

2012 IL App (2d) 110587-U
No. 2-11-0587
Order filed March 23, 2012

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
SECOND DISTRICT

AURORA LOAN SERVICES, LLC,)	Appeal from the Circuit Court
)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CH-4316
)	
KEE SEONG LEE,)	
)	
Defendant)	Honorable
)	Luis A. Berrones,
(Hye Ran Leekim, Defendant-Appellant).)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: The trial court properly denied defendant's section 2-1401 petition to vacate an allegedly void judgment, as an alleged statutory violation in the entry of the judgment did not render it void.

¶ 1 Hye Ran Leekim, one of the defendants in the mortgage foreclosure action underlying this appeal, seeks reversal of an order denying her petition under section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)) to vacate a default judgment in the foreclosure action. We affirm.

¶ 2 Plaintiff, Aurora Loan Services, LLC (ALS), filed its complaint in the circuit court of Lake County, naming Kee Seong Lee and Leekim as defendants. ALS moved for entry of an order of default against Lee and Leekim for failure to file an answer or to otherwise appear in the action. The trial court granted the motion and entered a judgment of foreclosure. The mortgaged property was sold pursuant to the judgment, and on March 8, 2011, the trial court entered an order confirming the sale. On May 24, 2011, Leekim filed an appearance and motion seeking to compel ALS to provide her with “copies of the affidavits in this case used to obtain a Judgment of Foreclosure.” Leekim claimed that her attorney had examined the record of the foreclosure action and had found no such affidavit. The trial court struck the motion, but its written order states that “Plaintiff[']s counsel tendered to Defendant’s counsel a copy of the proof up [sic] affidavit.” Thereafter, Leekim filed her section 2-1401 petition to vacate the judgment. She attached a copy of an “Affidavit of Proof” setting forth the amounts that ALS claimed defendants owed under the mortgage. The affidavit is signed and notarized, but the signature is not entirely legible and the affidavit does not otherwise identify the affiant, except as an “Authorized Agent for [ALS].” Leekim contended that “a Judgment cannot stand based on an affidavit in which the affiant is not identified without regard to a meritorious defense or due diligence as required by [section 2-1401].” As noted, the trial court denied the petition.

¶ 3 Section 2-1401 of the Code authorizes a litigant to seek relief from a judgment more than 30 days after it was entered. Ordinarily, a petition seeking relief under section 2-1401 must allege the existence of a meritorious claim or defense, due diligence in presenting the claim or defense to the trial court in the original action, and due diligence in filing the section 2-1401 petition. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006). However, “where a petitioner seeks

to vacate a final judgment as being void [citation] the allegations of voidness ‘substitute[] for and negate[] the need to allege a meritorious defense and due diligence.’ ” *People v. Laugharn*, 233 Ill. 2d 318, 322-23 n.1 (2009) (quoting *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002)).

¶ 4 Leekim acknowledges that she did not allege a meritorious defense to the underlying action. She claims, however, that the judgment of foreclosure is void because it was based on an affidavit by an unidentified affiant. Citing section 15-1506 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506 (West 2008)), Leekim asserts that “to obtain a Judgment of Foreclosure, there must be an affidavit as in all other civil cases ***[,] [e]specially in cases where the Complaint is not verified as in this case.” Section 15-1506(a) provides that facts may be proved by affidavit in certain circumstances, but section 15-1506(c) provides, “Nothing in this Section 15-1506 shall prevent a party from obtaining a *** default judgment authorized by Article II of the Code of Civil Procedure.” 735 ILCS 5/15-1506(c) (West 2008). Section 2-1301(d) of the Code provides that “[j]udgment by default may be entered for want of an appearance, or for failure to plead, but the court *may* in either case, require proof of the allegations of the pleadings upon which relief is sought.” (Emphasis added.) 735 ILCS 5/2-1301(d) (West 2008). Whether to require such proof is left to the discretion of the trial court. See *American Service Insurance Co. of Chicago v. City of Chicago*, 404 Ill. App. 3d 769, 779 (2010) (“Although a default may be deemed an admission of the material facts stated in the complaint, a trial court also has the discretion to require a plaintiff to present proof of the factual allegations in its complaint”).

¶ 5 In any event, even assuming for the sake of argument that the Illinois Mortgage Foreclosure Law requires a default judgment to be supported by affidavit, a defect in the affidavit would not

render the judgment void. A judgment is void when the court that entered it lacked jurisdiction over the parties or the subject matter or lacked the inherent power to make or enter the judgment. *Government Employees Insurance Co. v. Hersey*, 397 Ill. App. 3d 551, 554 (2010). “Once a court has obtained jurisdiction, an order will not be rendered void nor will the court lose jurisdiction merely because of an error or impropriety in the court’s determination of the facts or law.” *Id.* Leekim does not claim that the trial court lacked personal jurisdiction over the parties, and it cannot be gainsaid that the trial court had jurisdiction over the subject matter. With the exception of administrative review proceedings, the trial court’s subject matter jurisdiction over a cause of action derives not from any statute governing the cause of action, but rather from our state constitution. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-36 (2002). The court’s constitutionally conferred subject matter jurisdiction extends to all justiciable matters. *Id.* at 334. Statutory procedural requirements are not jurisdictional. *Id.* at 335-36. Clearly a mortgage foreclosure action is a justiciable matter. Moreover, the trial court—a court of general jurisdiction (*Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001))—did not lack the inherent power to enter a foreclosure judgment. *Id.* (“the ‘inherent power’ requirement applies to courts of limited jurisdiction and administrative agencies”).

¶ 6 Because the trial court had jurisdiction over the parties and the subject matter, its judgment was not void. Consequently, the judgment is not subject to challenge under section 2-1401 in the absence of a meritorious defense and due diligence in asserting that defense. Because Leekim concedes that she cannot meet those requirements, her petition was properly denied.

¶ 7 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 8 Affirmed.