2014 IL App (2d) 130792-U
No. 2-13-0792
Order filed May 28, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

G.T. LANDSCAPING, LLC,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-AR-463
	)	
LAWRENCE TUCKER,	)	Honorable
	)	Michael B. Betar,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court had jurisdiction to hear the section 2-1401 petition to vacate the default judgment. However, it erred in granting the petition on the pleadings (summary judgment) where, as a matter of law, petitioner did not plead or attest to facts that would establish due diligence or a meritorious defense. Reversed and remanded.

¶ 2 On March 28, 2012, plaintiff, G.T. Landscaping, filed a two-count complaint against defendant, Lawrence Tucker, for breach of contract and *quantum meruit*, seeking $26,773, plus costs. Tucker did not appear or answer. On July 16, 2012, the trial court entered a default judgment against Tucker. On May 16, 2013, with new counsel, Tucker petitioned to vacate the

judgment against him (735 ILCS 5/2-1401 (West 2012)), arguing that his lack of diligence should be excused because his prior counsel was negligent. The trial court, presumably believing it was authorized to invoke its equitable powers to grant relief from judgment, did so. However, pursuant *People v. Vincent*, 226 Ill. 2d 1 (2007), the court is no longer authorized to invoke its equitable powers to grant relief from judgment in the absence of due diligence and a meritorious defense. Therefore, on appeal, we reverse the trial court's judgment, reinstate the default judgment against Tucker, and remand for continued hearing of the citation, rule, body attachment, and garnishment proceedings. Reversed and remanded.

¶ 3 I. BACKGROUND

¶ 4 On March 28, 2012, G.T. Landscaping, a Lake County company, filed a verified two-count complaint against its customer, Tucker. Count I set forth a claim for breach of contract. Count II set forth a claim for *quantum meruit*. G.T. Landscaping sought $26,773, plus costs.

¶ 5 Attached to the complaint was a copy of the contract. The contract called for the performance of various projects. These included the: (1) provision and installation of blue stone steppers; (2) provision and installation of river stone to the patio, steps, pool deck, upper landing, and stoop; (3) provision and installation of quarry stone retaining wall units around the stoop; (4) provision of six tons of outcropping stones to build a water feature; (5) removal of the existing back steps, boardwalk, and pool deck; and (6) removal and reinstallation of the iron fence, the brick sidewalk, and various plants. The contract further provided that "[a]ll other services performed outside the nature of this contract will [be] charged on a time and material basis." This portion of the contract was signed in September 2008, and listed a price of $32,965.

¶ 6 Then, in handwriting, presumably in keeping with the provision for "other services," there was a new list of items entitled "additional" and dated "2009." These items were: tree

removal, concrete around the pool, "railroading" the retaining wall, building a trench for the water-heater and gas pipes, provision of additional quarry stone, and provision of an additional 12 tons of outcropping stones. With the extras, the total amount on the contract became $51,015. G.T. Landscaping's owner attached an affidavit stating that, thus far, only $24,242 had been paid, leaving $26,773 remaining due.

¶ 7 In June 2012,[1] Tucker was served with the complaint and a summons, directing him to appear for arbitration on July 16, 2012. The summons stated:

> "THIS IS AN ARBITRATION CASE
>
> ***
>
> YOU ARE HEREBY SUMMONED and required to appear before this Court at *** 1:30 p.m., on July 16, 2012, to answer the complaint in this case, a copy of which is hereto attached. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT."

¶ 8 According to his subsequently filed affidavit, Tucker called his attorney, Gloria Schmidt, immediately upon receipt of the summons. Tucker asked her about the instructions to appear and answer. She told him that he "had been served with a 30 day summons and had plenty of time [to] appear and answer."

