

No. 1-16-2417

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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In re APPLICATION OF THE COUNTY COLLECTOR	)	Appeal from the Circuit Court
OF COOK COUNTY ILLINOIS, for Judgment and Sale	)	of Cook County.
Against Real Estate Returned Delinquent for the	)	
Nonpayment of General Taxes for the Year 2010	)	No. 14 COTD 4475
and Prior Years.	)	
	)	Honorable
(Bank of America, N. A., Petitioner-Appellant v. Ybanc,	)	Margarita Kulys-Hoffman,
Inc., and Western Sites, LLC, Respondents-Appellees.)	)	Judge Presiding.

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JUSTICE DELORT delivered the judgment of the court.  
Justices Cunningham and Rochford concurred in the judgment.

**ORDER**

¶ 1 **Held:** We affirm the circuit court's dismissal of a section 2-1401 petition which had sought to vacate the sale and conveyance of tax-delinquent property.

¶ 2 Bank of America, N. A. appeals the dismissal of a petition which it filed pursuant to section 2-1401 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1401 (West 2014). The petition sought to void both the judicial sale of a tax-delinquent condominium unit in Chicago, and the judicial deed issued pursuant to that sale. The circuit court dismissed the petition with prejudice. We affirm.

¶ 3 On December 30, 2014, Western Sites, LLC filed a petition for tax deed in the circuit court, alleging that it had: (1) successfully bid on the delinquent taxes for the subject property at a sale conducted by county officials on August 9, 2012; (2) subsequently obtained a certificate of purchase for the property; and (3) provided requisite notice to various interested persons, including Bank of America, as required by law. The petition also alleged that the time for an interested person to redeem the taxes from the sale would expire June 17, 2015.

¶ 4 The original redemption period from the sale was set to expire on February 9, 2014. However, on November 20, 2012, an unsigned extension notice purporting to have been issued by Western Sites was filed, extending the redemption period to February 12, 2015. A second extension notice in like form was filed on September 12, 2014, extending the redemption period to March 19, 2015. A third, and final, extension notice was filed December 30, 2014, extending the redemption period to June 17, 2015. This notice was signed by Richard Glickman as “Attorney for Certificate Holder.” Bank of America was served with process in the tax deed proceeding on January 22, 2015, but did not appear at that time.

¶ 5 No one redeemed the property from the tax delinquency sale. On September 2, 2015, after a prove-up, the court entered orders: (1) substituting Ybanc, Inc. as petitioner in place of Western Sites, LLC by virtue of an assignment of the certificate of sale; and (2) directing the Cook County Clerk to issue a tax deed to Ybanc. Those orders terminated the case. The deed to Ybanc was recorded on September 17, 2015.

¶ 6 On March 1, 2016, Bank of America appeared in the litigation for the first time when it filed a petition under section 2-1401 of the Code of Civil Procedure, 735 ILCS 5/2-1401 (West 2014), challenging the order issuing the tax deed to Ybanc. On March 11, it filed the amended section 2-1401 petition at issue in this appeal. The amended petition alleged that the sale and

deed were void on the following three bases: (1) Western Sites, LLC was not authorized to transact business in Illinois when it registered to bid at the tax sale; (2) Western Sites, LLC was not authorized to transact business in Illinois when the sale was conducted; (3) Western Sites, LLC's assignment of the certificate of sale to Ybanc was invalid because the certificate endorsement effectuating the assignment was signed by Glickman as Western Sites, LLC's attorney and not by a manager or member of Western Sites, LLC, as required by Illinois law governing limited liability corporations. The petition alleged that because of these deficiencies, Western Sites, LLC never validly assigned the certificate of purchase to Ybanc, rendering the sale and deed void under section 22-85 of the Property Tax Code (Code) (35 ILCS 200/22-85 (West 2014)).

¶ 7 Ybanc filed a motion seeking dismissal of the section 2-1401 petition on two bases. Although the motion was not labeled as being brought under section 2-619.1 of the Code of Civil Procedure, that section permits a party to combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2-619.1 (West 2014). In the section 2-615 portion of the motion<sup>1</sup>, Ybanc argued that section 22-45 of the Code (35 ILCS 200/22-45 (West 2014)) limits the bases upon which a section 2-1401 petition may be brought to vacate a tax deed. Since the petition did not rest on any of those specified bases, Ybanc argued that the petition failed to state a cause of action upon which relief could be granted.

