

No. 1-14-2987

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BYLINE BANK, successor by merger to)	Appeal from the
Plaza Bank,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 12 CH 14842
)	
MARIA PARTIPILO and DIANNA G. ALIASI,)	
as Trustee of the Dianna G. Alias Declaration of)	
Trust dated May 1, 2007,)	The Honorable
)	Lisa A. Marino and
Defendants-Appellants.)	Pamela McLean Meyerson

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not err in dismissing defendants' petition to vacate the foreclosure judgment and confirmation of sale pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2012)), because their section 2-1401 petition was barred by section 15-1509(c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2012)). Affirmed.

¶ 2 In this mortgage foreclosure action, defendants' Maria Partipilo and Dianna G. Alias, as trustee of The Dianna G. Alias Declaration of Trust Dated May 1, 2007 (the Trust) (collectively "defendants"), appeal the circuit court of Cook County's denial of their petition to vacate the

foreclosure judgment and confirmation of sale pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). On appeal, defendants contend that the circuit court erred as a matter of law in denying their section 2-1401 petition as untimely and barred by section 15-1509(c) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1509(c) (West 2012)). In addition, defendants contend that the circuit court's order is void because the court lacked subject matter jurisdiction. We affirm.

¶ 3

BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. In April 2005, plaintiff Byline Bank, successor by merger to Plaza Bank, loaned Partipilo, as borrower and mortgager, \$1.8 million dollars. Partipilo signed a promissory note (the "Original Note"), which was secured by three mortgages (collectively "the mortgages") encumbering properties located at 6601-05 N. Avondale, Chicago, IL (the "Avondale property"), 6645-51 N.

Oliphant/6639 N. Avondale, Chicago, IL (the "Oliphant property") and 118 Greenwood, Park Ridge, Illinois (the "Greenwood property") (collectively "the properties"). Before the Original Note matured, Partipilo divested herself of all ownership and beneficial interest in the properties and transferred them to Dianna G. Aliasi, as trustee of the Trust.

¶ 5 On August 12, 2010, Partipilo executed a renewal promissory note (the "Renewal Note"), in which she promised to pay plaintiff the sum of \$1,740,628.92 to mature on February 12, 2011. Thereafter, the maturity of the Renewal Note was extended on September 29, 2010, on March 23, 2011, and again on September 23, 2011, by three changes in term agreements all signed by Partipilo individually. On December 12, 2011, the Renewal Note matured and plaintiff demanded that Partipilo pay the balance in full, which she failed to do. Plaintiff then filed a mortgage foreclosure action. Defendants were served with process on May 14, 2012, and entered their appearance through counsel. Although defendants' attorneys appeared in court on

at least two separate occasions, defendants did not file a responsive pleading asserting a defense to the matters alleged in the underlying complaint.

¶ 6 On January 4, 2013, plaintiff filed its motion for default judgment and judgment of foreclosure and sale. Shortly thereafter, the circuit court granted plaintiff's motion for default judgment, and entered judgments of foreclosure and sale as to all the properties. Judicial sales were conducted, and on July 30, 2013, the circuit court entered an order confirming these sales. The selling officer subsequently issued judicial deeds for the properties. In October 2013, plaintiff sold the Avondale property and the Oliphant property. On April 22, 2014, almost nine months after the judicial sales were confirmed; defendants filed their motion to vacate. Specifically, defendants argued that the Renewal Note had extinguished plaintiff's security interest in the properties because the Renewal Note had been executed after Partipilo had divested herself of any interest in the properties. Thereafter, the circuit court denied defendants' motion to vacate as untimely and barred under section 15-1509(c) of the Foreclosure Law (735 ILCS 5/15-1509(c) (West 2012)). Defendants then filed this timely appeal.

¶ 7 ANALYSIS

¶ 8 Defendants contend that the circuit court erred as a matter of law in denying their section 2-1401 petition as untimely and barred by section 15-1509(c) of the Foreclosure Law (735 ILCS 5/15-1509(c) (West 2012)). To be entitled to relief from a judgment pursuant to section 2-1401, a petitioner must affirmatively set forth specific factual allegations supporting each of the factual elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim to the circuit court in the original action; and (3) due diligence in filing the petition for relief. *Hirsch v. Optima, Inc.*, 397 Ill. App. 3d 102, 109 (2002). We review *de novo* a judgment entered on a section 2-1401 petition that is requesting relief based on the allegation

that the judgment is void. *Pekin Insurance Co. v. Rada Development, LLC*, 2014 IL App (1st) 133947, ¶ 19.