¶ 9 On July 16, 2012, Tucker again asked Schmidt about "this matter." On July 24, 2012, Schmidt responded in an email, wherein she stated:

> "As for the Lake County lawsuit,[2] I typically like to file motions to dismiss pursuant to an affirmative defense within the 30 day summons. However, since they are being such

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[1] The exact date is unclear from the record, but Tucker later attested it was June 2012.

d*cks about the whole thing, *let them waste the time of filing a motion to default you*. The court has no subject matter jurisdiction, and the judge cannot waive that (meaning the court will have to grant our motion). Defendants must be sued in a court of competent jurisdiction, and you are not a domiciliary of Lake County. So *I'll whip up a motion to vacate pursuant to an affirmative defense and file when I return*. Remember that since my appearance is not on file in that case (yet, since I'll do that when we file our motion) anything that gets filed will be sent to you and not me. ***" (Emphasis added.)

¶ 10 Meanwhile, on July 16, 2012, because Tucker did not appear, the trial court entered a default judgment against him for $26,773, plus costs.

¶ 11 On September 7, 2012, G.T. Landscaping, as the judgment debtor, filed a citation to discover assets. On October 10, 2012, Tucker received service of the citation, which commanded him to appear on October 16, 2012. The citation order stated: "YOU ARE COMMANDED to appear *** to be examined under oath to discover assets ***." According to Tucker, he then notified Schmidt, who "indicated" that "there must have been some type of mistake and that she would rectify the situation."

¶ 12 On October 16, 2012, Tucker again failed to appear. The court issued an "order and rule to show cause for failure to appear." On October 24, 2012, Tucker received service of the order. The order instructed Tucker to appear on November 27, 2012.

¶ 13 On November 27, 2012, Tucker again failed to appear when the case was called. The trial court issued a body attachment order. It is unclear from the record whether Schmidt was present on Tucker's behalf when the case was called. However, it is clear she was present at

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[2] In the email, Schmidt addressed at least two other lawsuits that she was handling for Tucker.

some point because, later, after G.T. Landscaping's counsel had left the courthouse, Schmidt orally moved to stay the body attachment order. She also moved for leave to file an appearance, answer, or otherwise plead within seven days. The court granted Schmidt's oral motions.

¶ 14 On December 4, 2012, Tucker, through Schmidt, filed a "motion to quash and vacate." The motion was made pursuant to section 2-613 of the Code of Civil Procedure (735 ILCS 5/2-613 (West 2012)), which is *not* a vehicle for bringing post-judgment challenges but, rather, simply instructs the manner in which separate counts and defenses, including jurisdictional defenses, shall be pleaded. In the motion, Tucker argued that the Lake County court did not have "jurisdiction" to enter the judgment against him because he was not a resident of Lake County. As recounted in an agreed statement of facts, the trial court discounted what were, in its view, *venue* concerns arising out of Tucker's county of residence. On March 8, 2013, in its written order, the court denied Tucker's "motion to quash and vacate" *without prejudice*. It advised Tucker to file, if he wished, a proper petition to vacate pursuant to section 2-1401. The court instructed that the section 2-1401 petition should be filed within 28 days, or by April 5, 2013.

¶ 15 Tucker did not file a section 2-1401 petition by April 5, 2013. Therefore, on April 17, 2013, G.T. Landscaping caused a non-wage garnishment summons to be issued against Tucker's bank.

¶ 16 On April 19, 2013, according to Tucker, Tucker contacted new counsel, the Garbis Law Firm, because he had "grown weary" of Schmidt. On April 24, 2013, the new attorney did not appear at the scheduled hearing, and the court continued the citation to discover assets and body attachment order. It ordered the new attorney to appear within seven days, or by May 1, 2013 (which he did not).

¶ 17 On May 6, 2013, Tucker's bank answered that it was in possession of Tucker's funds in an amount that would satisfy the judgment. On May 10, 2013, G.T. Landscaping moved for the turn-over of funds.

¶ 18 On May 16, 2013, new counsel entered its first appearance. The trial court was set to hear the citation to discover assets, the body attachment order, and the turn-over order. However, Tucker, through his new counsel, sought leave to file the section 2-1401 petition, with affidavit.

