He also argued he was under no obligation to pay Ally "any sum" as he had not entered into an agreement with Ally and that any claims by Ally were defeated by the "illegality" of the lease agreement. He argued he was entitled to judgment as a matter of law as there was no evidence to contradict the assertion in his attached affidavit that his copy of the lease agreement showing the possible assignment to GMAC was the "true original" agreement. Blake also made an argument that he was entitled to judgment as a matter of law under the Illinois Motor Vehicle Leasing Act (815 ILCS 636/1 *et seq*. (West 2012)).

¶ 18 Ally responded and filed a cross-motion for summary judgment, asserting it was entitled to judgment as a matter of law as there was no factual dispute that Ally had satisfied each of the elements for its breach of contract action. It argued the evidence

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reported Ally for "violation[s] of income tax law" through organized crime, failure to pay tax, unsubstantiated income, false/altered documents, unreported income and failure to withhold tax.

showed the lease was a valid contract, Grossinger had fully performed under that contract by turning over the leased vehicle to Blake and Grossinger had assigned its rights under the lease to GMACAB "k/n/a Ally Bank." It further argued Blake had breached the contract by failing to make payments in a timely manner, make all payments required under the lease and return the leased vehicle upon expiration of the lease. Ally claimed Blake continued to deprive it of its right to possess the vehicle and, under the lease, it was entitled to bring an action against Blake to recover damages and the lease vehicle. It argued the assignment of the lease to GMACAB, its "predecessor-in-interest," did not render the lease unenforceable or raise a genuine issue of material fact and, moreover, Blake was aware of the assignment to GMACAB through the February 14, 20006, notification letter, which had been mailed to the address on the lease.

¶ 19 In support of its cross-motion, Ally attached the affidavit of Shawn White, an operations manager in the asset recovery division for Ally Servicing LLC, the servicing agent for all of Ally's automotive portfolios, including Blake's lease. White provided a summary of Blake's payment history and Ally's action's regarding Blake's failure to make the lease payments and averred that Ally had been unable to recover the leased vehicle "to date" and the balance due on Blake's account was $19,857.69. Copies of demand letters to Blake notifying he was in default for failing to make lease payments and assorted other documents supported White's affidavit.

¶ 20 On May 16, 2013, the court denied Blake's motion for summary judgment on the counterclaim, granted Ally's cross-motion for summary judgment on the counterclaim and granted Ally leave to file a fee petition. During the hearing on the motion, the court

found Blake entered into a valid enforceable lease agreement with Grossinger, Grossinger fully performed under the agreement by turning over the Pontiac to Blake on the same day and it then assigned its rights to Ally. The court found the assignment valid and, therefore, the lease was not unenforceable. Since the lease was enforceable, the court held Blake was obligated to perform his duties to make the monthly payments under the lease and return the vehicle at the end of the lease period. It found Blake breached the lease agreement by failing to make payments in a timely manner, make all the required payments and return the Pontiac at the expiration of the lease period and by retaining possession of the vehicle. The court granted summary judgment to Ally, finding that, due to Blake's breach of the lease agreement, Ally had suffered $19,857.62 in damages for the balance remaining on Blake's account and the fact that it had been deprived of its right to possess the vehicle.

¶ 21 On July 12, 2013, the court denied Blake's motion to reconsider and vacate the grant of summary judgment to Ally and awarded Ally in excess of $24,000 in attorney fees and costs. It stated it would retain jurisdiction over the matter for purposes of enforcing a June 24, 2013, order it had entered prohibiting Blake from using, transferring or otherwise disposing of the Pontiac. Citing Illinois Supreme Court Rule 304(a), the court found no just reason for delaying enforcement and/or appeal from the order and the May 16, 2013, order granting summary judgment to Ally. It explained it denied the motion to reconsider as the motion raised the same arguments the court had already rejected on May 16, 2013, and failed to raise newly discovered evidence, new law or misapplication of the law as required for granting a motion to reconsider.

¶ 22 On July 12, 2013, Blake filed a notice of appeal, appeal No. 1-13-2254, and an

amended notice of appeal on July 25, 2013.

¶ 23 On August 13, 2013, Ally filed a citation to discover assets.