¶ 8 In the section 2-619 portion of the motion, Ybanc alleged that the petition should be dismissed because it was not filed within the time required by law. The petition was filed within two years of the order at issue as required by section 2-1401(c), 735 ILCS 5/2-1401(c) (West

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<sup>1</sup> Bank of America correctly notes that the motion cited section 2-615(b) rather than simply section 2-615, as it should have. However, we can affirm on any basis in the record, and for simplicity, we will refer to the motion as having been brought under section 2-615.

2014), so it was in fact timely in that sense. Ybanc nonetheless claimed that Bank of America's failure to allege any meritorious defense or how it acted with due diligence rendered the petition untimely.

¶ 9 On August 5, 2016, after briefing and argument, the circuit court granted Ybanc's motion to dismiss. The court found that the errors alleged by Bank of America rendered the tax deed orders merely voidable, not void. On August 11, the court struck the prove-up hearing on Bank of America's section 2-1401 petition based on its earlier dismissal of that petition. This appeal followed.

¶ 10 Ybanc has not filed a brief on appeal. However, the issues and record are straightforward, and we will address the merits of the appeal in accordance with the standards of *First Capitol Mortgage Corp v. Talandis Construction Corp.*, 63 Ill.2d 128 (1976). In its notice of appeal, Bank of America seeks review of: (1) the August 5 order dismissing its section 2-1401 petition; and (2) the August 11 order striking its motion for a default prove-up. We address these issues in turn.

¶ 11 On appeal, Bank of America argues that the circuit court erred in dismissing its petition as it had sufficiently alleged that the order for tax deed, the tax deed, and the certificate of purchase "are void as a matter of law" because the owner and holder of the certificate of purchase did not comply with certain provisions of the Property Tax Code. We disagree.

¶ 12 When ruling on a motion to dismiss under either section 2-615 or section 2-619, a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. As a result, a motion to dismiss pursuant to either section should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.

*Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006) (section 2–615); *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8 (section 2– 619). The review of an order granting a section 2–1401 petition on the pleadings alone is *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18 (2007).

¶ 13 Section 2-1401 of the Code provides a method by which a litigant can collaterally attack a judgment previously entered in a case. “As a general rule, petitions brought pursuant to section 2–1401, to be legally sufficient, must be filed within two years of the order or judgment, the petitioner must allege a meritorious defense to the original action, and the petitioner must show that the petition was brought with due diligence.” *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). However, if the petition challenges the judgment on the basis that it was void, the petition may be brought at any time, and the voidness allegation substitutes for the meritorious defense and due diligence requirements. *LVNV Funding, LLC v. Trice*, 2015 IL 116129, ¶ 11. Under Illinois law, a party may challenge a judgment as being void at any time, either directly or collaterally, and the challenge is not subject to forfeiture or other procedural restraints. *Id.* ¶ 38. But a judgment is not void unless it suffers from “the most fundamental defects, such as lack of personal jurisdiction or lack of subject matter jurisdiction”. *Id.*

¶ 14 In a civil lawsuit such as this one, the term “jurisdiction” relates solely to either subject matter jurisdiction or personal jurisdiction. Personal jurisdiction is not at issue here, as Bank of America does not challenge the fact it was served with process, although it does note that it could not locate any memorialization of the January 22, 2015 service of process in its records. Subject matter jurisdiction is defined solely as the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *Id.* ¶ 38. General errors in the underlying proceeding do not render the judgment void for lack of subject matter jurisdiction. *Id.* ¶ 39.

¶ 15 Two provisions of the Property Tax Code are at issue. The first is section 22-45, which establishes limits on section 2-1401 petitions in tax deed cases. Section 22-45 provides in relevant part:

“Tax deed incontestable unless order appealed or relief petitioned. Tax deeds issued under Section 22-40 are incontestable except by appeal from the order of the court directing the county clerk to issue the tax deed. However, relief from such order may be had under Sections 2-1203 or Section 2-1401 of the Code of Civil Procedure in the same manner and to the same extent as may be had under those Sections with respect to final orders and judgments in other proceedings. The grounds for relief under Section 2-1401 shall be limited to:

- (1) proof that the taxes were paid prior to sale;
- (2) proof that the property was exempt from taxation;
- (3) proof by clear and convincing evidence that the tax deed had been procured by fraud or deception by the tax purchaser or his or her assignee; or
- (4) proof by a person or party holding a recorded ownership or other recorded interest in the property that he or she was not named as a party in the publication notice as set forth in Section 22-20, and that the tax purchaser or his or her assignee did not make a diligent inquiry and effort to

serve that person or party with the notices required by Sections 22-10 through 22-30.” 35 ILCS 200/22-85 (West 2014).