¶ 19 In the affidavit, Tucker recounted the above-stated facts. He argued that any apparent lack of diligence was due to Schmidt's negligent representation. Tucker attested:

> "[By April,] I had grown weary of my counsel and her lack of attention. [Schmidt] informed me that she was withdrawing from this matter based on my frustration with her efforts. On April 19, 2013, I immediately contacted The Garbis Law Firm and requested that [Schmidt] forward her file to The Garbis Law Firm. After numerous phone calls, emails, and texts over a four week period, [Schmidt] finally forwarded the file to my current counsel on May 15, 2013, whereupon I discovered that her motion to quash the service of summons was denied and that [she] never filed a [s]ection 2-1401 petition to vacate the default judgment. ***
>
> Ms. Schmidt failed to inform me of her actions and kept telling me that everything was in order. I never fully learned of the severity of this situation until May 15, 2013."

¶ 20 As to a meritorious defense, Tucker attested in total:

> "This matter is based on a breach of a landscaping agreement between myself and G.T. Landscaping for $40,000. I paid G.T. Landscaping $32,000 and held back the final

> payment to G.T. Landscaping because there were some unfinished items. G.T. Landscaping then sent me an invoice with an additional $18,000 of charges that G.T. Landscaping deemed were 'extras.' I never signed for these extras and I dispute these 'extras.' "

And,

> "I believe that I have a meritorious defense and am requesting an opportunity to have a trial on the merits of this case."

Tucker, citing *Smith v. Airoom, Inc*., 114 Ill. 2d 209, 220-21 (1986), stated that section 2-1401 petitions invoke the equitable powers of the court. He argued that here, enforcing the default judgment against him would be "unfair, unjust, and unconscionable," given his "honest mistake for not addressing the matter sooner."

¶ 21 G.T. Landscaping responded. As to diligence in pursuing the initial action, it argued that there was no excuse for Tucker's failure to properly read the summons ordering him to appear on July 16, 2012. As to diligence in pursuing the section 2-1401 petition, it argued that Tucker appeared to condone, through his acceptance of the July 24, 2012, email, Schmidt's general attitude that they need not *ever* timely answer the complaint. As stated in the email: "since they are being such d*cks about the whole thing, let them waste the time of filing a motion to default you." (In other words, at least as of July 24, 2012, Tucker should have been aware that Schmidt was defying court orders to appear and answer; therefore, he cannot claim surprise at her mishandling of the case.) G.T. Landscaping listed Tucker's other failures in diligence as: (1) a second failure to appear at the October 16, 2013, citation hearing; (2) a third failure to appear at the November 27, 2013, rule to show cause hearing; (3) an initial petition to vacate that was not properly brought pursuant to section 2-1401; (4) a fourth failure to appear at the April 24, 2013,

hearing, where the trial court had expected to hear the amended section 2-1401 petition and/or the citation to discover assets; (5) the new attorney's failure to file an appearance within seven days of the April 24, 2013, order; and (6) the failure to file the section 2-1401 petition until May 16, 2013, outside the 28-day, April 5, 2013, deadline ordered by the court.

¶ 22 As to a meritorious defense, G.T. Landscaping argued that Tucker did not plead sufficient facts. For example, Tucker stated that there were "unfinished items," but he did not state what these were. Also, Tucker stated that he "disputed" the "extras" and did not sign for the "extras," but he did not expressly deny G.T. Landscaping's claim that he orally requested them, that they were performed, and that they added permanent value to his residence.

¶ 23 On July 8, 2013, the trial court conducted a summary-judgment hearing on the section 2-1401 petition. There is no transcript of the hearing; instead, it is documented in an agreed statement of facts. Tucker was present, but the court did not find his testimony to be "necessary." The court asked Tucker's new attorney whether a disciplinary complaint had been filed against Schmidt. The new attorney advised that a disciplinary complaint was being filed. The court then entered a judgment on the pleadings, granting the petition. According to the agreed statement of facts, the court stated that Tucker was diligent "in light of the negligence of [Schmidt] in presenting the defense and delays in moving to vacate the judgment." This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, G.T. Landscaping challenges: (1) the trial court's jurisdiction to hear the section 2-1401 petition; and (2) alternatively, the trial court's ruling on the petition. Because we hold that the trial court had jurisdiction to hear the petition, we reach both issues.

