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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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PATRICIA A. KELVER,	)	Appeal from the Circuit Court
	)	of Lake County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-L-964
	)	
WILLIAM BACZEK, JAN BACZEK,	)	
ANDREA BACZEK, BENJAMIN BASS,	)	
Indiv. and d/b/a Property Group, and	)	
STEPHEN MARTIN,	)	Honorable
	)	Diane E. Winter,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Because *res judicata* did not bar plaintiff's complaint, the trial court erred by granting defendants' motion to dismiss. Therefore, we reversed and remanded.
- ¶ 2 Plaintiff, Patricia A. Kelter, filed a petition to vacate a tax deed order pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2006)). According to plaintiff, the tax deed to her property was procured by fraud. The trial court granted plaintiff's section 2-1401 petition, and she then filed a complaint against defendants, William Baczek, Jan Baczek, Andrea Baczek, Benjamin Bass, and Stephen Martin, in relation to the same property.

Defendants argued that plaintiff's complaint was barred by *res judicata* because all of the claims could have been raised in her section 2-1401 petition. Defendants moved to dismiss plaintiff's complaint on this basis, and the trial court granted the motion. Plaintiff appeals, arguing that an exception to *res judicata* applies in this case. We agree and reverse and remand for further proceedings.

¶ 3

### I. BACKGROUND

¶ 4 The record reveals the following. Plaintiff and her husband Richard owned property in Round Lake Park and did not pay real estate taxes in 2002. On December 1, 2003, the Lake County Treasurer conducted the tax sale for the 2002 real estate taxes. Benjamin Bass, an attorney, purchased the real estate taxes.

¶ 5 Based on a "disputed" 2003 contract to purchase the property from plaintiff and Richard for \$140,000, William and Jan Baczek (the Baczeks) claimed an interest in the property. Plaintiff and Richard refused to recognize the contract or to convey the property. On February 25, 2005, the Baczeks filed a complaint for specific performance against plaintiff and Richard. Richard died on March 30, 2005.

¶ 6 On May 8, 2006, Bass, as purchaser of the real estate taxes, filed a Petition for Tax Deed (tax deed case). On August 28, 2006, the Baczeks tendered \$21,293.31 to redeem the property's taxes. The Baczeks' attorney, Stephen Martin, notified plaintiff's attorney of the redemption. Based on the Baczeks' redemption, Bass moved for dismissal of his tax deed case on September 21, 2006.

¶ 7 Between September 21, 2006, and October 20, 2006, Bass and Martin negotiated an agreement (agreed order) in which the Baczeks' redemption would be expunged; the dismissal of Bass's tax deed case would be vacated; Bass would seek a tax deed; and Bass would sell the

property to the Baczeks for \$65,000, resulting in a profit to Bass and a savings to the Baczeks of approximately \$37,000. Bass and Martin also agreed that plaintiff would not receive notice of the agreed order.

¶ 8 On December 7, 2006, Bass and Martin appeared in court, and the agreed order was entered. The agreed order expunged the Baczeks' redemption and vacated Bass's prior dismissal of the tax deed case. Bass sought issuance of the tax deed; the court entered an order directing the issuance of a tax deed; and a tax deed was issued and recorded. Neither Bass nor Martin disclosed to the court that plaintiff had no notice of the proceedings. Bass then sold the property to the Baczeks.

¶ 9 The Baczeks' specific performance case was scheduled for a status hearing on April 20, 2007, at which time they voluntarily dismissed it. Shortly thereafter, plaintiff learned of the agreed order and filed a section 2-1401 petition to vacate it on May 21, 2007. In her petition, plaintiff alleged that Bass procured the tax deed by "fraud or by deception." In terms of relief, plaintiff sought to: (1) vacate the December 7, 2006, agreed order expunging the Baczeks' tax redemption; (2) vacate the December 7, 2006, order directing issuance of a tax deed; and (3) void the tax deed that was issued. The court conducted a "multi-day" evidentiary hearing on plaintiff's section 2-1401 petition and then granted the relief she sought.

¶ 10 On December 6, 2011, plaintiff filed the instant seven-count complaint against the Baczeks, including Jan Baczek's wife, Andrea Baczek, Bass, and Martin (collectively "defendants") seeking actual and punitive damages and pain and suffering. Count I alleged fraud based on misrepresentations by Bass and Martin; count II alleged intentional interference in that Bass and Martin intentionally and substantially interfered with plaintiff's interest in the property by divesting her of ownership; count III alleged that plaintiff was denied use and occupancy of

the property due to the Baczecks' possession of the property; count IV alleged waste in that plaintiff sustained damage for repair of the property; count V alleged conversion in that the Baczecks disposed of plaintiff's fixtures and personal items in the property; count VI alleged unjust enrichment in that the Baczecks received numerous benefits during their use and occupancy of the property; and count VII alleged conspiracy in that Bass and Martin engaged in a concerted course of action to withhold information from plaintiff and the court.