¶ 16 Section 22-85 of the Property Tax Code, upon which Bank of America solely relies, provides in pertinent part:

“Failure to timely take out and record deed; deed is void.

Unless the holder of the certificate purchased at any tax sale under this Code takes out the deed in the time provided by law, and records the same within one year from and after the time for redemption expires, the certificate or deed, and the sale on which it is based, shall, after the expiration of the one year period, be *absolutely void* with no right to reimbursement.” (Emphasis added). 35 ILCS 200/22-85 (West 2014).

¶ 17 We find that the outcome here is controlled by *DG Enterprises, LLC v. Cornelius*, 2015 IL 118975. In *DG Enterprises*, a section 2-1401 petitioner sought relief based on the failure to include contact information for the county clerk on a tax sale notice. The supreme court recognized invalidation of a tax deed implicates two competing interests: (1) providing an avenue for an owner to rescue property from a forced tax sale; and (2) the need for finality in judgments to promote the marketability of land titles. *Id.*, ¶ 24. The court explained that the General Assembly struck a balance between those competing interests when it enacted section 22-45 of the Property Tax Code. *Id.* ¶ 25. The court found that since the “missing county clerk address” defect was not listed among the specific grounds for relief listed in section 22-45, the section 2-1401 petition necessarily failed. *Id.* ¶ 29.

¶ 18 Similarly here, Bank of America's challenges fall outside the four enumerated criteria listed in section 22-45. Nothing in the petition alleges that: (1) the taxes had, in fact, been timely paid; (2) that the property was exempt from taxation; (3) the tax deed was procured by fraud; or (4) that Bank of America was omitted from the published notice and the tax purchaser did not make a diligent inquiry to locate Bank of America. Therefore, the circuit court properly dismissed the petition.

¶ 19 Although Ybanc cited the *DG Enterprises* case in the court below, Bank of America makes no effort to distinguish it in this court or to otherwise explain why the court's interpretation of section 22-45 does not control this case. In fact, Bank of America does not even mention the case in its brief. Instead, Bank of America, invoking section 22-85 of the Code, contends that, due to the alleged licensure and signature irregularities, Western Sites, LLC's actions were nullities, with the result that the "holder of the certificate purchased at the tax sale" under this Code "did not take out the deed in the time provided by law." Bank of America contends that the petition sufficiently alleged that the tax deed order was void and should have survived the motion to dismiss as a void judgment is subject to attack at any time.

¶ 20 In support of that argument, Bank of America relies on *In re County Treasurer*, 2012 IL App (1st) 101976. In that case, the section 2-1401 petition alleged that the sale and deed were invalid because the original tax sale bidder, GJ Venture, LLC, had already assigned away its rights to the property to Sabre Group, LLC, when GJ, and not Sabre, extended the redemption period. At the prove-up hearing for the tax deed, Sabre's attorney stated that she was missing the extension paperwork and was unable to locate it in her file. The court granted her leave to submit the certificate or a certified copy of public records showing the missing extension, but she



apparently did not did so. Even so, the court later directed the county clerk to issue a tax deed and the deed was recorded.

¶ 21 The section 2-1401 petition filed in *In re County Treasurer* challenging the tax deed alleged that GJ's extension of the redemption period was invalid because it no longer had any rights to extend, having unconditionally transferred its interests to Sabre some time earlier. The petition alleged that the tax deed was thus procured by fraud on the court, specifically, that Sabre failed to inform the court that the missing extension was executed by GJ and not Sabre. On review, the appellate court reversed the dismissal of the section 2-1401 petition, granted the petition, and voided the sale and deed. The court reasoned that under section 21-385 of the Property Tax Code, 35 ILCS 200/21-385 (West 2008), only the purchaser or its assignee could extend the redemption period. It recognized a "clear legislative intent that the purchaser or assignee" authorized to extend the redemption period "must also be the certificate holder". Consequently, it found that GJ's extension "was a nullity," with the result of reinstating the original unextended redemption expiration date. Since the deed was not recorded within one year of that date, section 22-85 became operative and the sale and deed were void. *Id.* ¶ 41.