¶ 26 A. Jurisdiction

¶ 27 G.T. Landscaping argues that the trial court did not have jurisdiction to grant Tucker's section 2-1401 petition because Tucker did not file it within 30 days of the court's March 8, 2013, denial of the "motion to quash and vacate." We reject G.T. Landscaping's jurisdictional argument.

¶ 28 When a trial court denies a petition to vacate but grants the petitioner leave to amend, the court retains jurisdiction to hear the subsequently filed petition. See, *e.g.*, *Smith v. Cole*, 256 Ill. App. 3d 806, 809 (1993); *Picardi v. Edwards*, 228 Ill. App. 3d 905, 909 (1992); and *Romo v. Allin Express Service, Inc.*, 219 Ill. App. 3d 418, 419 (1991). Here, because the trial court instructed Tucker to file a proper section 2-1401 petition, it retained jurisdiction to hear it. The section 2-1401 petition was filed within two years of the default judgment. The fact that Tucker failed to file the section 2-1401 petition within 28 days as instructed, or 30 days as G.T. Landscaping now complains, does not implicate jurisdictional concerns. Rather, for the reasons that follow, Tucker's failure to follow instructions merely speaks to the element of diligence in pursuing the petition.

¶ 29 G.T. Landscaping's reliance on *Shapira v. Lutheran General Hospital*, 199 Ill. App. 3d 479, 486 (1990), is off-point, because *Shapira* does not address the trial court's jurisdiction to rule upon a section 2-1401 petition; rather, *Shapira* addresses the merits of the trial court's ruling on the section 2-1401 petition. In *Shapira*, the petitioner filed an insufficient section 2-1401 petition, the trial court granted a 30-day extension to amend the petition, the petitioner tardily asked for another 30-day extension after the first one had expired, and, then, 10 months later, the petitioner finally filed the amended section 2-1401 petition. *Id.* The court granted the amended petition. The appellate court reversed, stating that the trial court should not have granted the petition where the petitioner failed to demonstrate diligence. *Id.* Rather than support G.T.

Landscaping's jurisdictional argument, *Shapira* supports our conclusion that Tucker's failure to promptly file the proper section 2-1401 petition merely speaks to the diligence component of that petition.

¶ 30 G.T. Landscaping's reliance on *Glenview v. Buschleman*, 296 Ill. App. 3d 35 (1998), is also misplaced. In that case, the trial court denied *with prejudice* the first petition to vacate. Forty-three days later, the trial court granted leave to amend the petition. The trial court denied the amended petition. The appellate court held that the trial court did not have jurisdiction to rule on the amended petition. *Id*. at 41. It reasoned that the denial of the initial section 2-1401 petition was a final and appealable order; it was denied with prejudice and there were no instructions to amend. Because the initial denial was a final and appealable order, jurisdiction remained with the trial court only until the petitioner filed a notice appeal or until his 30 days to file an appeal expired, whichever came first. *Id*. *Buschleman* is distinguishable from the instant case because, there, the trial court entered a final and appealable denial of a section 2-1401 petition, whereas, here, the trial court denied a petition to vacate *without prejudice* and with leave to amend. As we have stated, when a trial court denies a petition to vacate but grants the petitioner leave to amend, the court retains jurisdiction to hear the subsequently filed petition. See, *Cole*, 256 Ill. App. 3d at 809.