¶ 24 On August 30, 2013, Blake filed a section 2-1401(f) petition to vacate the grant of summary judgment to Ally as void for lack of subject matter jurisdiction (first section 2-1401 petition). He argued he had named GMAC as the defendant, Ally was therefore not a party at the time it filed its counterclaim and, as a non-party, could not invoke the jurisdiction of the court. He asserted, as Ally failed to refile the counterclaim after he filed his amended complaint naming Ally as a defendant, the counterclaim was void and the court had no subject matter jurisdiction to consider it.

¶ 25 On September 13, 2013, the court held a hearing on the citation to discover assets and Blake's section 2-1401 petition to vacate the May 16, 2013, order granting summary judgment to Ally. During the hearing, the court initially stated that it was striking Blake's section 2-1401 petition as Blake had not filed it before the same judge who had issued the May 16, 2013, order. Following Blake's repeated remonstrations, the court finally stated that "I think it's inappropriate, but I'll rule on it. Your petition is denied." The court entered a written order striking the petition and ordering Blake to turn the Pontiac over to Ally by November 20, 2013.

¶ 26 Blake did not turn over the vehicle to Ally. Instead, he filed a motion to stay enforcement of the trial court's order in the appellate court, where his appeal from the trial court's grant of summary judgment to Ally was pending. We denied the motion for stay on October 1, 2013.

¶ 27 When Blake failed to comply with the trial court's order to turn over the vehicle to Ally, Ally filed a motion for rule to show cause why Blake should not be held in

contempt. The court granted the rule to show cause on October 4, 2013. Blake having failed to appear in court, the court issued a body attachment against Blake.

¶ 28 Blake filed a motion to vacate the October 4, 2013, order. On November 5, 2013, the court held a hearing on Blake's motion. During the hearing, Blake informed the court that the car was at "Vera Body Shop." Ally having determined the location of the body shop, the court ordered Ally to take possession of the car at the body shop. It quashed the body attachment against Blake and continued Blake's motion to vacate in order that the motion could be heard by the judge who issued it. On November 8, 2013, that judge denied Blake's motion to vacate.

¶ 29 Blake, in front of the judge who had entered the order granting summary judgment to Ally on the counterclaim, next filed a combined section 2-1301 and section 2-1203 motion to vacate and reconsider that order. He argued questions of material fact existed regarding how or when the lease was assigned to Ally and whether a contract existed between Blake and Ally and that Ally did not properly file its counterclaim with leave of court and the order was void.

¶ 30 On November 12, 2013, Blake moved to voluntarily dismiss his appeal from the May 16, 2013, order granting summary judgment to Ally on the counterclaim and the July 12, 2013, order denying his motion to reconsider the order. On December 2, 2013, this court granted Blake's motion to voluntarily dismiss his appeal.

¶ 31 On November 21, 2013, the trial court denied Blake's combined motion to vacate and/or reconsider the order granting summary judgment to Ally, finding it lacked jurisdiction to consider the motion. Blake then filed a second section 2-1401(f) petition to vacate the order granting the summary judgment to Ally as void for lack of subject

matter jurisdiction (second section 2-1401 petition). He reiterated his earlier arguments that the order was void because Ally was not a named party when it filed the counterclaim without leave of court, the counterclaim was a nullity as the lease was void and the court lacked subject matter jurisdiction to consider the "prematurely filed" counterclaim.

¶ 32 On December 12, 2013, the trial court enter an order denying Blake's second section 2-1401 petition to vacate the grant of summary judgment to Ally, stating it had "determined the petition attempts to relitigate issues already adjudicated by the court." On January 7, 2014, it denied Blake's motion to reconsider the "sua sponte" order and struck his "objections" to the order. In its order, the court cautioned Blake "about continuing to file motions on issues already addressed by the court" and noted that Blake could be subject to sanctions for filing similar motions.

¶ 33 On January 7, 2014, Blake filed a notice of appeal from the May 16, 2013, order granting Ally's motion for summary judgment on the counterclaim, the December 12, 2013, order denying his second section 2-1401(f) petition to vacate the grant of summary judgment as void and the January 7, 2014, order denying his motion to reconsider the December 12, 2013, denial of his section 2-1401(f) petition.