¶ 22 All of this leads us to resolve an apparent conflict between sections 22-45 and 22-85 of the Property Tax Code. Section 22-45 provides that a section 2-1401 petition may be used to vacate a court order granting a tax deed, but only if the procedural defect alleged falls within one of four specific categories. Section 22-85 does not mention section 2-1401 petitions at all. It merely says that if the certificate holder does not take out a deed within one year from the expiration of redemption, the deed and sale are void.

¶ 23 When construing a statute, our goal is to "ascertain and give effect to the intent of the legislature," which begins with the language of the statute, "the best indicator of legislative

intent.” *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). If the language is clear and unambiguous, we may not depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express, nor by rendering any word or phrase superfluous or meaningless. *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189 (1990).

¶ 24 Our supreme court has held:

“A court presumes that the legislature intended that two or more statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative. Statutes relating to the same subject must be compared and construed with reference to each other so that effect may be given to all of the provisions of each if possible. Even when an apparent conflict between statutes exists, they must be construed in harmony with one another if reasonably possible. [Citations omitted.]”  
*Knolls Condominium Ass’n v. Harms*, 202 Ill.2d 450, 458–59 (2002).

¶ 25 Applying these standards to the statutes at issue here, we note that section 22-45 specifically refers to section 2-1401 petitions, and section 22-85 does not. Additionally, section 22-45 clearly refers to the vacating of court judgments. Section 22-85, on the other hand, establishes circumstances under which a “certificate or deed, and the sale on which it is based” become void, but that section does not mention court judgments at all. This leads to the following conclusion: failure to meet the deadline established in section 22-85 may render a tax sale or deed void, but if a party seeks relief from a tax deed order through a section 2-1401 petition, the grounds justifying such relief are limited to those specified in section 22-45. And,

because section 22-45 clearly forecloses technical challenges such as those contained in Bank of America's section 2-1401 petition, we find that the circuit court properly dismissed the petition.

¶ 26 *In re County Collector* does not command a contrary result. It must be construed in light of more recent authority from our supreme court regarding “void” and “voidable” judgments. In *Trice*, for instance, the court addressed technical claims similar to those made here, and explained: “lack of ‘inherent power’ refers to the idea that if a certain statutory requirement or prerequisite—such as obtaining a debt collection license—is not satisfied, then the circuit court loses ‘power’ or jurisdiction to consider the cause of action at issue. In other words, the circuit court’s jurisdiction depends on whether the court properly follows certain statutory requirements.” *Trice*, 2015 IL 116129, ¶ 29. The court found that under the 1970 constitution:

“[W]hether a judgment is void in a civil lawsuit that does not involve an administrative tribunal or administrative review depends solely on whether the circuit court which entered the challenged judgment possessed jurisdiction over the parties and the subject matter. ‘Inherent power’ as a separate or third type of jurisdiction applies only to courts of limited jurisdiction or in administrative matters. It has no place in civil actions in the circuit courts, since these courts are granted general jurisdictional authority by the constitution.” *Id.* ¶ 32.

The *Trice* court also restated the rule that “only the most fundamental defects, *i.e.*, a lack of personal jurisdiction or lack of subject matter jurisdiction \* \* \* warrant declaring a judgment void.” *Id.*, ¶ 38. Under *Trice*, the tax deed order at issue here was not void for lack of jurisdiction.

¶ 27 And in *DG Enterprises*, the court considered a section 2-1401 challenge to a tax deed based on a criterion not listed in 22-45. The court rejected that challenge, stating: “We think it obvious that if the legislature had meant to provide a separate ground for a collateral attack based solely on the lack of diligent inquiry and effort in serving the notices, it would have crafted a subsection (5) to section 22-45. Accordingly, the statute must be applied as written.”

¶ 28 Because we have found that the court properly dismissed Bank of America’s section 2-1401 petition, it necessarily follows that the court also properly struck Bank of America’s motion for a default prove-up of the same, dismissed petition.

¶ 29 Affirmed.