¶ 31 It seems as though G.T. Landscaping relies upon *dicta* in *Buschleman* for its argument that the trial court loses jurisdiction after 30 days of the first section 2-1401 petition, even if the first denial was without prejudice and with leave to amend. That *dicta* states that "critical to the applicability" of a successive section 2-1401 petition is that: (1) the trial court granted leave to file it; (2) it is submitted for the purposes of curing defects in the first petition or for alleging grounds that could not have been previously adjudicated; and (3) it is filed within 30 days after

the order granting leave to amend. *Id*. at 40. This third "factor" is not set forth as a jurisdictional requirement, but, rather, to borrow the *Buschleman* court's words, as a point "critical to the applicability," or critical to the trial court's acceptance of the second section 2-1401 petition. We do not see the third factor as a jurisdictional requirement, particularly where, as here, the trial court instructed the petitioner to reformat and amend the petition pursuant to section 2-1401. Rather, per *Shapira*, we see the third factor as one that speaks to the element of diligence.

¶ 32 B. The Section 2-1401 Petition

¶ 33 Next, we address G.T. Landscaping's argument that the trial court erred in granting Tucker's section 2-1401 petition on the pleadings (summary judgment). It appears to us, based on the record and the agreed statement of facts, that the trial court's ruling was based in equity. The trial court invoked its equitable powers to vacate the default judgment, on the basis that Tucker's attorney proceeded under a mistaken strategy and acted without diligence. However, pursuant to *People v. Vincent*, 226 Ill. 2d 1, 15-16 (2007), courts should not exercise their discretion to grant equitable relief where the requirements of a section 2-1401 petition have not been met.

¶ 34 In *Mills v. McDuffa*, 393 Ill. App. 3d 940, 945 (2009), this court applied to civil cases the section 2-1401 principles set forth in *People v. Vincent*, 226 Ill. 2d 1 (2007). *Vincent* explicitly stated that it is incorrect for courts to continue to rely on their equitable powers in granting section 2-1401 petitions:

> "[T]he operation of the abuse of discretion standard is the result of *the erroneous belief that a section 2-1401 petition 'invokes the equitable powers of the court'* ***. When the legislature abolished the [common-law] writs in favor of today's statutory remedy, it became inaccurate to continue to view the relief in strictly equitable terms. *** Because

relief is no longer purely discretionary, it makes little sense to continue to apply an abuse of discretion standard on review." *Id*. at 15-16. (Emphasis added.)

The *Vincent* court essentially held that the standard by which we should review the trial court's disposition of a section 2-1401 petition depends upon the manner in which it was disposed. *Id*. at 15-17. Five types of final dispositions are possible in section 2-1401 litigation: "the trial judge may dismiss the petition; the trial judge may grant or deny the petition on the pleadings alone (summary judgment); or the trial judge may grant or deny relief after holding a hearing at which factual disputes are resolved." *Id*. at 9 (citing D. Simko, *Updating the Standard of Review for Petitions to Vacate Final Judgments*, 86 Ill. B. J. 34 (1998) (listing the five possible dispositions as dismissal, granting relief without an evidentiary hearing, denying relief without an evidentiary hearing, granting relief after an evidentiary hearing, and denying relief after an evidentiary hearing)). *Vincent* mandates that, where a trial court enters a judgment on the pleadings or a summary judgment in a section 2-1401 proceeding, that judgment will be reviewed *de novo* on appeal. *Id*. at 18. Although *Vincent* dealt with the dismissal of a section 2-1401 petition (possibility number one), the court stated that future analyses regarding the standard of review for a grant or denial of a section 2-1401 petition should "be *** grounded in the notion that each of the dispositions available in a section 2-1401 action is borrowed from our civil practice and pleadings rules." *Id*. at 17.

¶ 35 After *Mills*, this court split on the application of *Vincent* to section 2-1401 proceedings in civil cases. See, *e.g.*, *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321 (2010) (continuing to apply abuse-of-discretion review) (Jorgensen, J., specially concurring, disagreed with the application of that standard); *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699 (2010) (the standard of review to be applied to a section 2-1401 determination following an evidentiary

hearing is, per *Vincent*, the manifest-weight-of-the-evidence standard). Other cases within our court have declined to come down on either side of the split. See, *e.g.*, *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32 (finding that the result of the case before it would be the same under either of the proposed standards). We, consistent with *Mills*, hold that *Vincent* instructs us to review *de novo* a trial court's section 2-1401 determination based on the pleadings (summary judgment).