¶ 9 As a threshold matter, defendants contend the circuit court's order is void because the court lacked subject matter jurisdiction. Subject matter jurisdiction refers to the court's power to hear and determine cases of the general class to which the proceeding in question belongs. *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 27. Under the Illinois Constitution of 1970, "the circuit courts have original jurisdiction of all justiciable matters except where [the supreme] court has exclusive and original jurisdiction relating to the redistricting of the General Assembly and the ability of the Governor to serve or resume office." Ill. Const. 1970, art. VI, § 9. 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." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 335 (2002). The only consideration in determining whether subject matter jurisdiction exists is whether the alleged claim falls within the general class of cases that the court has the inherent power to hear and determine. *Beal Bank v. Barrie*, 2015 Ill. App. (1st) 133898, ¶ 20; citing *In re Luis R.*, 239 Ill. 2d 295, 301 (2010).

¶ 10 In the case *sub judice*, it is indisputable that the circuit court had the power to hear and enter dispositions on the foreclosure complaint brought by plaintiff. See 735 ILCS 5/15–1101 et seq. (West 2012); *JPMorgan Chase, N.A. v. Ontiveros*, 2015 IL App (2d) 140145, ¶ 21 (the circuit court maintains subject matter jurisdiction over foreclosure actions). Further, defendants' contention fails to contain a cohesive legal argument with citations to relevant authority and we need not consider this matter further. See Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013); *Country Mutual Insurance Co. v. Styck's Body Shop, Inc.*, 396 Ill. App. 3d 241, 254-55

(2009) (this court is entitled to clearly defined issues, cohesive legal arguments and citations to relevant authority).

¶ 11 We will now address defendants' overarching contention on appeal. Under section 15-1509(b) of the Foreclosure Law:

"(b) Effect Upon Delivery of Deed. Delivery of the deed executed on the sale of the real estate, even if the purchaser or holder of the certificate of sale is a party to the foreclosure, shall be sufficient to pass the title thereto." 735 ILCS 5/15-1509(b) (West 2012).

¶ 12 In addition, section 15-1509(c) provides the following:

"(c) Claims Barred. Any vesting of title by a consent foreclosure pursuant to Section 15-1402 or by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure in accordance with paragraph (2) of subsection (c) of Section 15-1502, notwithstanding the provisions of subsection (g) of Section 2-1301 to the contrary. Any person seeking relief from any judgment or order entered in the foreclosure in accordance with subsection (g) of Section 2-1301 of the Code of Civil Procedure may claim only an interest in the proceeds of sale." 735 ILCS 5/15-1509(c) (West 2012).

¶ 13 In reaching our determination, we find *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224, controlling, where our court held that due to the above provisions of the Foreclosure Law, a section 2-1401 petition cannot be asserted in an effort to vacate the circuit court's confirmation of a foreclosure sale. *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30. In *Prabhakaran*, the defendant filed a section 2-1401 petition seeking to vacate a foreclosure

judgment and the circuit court's order confirming the judicial sale of the foreclosed property to the plaintiff U.S. Bank. *Id.*, ¶ 1. U.S. Bank, however, contended that "section 15-509(c) of the Foreclosure Law barred the defendant's section 2-1401 petition as a matter of law because the selling officer had already delivered a deed to U.S Bank following the circuit court's order confirming sale of the property." *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 26. This court agreed and noted that "[a] section 2-1401 petition is not a timely appeal; it is a new action in the circuit court that seeks vacation of a final judgment." *Prabhakaran*, 2013 IL App (1st) 111224, ¶ 28 (citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002)). This court made clear that "[t]here is simply no Illinois authority to support the defendant's argument that she can utilize section 2-1401 to circumvent section 15-1509(a) or section 15-1509(c) of the Foreclosure Law after the circuit court confirmed the sale of the property." *Prabhakaran*, 2013 IL App (1st) 111224 at ¶ 30. Further, "[t]he clear and unambiguous language of section 15-1509(c) of the Foreclosure Law bars the defendant's claims in her section 2-1401 petition and is dispositive." *Id.*; See *Harris Bank, N.A. v. Harris*, 2015 IL App (1st) 133017, ¶ 48 (based on *Prabhakaran*, the reviewing court held that section 15–1509(c) of the Foreclosure Law barred the defendant's section 2-1401 petition).