¶ 34 ANALYSIS

¶ 35 Ally's motion to dismiss the appeal has been taken with the case and requires initial consideration. For the following reasons, we agree with Ally that we have no jurisdiction to consider the May 16, 2013, order. As to the December 12, 2013, order and the January 7, 2014, order, we find that Blake's appeal from these orders is barred pursuant to the doctrine of *res judicata*.

¶ 36 1. Jurisdiction to Consider the May 16, 2013, Order

¶ 37 Ally argues we have no jurisdiction to consider Blake's appeal from the May 16, 2013, order granting its motion for summary judgment on the counterclaim as Blake abandoned his appeal of the order and an appeal of the order is, therefore, time barred. We agree.

¶ 38 The timely filing of a notice of appeal is both mandatory and jurisdictional. *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 20. Pursuant to Illinois Supreme Court Rule 303(a)(1), a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." Il. Sup. Ct. Rule 303(a)(1) (eff. June 4, 2008). When an appeal is untimely, we must dismiss the appeal for lack of jurisdiction. *Won*, 2013 IL App (1st) 122523, ¶ 20; *Pestka v. Town of Fort Sheridan Co., L.L.C.*, 371 Ill. App. 3d 286, 293 (2007).

¶ 39 " 'An order is final and thus appealable if it either terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate branch thereof.' " *Hernandez v. Bernstein*, 2011 IL App (1st) 102646, ¶ 7 (quoting *Hull v. City of Chicago,* 165 Ill.App.3d 732, 733 (1987)). The May 16, 2013, order challenged here became final on July 12, 2013, when the court entered the order denying Blake's posttrial motion to reconsider the May 16, 2013, grant of summary judgment to Ally on its counterclaim. The court specifically ordered that both the May 16, 2013, order and the July 12, 2013, order were final and appealable under Illinois Supreme Court Rule 304(a). As a result, Blake had 30 days from July 12,

2013, until August 12, 2013, in which to file his notice of appeal from the orders. Il. Sup. Ct. Rule 303(a)(1) (eff. June 4, 2008).

¶ 40 Blake did, in fact, file a timely notice of appeal and amended notice of appeal from the order in July 2013, appeal No. 1-13-2254. However, in November 2013, he moved to withdraw his appeal and we granted his motion on December 2, 2013, entering an order dismissing the appeal. By obtaining dismissal of his appeal from the May 16, 2013, order, Blake abandoned his appeal from the May 16, 2013, order. When Blake obtained the dismissal of his appeal, the 30-day time period for appealing the May 16, 2013, order had long expired. He was, therefore, foreclosed from filing another appeal from the May 16, 2013, order. Accordingly, Blake's current appeal from the May 16, 2013, order, which he filed in January 2014, is time barred and must be dismissed.

¶ 41 In response to Ally's motion to dismiss the appeal, Blake argues we have jurisdiction to consider his appeal as the court's orders regarding the counterclaim were void for lack of jurisdiction and a void judgment or order may be attacked at any time, in any court, either directly or collaterally. A judgment, order or decree entered by a court lacking personal jurisdiction over the parties or jurisdiction over the subject matter, or which lacks the inherent power to make or enter the particular order involved, is void and may be attacked at any time or in any court, either directly or collaterally.[3] *Capital One Bank, N.A. v. Czekala*, 379 Ill. App. 3d 737, 741 (2008) (citing *Sarkissian v. Chicago Board of Education,* 201 Ill.2d 95, 103 (2002). The question of whether the trial court has jurisdiction is a question of law that we review *de novo. Cameron v. Owens-*

[3] " 'A void judgment is from its inception a complete nullity and without legal effect.' " *Dovalina v. Conley*, 2013 IL App (1st) 103127, ¶ 13 (quoting *Ford Motor Credit Co. v. Sperry,* 214 Ill.2d 371, 380 (2005)).

*Corning Fiberglas Corp.*, 296 Ill. App. 3d 978, 983 (1998).