¶ 36 To obtain relief from judgment under section 2-1401, a petitioner must adequately establish: (1) due diligence in presenting the defense in the original action; (2) due diligence in presenting the petition to vacate; and (3) a meritorious defense. 735 ILCS 5/2-1401 (West 2012). Due diligence requires the petitioner to have a reasonable excuse for failing to act within the appropriate time. *Domingo*, 402 Ill. App. 3d at 700. Because section 2-1401 does not afford a litigant relief from the consequences of his own mistake or negligence, a party relying on section 2-1401 is not entitled to relief unless he shows that, through no fault or negligence of his own, a factual error or a valid defense was not presented to the trial court. *Id.* In particular, 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. *Id.* We turn now to these section 2-1401 components.

¶ 37 Here, there can be no doubt that Tucker, as a party in this litigation, did not act diligently. As to diligence in pursuing the initial action, Tucker received an unambiguous court order to appear and answer by July 16, 2012:

> "YOU ARE HEREBY SUMMONED and required to appear before this Court at *** 1:30 p.m., on July 16, 2012, to answer the complaint in this case, a copy of which is

> hereto attached. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT."

His failure to appear resulted in the default judgment.

¶ 38 Generally, a defendant's failure to abide by a summons is not excusable neglect or mistake. *Falcon Manufacturing Co. v. Nationwide Brokers, Inc.*, 123 Ill. App. 3d 496, 500 (1984) (as a matter of law, defendant did not establish diligence where he assumed that the summons, by which he failed to abide, referred to another case). Tucker's excuse for failing to abide by the summons, as set forth in his affidavit, was that his attorney told him he had "plenty of time" to appear and answer. Objectively, there is nothing wrong with an attorney telling a client in the weeks before the deadline that there is "plenty of time" to answer. This excuse does not explain why Tucker (or Schmidt) did not appear and answer by the hearing date.

¶ 39 Tucker attested that he did not learn of the default judgment against him until October 10, 2012, and that, at that time, Schmidt told him there must be some mistake. However, Tucker's claim that he was surprised by the default judgment is belied by Schmidt's July 24, 2012, email. There, Schmidt told Tucker that their very strategy would be to *invite* a default judgment, which they would later seek to vacate: "since they are being such d*cks about the whole thing, *let them waste the time of filing a motion to default you*. *** Defendants must be sued in a court of competent jurisdiction, and you are not a domiciliary of Lake County. So *I'll whip up a motion to vacate* pursuant to an affirmative defense and file when I return." (Emphasis added.)

¶ 40 It may have been poor strategy to allow a default, but a poor strategy cannot provide the basis to vacate a judgment. See *Domingo*, 402 Ill. App. 3d at 700 (section 2-1401 petitions are not intended to provide a litigant relief from the consequences of its own mistake). The mistaken

belief that a default judgment will be easy to vacate does not establish diligence in the initial action.

¶ 41 As to diligence in presenting the section 2-1401 petition, we note that, post-judgment, Tucker disobeyed three court orders to appear (on October 16, 2012; November 27, 2012; and April 24, 2013). His first petition to vacate was not made pursuant to section 2-1301 (735 ILCS 5/2-1301 (West 2012) (concerning relief from judgment within 30 days)), or section 2-1401. At the April 24, 2013, hearing, the trial court ordered Tucker's new attorney to file an appearance within seven days, or by May 1, 2013. The new attorney did not file an appearance until May 16, 2013. Tucker explains that Schmidt was dilatory in passing on her case file, but nothing was stopping the new attorney from obtaining a copy of the complaint and other documents from the court file.