¶ 11 On April 24, 2012, Bass and the other defendants filed separate motions to dismiss plaintiff's complaint under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). Relevant to this appeal, defendants argued that plaintiff's complaint was barred by *res judicata* under section 2-619(a)(4) of the Code (735 ILCS 5/2-619(a)(4) (West 2012)) because she had already pursued relief in a section 2-1401 petition.

¶ 12 Plaintiff filed a response to the motions to dismiss, arguing that *res judicata* did not apply because there was no identity of cause of action. Plaintiff further argued that even assuming that the requirements of *res judicata* were satisfied, an exception to the doctrine prevented its application. The exception in this case, according to plaintiff, was that she could not have obtained review of the claims in her complaint in her initial section 2-1401 petition because of the court's limited subject matter jurisdiction in a section 2-1401 proceeding. Plaintiff argued that section 2-1401 allowed only relief from judgment; it did not allow her to seek new and additional causes of action.

¶ 13 On May 2, 2013, the trial court granted defendants' motions to dismiss. Initially, the court determined that the three requirements of *res judicata* were satisfied. The court noted that it conducted a "multi-day hearing" on plaintiff's section 2-1401 petition and that the factual basis that resulted in the granting of her section 2-1401 petition was the same as alleged in her

complaint. In particular, the court found that plaintiff could have included the issue of damages in her section 2-1401 petition. Regarding plaintiff's argument that the court had limited jurisdiction in a section 2-1401 proceeding, the court stated that the cases cited by plaintiff ignored the reality that it was a court of general jurisdiction. According to the court, "plaintiff in the first [section 2-1401] action could have requested, either by additional claims or joinder of claims, the damages that she had already suffered as part of the actions that she alleged against the defendants in that [section 2-1401] action."

¶ 14 Plaintiff timely appealed.

¶ 15 II. ANALYSIS

¶ 16 A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that defeats the plaintiff's claim. *Severino v. Freedom Woods, Inc.*, 407 Ill. App. 3d 238, 243 (2010). Section 2-619(a)(4) permits a defendant to file a motion for dismissal on the basis that the cause of action is barred by a prior judgment (*res judicata*). See 735 ILCS 5/2-619(a)(4) (West 2012). The standard of review from a dismissal based upon the doctrine of *res judicata* is *de novo*. *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 489 (2009).

¶ 17 *Res judicata* is an equitable doctrine designed to prevent a multiplicity of lawsuits between the same parties in which the facts and issues are the same. *Severino*, 407 Ill. App. 3d at 244. "*Res judicata* bars a subsequent action if (1) a final judgment on the merits was rendered by a court of competent jurisdiction, (2) there is an identity of parties or their privies, and (3) there is an identity of cause of action." *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 3 (2009). The doctrine of *res judicata* bars not only what was actually decided in the first action

but also whatever could have been decided. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008).

¶ 18 On appeal, plaintiff abandons her previous argument in the trial court that there was no identity of cause of action between her section 2-1401 petition and her complaint. In other words, she concedes that the claims in her complaint arose from the same transaction, the issuance of the tax deed, as challenged in her section 2-1401 petition. Plaintiff thus concedes that the three requirements of *res judicata* are satisfied. Nevertheless, plaintiff argues that *res judicata* does not bar her complaint because this case falls within one of the exceptions to the doctrine.

¶ 19 There are six exceptions to *res judicata* set forth in section 26(1) of the Restatement (Second) of Judgments (1982), which were adopted by the supreme court in *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 341 (1996). The particular exception relied on by plaintiff states:

“[T]he plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.” Restatement (Second) of Judgments § 26(1)(c) (1982).

¶ 20 Defendants counter that the trial court did not lack subject matter jurisdiction to consider the claims in plaintiff’s complaint (fraud, intentional interference, use and occupancy, waste, conversion, unjust enrichment, and conspiracy) when she filed her section 2-1401 petition. For the following reasons, we agree with defendants that the court did not lack subject matter jurisdiction.