¶ 42 In Blake's response to the motion to dismiss, he argues the trial court had no jurisdiction over Ally as Ally was not a named party when it filed the counterclaim and the court, therefore, did not have jurisdiction to consider the counterclaim. He fails to specify whether this impacts the court's personal jurisdiction or its subject matter jurisdiction. Blake makes the same arguments in his briefs on appeal but therein states that the court lacks personal jurisdiction over Ally. In contrast, in his section 2-1401 petitions filed below, he argued the court lacked subject matter jurisdiction to consider the counterclaim as a result of Ally's nonparty status. We find the trial court lacked neither subject matter to consider the counterclaim nor personal jurisdiction over Blake. We also find that Blake's allegation that the court had no jurisdiction over Ally is meaningless as the judgment complained of in this appeal was entered against Blake. Therefore, the only pertinent question regarding jurisdiction was whether there was personal jurisdiction over Blake.

¶ 43 Subject matter jurisdiction is "the court's power 'to hear and determine cases of the general class to which the proceeding in question belongs.' " *In re M.W.,* 232 Ill.2d 408, 415 (2009) (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.,* 199 Ill.2d 325, 334 (2002)). "[E]xcept in the context of administrative review, an Illinois circuit court possesses subject matter jurisdiction as a matter of law over all 'justiciable matters' brought before it." *In re Luis R.*, 239 Ill. 2d 295, 301 (2010) (quoting *M.W.,* 232 Ill.2d at 424). "[A] 'justiciable matter' is 'a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.' " *Id*. (quoting *Belleville*

*Toyota,* 199 Ill.2d at 335). "To invoke a circuit court's subject matter jurisdiction, a petition or complaint need only 'alleg[e] the existence of a justiciable matter.' " *Id*. (quoting *M.W.,* 232 Ill.2d at 426). "[T]he *only* consideration is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. If it does, then subject matter jurisdiction is present." (Emphasis in original.) *Id*. Ally's counterclaim alleged a common law breach of contract action based on the lease, a claim action falling within the general class of cases the trial court has an inherent power to hear and decide. The court, therefore, had subject matter jurisdiction to enter a decision on Ally's counterclaim. *Id.* at 305 (subject matter jurisdiction is invoked by the filing of a petition or complaint alleging the existence of a justiciable matter).

¶ 44 Personal jurisdiction, unlike subject matter jurisdiction, is not invoked by the filing of a petition or complaint alleging the existence of a justiciable matter. *Id.* at 305. Rather, it is " ' "derived from the actions of the person sought to be bound." ' " *Id*. (quoting *M.W.,* 232 Ill.2d at 426 (quoting *Meldoc Properties v. Prezell,* 158 Ill.App.3d 212, 216 (1987))). A plaintiff submits to the jurisdiction of the court by filing a complaint, thereby seeking to be bound to the court's resolution of the complaint. *Id*. "A respondent or defendant, by contrast, either has personal jurisdiction imposed upon him by the effective service of summons, or consents to personal jurisdiction by his appearance." *Id*.

¶ 45 The trial court had personal jurisdiction over Blake. By filing his replevin complaint, Blake submitted to the court's personal jurisdiction over him. *Luis R.*, 239 Ill. 2d at 305. By filing its appearance and subsequent counterclaim, Ally submitted to the

court's personal jurisdiction over it. *Id*. Therefore, the court had personal jurisdiction over both parties to the counterclaim. Further, Blake's argument that the court lacked personal jurisdiction to consider Ally's counterclaim as Ally was not a named party when it filed the counterclaim is a red herring. Blake has no standing to challenge the court's personal jurisdiction over Ally. Again, the judgment complained of is against Blake and, therefore, the question is whether the court had personal jurisdiction over Blake. Blake can only challenge the court's personal jurisdiction over himself. *Miller v. Moseley*, 311 Ill. 157, 162 (1924) ("Several of the errors assigned allege the court did not acquire jurisdiction of other defendants who are not complaining and have assigned no errors, and plaintiffs in error cannot complain for them.")

¶ 46 As the court had both personal jurisdiction over Blake and Ally and subject matter jurisdiction over the breach of contract counterclaim, its May 16, 2013, order regarding the counterclaim was not void. Even if, as Blake argues, the court's decision on the counterclaim was erroneous, this merely renders the court's order voidable, not void, as a court cannot lose jurisdiction because it made a mistake in determining the facts, the law or both. *People v. Davis,* 156 Ill. 2d 149, 156 (1993). Unlike a void order, a voidable decision is not subject to collateral attack, in any court at any time. *Id.* at 155-56. As the May 16, 2013, order was not void, Blake had 30 days from the date on which the May 16, 2013, order became final in which to appeal from the order. The May 16, 2013, order became final on July 12, 2013. Therefore, Blake had until August 12, 2013, to appeal from the order. He filed the appeal at bar in January 2014, almost five months later. Accordingly, his current appeal from the May 16, 2013, order is time barred and must be dismissed.