¶ 14 Here, as in *Prabhakaran*, the judicial deed was executed and delivered, thereby vesting title in plaintiff under sections 15-1509(b) and 15-1509(c) of the Foreclosure Law (735 ILCS 5/15-1509(b), (c) (West 2012)). Defendants' attempt to distinguish *Prabhakaran* is misplaced, as defendants' relied upon cases which address different fact patterns and issues stemming from a section 2-1401 petition. See *Citimortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, ¶ 15 (the reviewing court concluded the instant case was distinguishable from *Prabhakaran* because the defendant limited her claim to only an interest in the proceeds from the sale; she did not try to

vacate the foreclosure decree and the order confirming sale); *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 17 (*Prabhakaran* is distinguishable and inapplicable because the instant case involves a section 2-1401 petition based solely on a lack of jurisdiction concerning service of process); *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶12 (where this court noted "*Prabhakaran* is distinguishable, as it did not involve a section 2-1401 petition based solely on a lack of jurisdiction concerning service of process"). Therefore, this vesting of title in plaintiff operates as an entire bar on defendants' claim.

¶ 15 Furthermore, even if defendants' claim was not barred, defendants do not have a meritorious defense. Defendants contend that the mortgages ceased to exist upon execution of the Renewal Note as it paid off the Original Note and released Partipilo from any obligation. We disagree. In relevant part, the Renewal Note provided:

i. The [Renewal] Note is a renewal of a promissory note originally dated April 12, 2005, in the original principal amount of \$1,800,000. (p. 2)

ii. The payment of this [Renewal] Note is secured by a certain Mortgages and Assignments of Leases and Rents, each dated April 12, 2005 and recorded with the Recorder of Deeds of Cook County, Illinois, on April 20, 2005 *** upon the real estate commonly known as 6645-51 N. Oliphant/6639 N. Avondale, Chicago, IL; 6601-05 N. Avondale, Chicago Illinois and 1118 Greenwood, Park Ridge, Illinois. (pp. 5-6)

iii. PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THIS NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE. (p. 7) (capitalization and emphasis in original.)"

¶ 16 Thus, Partipilo agreed that the Renewal Note renewed the indebtedness evidenced by the Original Note and the mortgages remained as security. Maturity of the Renewal Note was further extended on three separate occasions and Partipilo individually signed the extension each time. Consequently, no meritorious defense exists. See *Halle v. Robertson*, 219 Ill. App. 3d 564, 568–69 (1991) (a meritorious defense, such as must be shown in support of an application to set aside a default judgment, is one that raises questions of law deserving investigation or a real controversy as to the essential facts).

¶ 17 Moreover, defendants have not established sufficient due diligence. They were served with process in May 2012, and although their attorneys made an appearance in court, defendants did not file a responsive pleading. Approximately six months later, plaintiff filed its motion for default judgment and judgment of foreclosure and sale. On January 16, 2013, the circuit court entered judgments of foreclosure and sale to the properties and plaintiff proceeded to conduct judicial sales on all three properties. Defendants raised no objection. Plaintiffs then sought and obtained a confirmation of these judicial sales and defendants still failed to raise any objection. Now on appeal, defendants fail to produce any compelling arguments to excuse these delays. See *West Bend Mutual Insurance Co. v. 3RC Mechanical and Contracting Services, LLC*, 2014 IL App (1st) 123213, ¶ 14 (the petitioner must show that his failure to defend against the lawsuit was the result of an excusable mistake and that under the circumstances he acted reasonably, and not negligently, when he failed to initially resist the judgment). Accordingly, the circuit court properly denied defendant's motion to vacate.

¶ 18 CONCLUSION

¶ 19 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.