¶ 21 Subject matter jurisdiction is defined as a court’s power to hear and determine cases of the general class to which the proceeding belongs. *In re Luis R.*, 239 Ill. 2d 295, 300 (2010). To invoke a trial court’s subject matter jurisdiction, a petition or complaint need only allege the existence of a “justiciable matter,” which 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 having adverse legal interests. *Id.* at 301. Here, the subject matter jurisdiction of the trial court attached when plaintiff filed her section 2-1401 petition to vacate the agreed order expunging the Baczecks’ tax redemption and directing the issuance of a tax deed. See *In re Marriage of Fox*, 191 Ill. App. 3d 514, 520 (1989) (jurisdiction of the court to hear a particular controversy is invoked by filing an action); see also *People v. Mathis*, 357 Ill. App. 3d 45, 49 (2005) (the subject matter jurisdiction of the trial court attached when the defendant filed his timely section 2-1401 petition).

¶ 22 That said, the exception to *res judicata* relied on by plaintiff is broader than whether the trial court had subject matter jurisdiction. The language in the exception makes clear that it also applies when the court is restricted in its authority “to entertain multiple theories or demands for multiple remedies or forms of relief in a single action.” Restatement (Second) of Judgments § 26(1)(c) (1982). It is this part of the exception that applies here.

¶ 23 As plaintiff points out, a trial court loses jurisdiction over a matter once 30 days have passed following the entry of a final order. *People ex rel. McGraw v. Mogilles*, 136 Ill. App. 3d 67, 71 (1985). “The remedy provided by section 2-1401, however, is a limited exception to the general rule that the trial court loses jurisdiction after 30 days of entering a judgment and the petitioner must allege and prove a proper ground for relief.” *Id.* at 73. In this case, plaintiff filed a section 2-1401 petition to vacate the agreed order directing the issuance of a tax deed on the

basis that the tax deed was procured by fraud. As a result, the limited issue before the court in adjudicating her section 2-1401 petition was whether she was entitled to relief from that agreed order. Once plaintiff succeeded in her section 2-1401 petition, *i.e.*, the agreed order was vacated, she was free to bring additional claims for damages. Indeed, it was not until plaintiff prevailed on her section 2-1401 petition that she had the right to pursue additional claims for damages.

¶ 24 Defendants respond to this argument by pointing out that section 2-1401 allows for broad relief and is subject to the usual rules of civil practice. Section 2-1401(a) provides:

“Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided in Section 6 of the Illinois Parentage Act of 1984, there shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.” 735 ILCS 5/2-1401(a) (West 2006).

Our supreme court has described section 2-1401 as a comprehensive, statutory procedure that permits the vacatur of a final judgment older than 30 days. *People v. Vincent*, 226 Ill. 2d 1,7 (2007). Though section 2-1401 requires that the petition be filed in the same proceeding in which the order of judgment was entered, it is *not* a continuation of the original action. *Id.*; see 735 ILCS 5/2-1401(b) (West 2006) (the “petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof.”). Rather, section 2-1401

petitions are “essentially complaints inviting responsive pleadings,” meaning the proceedings under section 2-1401 are subject to the usual rules of civil practice. *Id.* at 8; see also *In re Marriage of Klebs*, 196 Ill. App. 3d 472, 479 (1990) (a section 2-1401 petition is not a continuation of the previous action, but a new action, subject to the rules of civil practice and is to be considered as any other civil complaint). As with a complaint, a section 2-1401 petition may be challenged by a motion to dismiss for its failure to state a cause of action or if, the petition, on its face, shows that the petitioner is not entitled to relief. *Vincent*, 226 Ill. 2d at 8.

¶ 25 Though defendants correctly describe section 2-1401, nothing in the language of that section or in the relevant case law suggests that plaintiff was allowed to bring new claims in her section 2-1401 petition. Under defendants’ theory, plaintiff should have anticipated and raised every additional claim for damages in her section 2-1401 petition, despite the court’s limited authority to decide only whether the agreed order should be vacated. As stated, the sole inquiry in a section 2-1401 proceeding is whether to grant or deny relief from an order or judgment. Requiring plaintiff to raise all of her claims in a section 2-1401 or risk forfeiture is not consistent with the overall purpose of a section 2-1401 proceeding. Moreover, plaintiff may not have been aware of some her claims, such as waste and unjust enrichment, until she prevailed on her section 2-1401 petition and the property was returned to her. Finally, *res judicata* is an equitable doctrine, and defendants take an overly restrictive view of its application in this case.

¶ 26

### III. CONCLUSION

¶ 27 Because the trial court’s authority in adjudicating plaintiff’s section 2-1401 petition was limited to either granting or denying relief from a final judgment, the exception to *res judicata* applies, and plaintiff’s complaint was not barred. Therefore, the trial court erred by granting defendants’ motion to dismiss plaintiff’s complaint on the basis of *res judicata*. For all of these

reasons, the judgment of the Lake County circuit court is reversed, and the case is remanded for proceedings consistent with this order.

¶ 28 Reversed and remanded.