¶ 47 2. Jurisdiction to Consider the December 2, 2013, and January 7, 2014, Orders

¶ 48 Ally argues we have no jurisdiction to consider Blake's appeal from the December 12, 2013, order denying his second section 2-1401(f) petition to vacate the grant of summary judgment because (a) the petition did not allege due diligence or a meritorious defense and was, therefore, merely an untimely post judgment motion the trial court had no jurisdiction to consider and (b), even if the petition was properly brought under section 2-1401, the petition was time barred as it was not brought within 30 days of the denial of the first section 2-1401 petition. It also argues we have no jurisdiction to consider the court's January 7, 2014, denial of Blake's motion to reconsider the December 12, 2013, order.

¶ 49 Blake responds that he brought both of his section 2-1401 petitions on voidness grounds and we, therefore, have jurisdiction to consider his appeal. He argues the general rules applicable to a section 2-1401 petition (two-year time limitation, due diligence and meritorious defense) do not apply where the petition is brought on voidness grounds and restates his argument that a void judgment or order may be attacked at any time, in any court, either directly or collaterally. We find we have jurisdiction to consider Blake's second section 2-1401 petition but that our consideration of the petition is barred by *res judicata*.

¶ 50 Blake's second section 2-1401 petition was not an untimely post judgment motion as Ally asserts. “Generally, the filing of a second section 2–1401 petition does not toll the 30 days provided for filing an appeal from denial of the first section 2–1401 petition.” *Holloway v. Kroger Co.,* 253 Ill.App.3d 944, 947 (1993). However, the trial court here did

not deny Blake's first section 2-1401 petition to vacate the summary judgment order. Instead, it entered an order striking the petition. The court did not strike the petition "with prejudice" and informed Blake he should refile the petition before the judge who entered the order granting summary judgment to Ally. Blake, therefore, could properly refile the petition and, in fact, did so. We therefore deny Ally's motion to dismiss the appeal from the December 12, 2013, and January 7, 2014, orders on this basis.

¶ 51 Section 2-1401 establishes a statutory procedure for obtaining relief from a final judgment more than 30 days after the judgment was entered. 735 ILCS 5/2-1401 (West 2012). Generally, in order to be entitled to relief under section 2-1401, a petitioner must file the petition within two years of entry of the challenged order and must affirmatively allege specific facts showing: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief. 735 ILCS 5/2–1401(c) (West 2012); *Smith v. Airoom, Inc.,* 114 Ill.2d 209, 220-21 (1986). A voidness challenge brought more than 30 days after a default judgment is considered under section 2-1401 but will not be subject to the time, due diligence, or meritorious defense requirements applicable to other section 2-1401 petitions. *Mortgage Electrical Systems v. Gipson*, 379 Ill. App. 3d 622, 627 (2008) (citing *Sarkissian v. Chicago Board of Education,* 201 Ill.2d 95, 104-05 (2002)). However, although a petition challenging a judgment as void is not subject to the limitations period or due diligence and meritorious defense requirements, the initial question is whether the judgment is actually void. *People v. Balle,* 379 Ill.App.3d 146, 151 (2008); *People v. Lott,* 325 Ill.App.3d 749, 751–52 (2001).

¶ 52 Blake contends, as he did in his section 2-1401 petitions, that the trial court's

orders regarding the counterclaim are void for lack of jurisdiction as Ally was not a named party when it filed its counterclaim. We have already addressed this argument and determined the trial court's orders regarding the counterclaim are not void for lack of jurisdiction as the court had both subject matter jurisdiction over the counterclaim and personal jurisdiction over Blake. Therefore, as the court's orders are not void, Blake's section 2-1401 petitions must comply with the usual timeliness, due diligence and meritorious defense requirements for a valid section 2-1401 petition.

¶ 53 We need not, however, belabor the question of whether Blake's second section 2-1401 petition to vacate the grant of summary judgment to Ally sets forth the requisite meritorious defense and due diligence as the issues raised in his petition are *res judicata* and cannot be relitigated. " '*Res judicata* is an equitable doctrine designed to prevent the multiplicity of lawsuits between the same parties and involving the same facts and the same issues.' " *Hernandez v. Bernstein*, 2011 IL App (1st) 102646, ¶ 6 (quoting *Murneigh v. Gainer,* 177 Ill.2d 287, 299 (1997)). "It 'applies to bar issues that were actually decided in the first action, as well as matters that could have been decided.' " *Id*. (quoting *Lane v. Kalcheim,* 394 Ill.App.3d 324, 329 (2009)). Under the doctrine, " 'a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action.' " *Id. (*quoting *Lane*, 394 Ill.App.3d at 329).

¶ 54 In Blake's second section 2-1401 petition, he argued the summary judgment order was void as (1) Ally was not a named party when it filed the counterclaim without leave of court, (2) the counterclaim was a nullity because Ally was not a party to the lease agreement and failed to show it had been assigned the lease, (3) the

counterclaim was a nullity as it had been changed without his knowledge or permission and (4) and the court lacked subject matter jurisdiction to consider the "prematurely filed" counterclaim. As the trial court found on December 12, 2013, when it denied the second section 2-1401 petition, "the petition attempts to relitigate issues already adjudicated by the court."

¶ 55 Blake's arguments in his second section 2-1401 petition are essentially the same arguments he made in various iterations throughout the trial court proceedings. For example, in his "response" to Ally's answer and counterclaim, he argued Ally was not a proper party to the action, Ally acted in bad faith in interjecting itself into the action and the lease was null and void. In his motion to strike the counterclaim, he argued Ally had no standing to assert the counterclaim as his action was against GMAC, not Ally, and that the lease agreement was void as it was modified without his signature. In his amended complaint he argued Ally offered no evidence as to why it, rather than GMAC, was the proper party and Ally acted in bad faith in interjecting itself into the action. In his motion for summary judgment, he argued the "illegality" of the lease agreement. The court decided these issues when it denied Blake's motion to strike the counterclaim, holding Ally was "a proper party-defendant." It decided these issues when it denied Blake's motion for summary judgment and granted Ally's motion for summary judgment on the breach of contract counterclaim, finding Grossinger fully performed under the lease agreement, Ally had been assigned the lease, the lease was valid and Blake failed to perform under the lease. It decided these issues when it denied Blake's motion to reconsider the summary judgment order.

¶ 56 Blake abandoned his appeal from the court's findings on these issues when he

abandoned his appeal from the May 16, 2013, order granting summary judgment to Ally. He cannot raise these same issues through a section 2-1401 petition. A section 2-1401 petition is " 'not designed to provide a general review of all trial errors nor to substitute for direct appeal.' " *People v. Haynes*, 192 Ill. 2d 437, 461 (2000) (quoting *People v. Berland,* 74 Ill.2d 286, 314 (1978)). Points previously raised at trial and other collateral proceedings cannot form the basis of a section 2-1401 petition for relief. *Haynes*, 192 Ill. 2d at 461. "Issues which could have been raised in a motion for rehearing or on direct appeal are *res judicata* and may not be relitigated in the section 2-1401 proceeding, which is a separate action and not a continuation of the earlier action." *In re Marriage of Baumgartner*, 226 Ill. App. 3d 790, 794 (1992). All the issues Blake raised in his second section 2-1401 petition, indeed all the issues he raised in his first section 2-1401 petition, had been previously decided by the trial court and could have been challenged in Blake's timely appeal from the May 16, 2013, had he not abandoned that appeal. Accordingly, these issues are *res judicata* and cannot be relitigated in a section 2-1401 petition or on appeal.

¶ 57 CONCLUSION

¶ 58 For the reasons stated above, we grant Ally's motion to dismiss the appeal for lack of jurisdiction with regard to the May 16, 2013, order. We deny Ally's motion to dismiss the appeal from the December 12, 2013, and January 7, 2014, orders but find the appeal is barred by *res judicata*.

¶ 59 Dismissed in part; Affirmed in part.