¶ 42 Tucker explains that it was not he who lacked diligence, but, rather, Schmidt. Generally, however, a party is bound by the mistakes or negligence of his or her attorney. *R.M. Lucas Co. v. Peoples Gas Light and Coke Co.*, 2011 IL App (1st) 102955, ¶ 18. A litigant has a duty to follow his or her own case. *Id.*

¶ 43 Tucker then argues that, nevertheless, the trial court acted within its discretion to invoke its equitable powers to relax diligence standards under these circumstances. As we have discussed, however, cases allowing a court to invoke its equitable powers to relax the diligence requirement are outdated. See, *e.g.*, *id.*, ¶ 24.

¶ 44 In *R.M. Lucas*, the appellate court affirmed the trial court's summary denial of a section 2-1401 petition. *Id.* ¶ 24. The petitioner had argued that the diligence requirement should be relaxed because his attorney handled the case in a negligent manner. *Id.* ¶ 20. The court agreed that the failure in diligence was caused by the attorney's "unanticipated and inexplicable"

negligence, in that the attorney did not respond to discovery requests or keep the petitioner updated on the case. *Id*. However, the trial court was correct as a matter of law in refusing to relax the diligence standard. *Id*. ¶ 24. Since *Vincent*, it is no longer proper for the court to invoke its equitable powers to relax diligence requirements. *Id*. (overruling *Cohen v. Wood Brothers Steel Stamping Co*., 227 Ill. App. 3d 354, 360 (1992) (the interests of fairness and substantial justice compelled the court to exercise its equitable powers to vacate the dismissal of the case where the attorney abruptly and inexplicably abandoned his client)). The court further explained that its ruling was consistent with the general rule that a party is bound by the mistakes and negligence of its counsel. *Id*.; see also *People v. Lawton*, 212 Ill. 2d 285, 300 (2004) (stating in *dicta* that a litigant in a civil case cannot obtain section 2-1401 relief on the ground that his or her lawyer was negligent in the initial action).

¶ 45 Even before *Vincent* and its rejection of the principle that section 2-1401 petitions invoked the equitable powers of the court, the Second District was reluctant to accept an attorney's negligence as a basis to vacate a default judgment. For example, in *Carroll Service Co. v. Schneider*, 144 Ill. App. 3d 38, 41 (1986) (Second District), the court affirmed the denial of the petition to vacate a default judgment, ruling that the attorney's miscommunication with his secretary was not a reasonable excuse for failing to file an answer to the complaint, and the petitioner, who had a responsibility to follow the case, was bound by his attorney's negligence. See also *Cohen*, 227 Ill. App. 3d at 359-60 (acknowledging that the Second District does not favor a relaxation of the due diligence requirement based on attorney negligence and likely would *not* have invoked its equitable powers based on attorney misconduct as it, the *Cohen* court, did).

¶ 46 We note that Tucker cites no case law whatsoever in support of his diligence argument. He does not acknowledge, either with discussion or citation to competing case law, G.T. Landscaping's citation to *R.M. Lucas*, *Cohen*, *Carroll*, and *Lawton*. In fact, Tucker does not even challenge the principles cited therein that courts may no longer exercise equitable powers to relax the diligence standards based on attorney error or that, even under the prior equitable powers doctrine, the Second District was reluctant to do so. Rather, Tucker merely reiterates what he believes to be the gross errors of his counsel and states in a conclusory manner that he should not be bound by these errors.

¶ 47 We acknowledge that the rejection of the equitable-powers approach combined with the Second District's standing reluctance to relieve section 2-1401 petitioners from the conduct of their attorneys could make it more difficult for petitioners to obtain section 2-1401 relief. We leave for another day the question of what circumstances, if any, may allow for an attorney's misconduct to provide a litigant with a reasonable excuse for failing to act in a timely manner. We also leave for another day the question of what circumstances, if any, may create a material question of fact as to whether the attorney's misconduct provided the litigant with a reasonable excuse for failing to act in a timely manner, such that the petitioner would be entitled to an evidentiary hearing. In the case at bar, it is enough to state that those potentially mitigating circumstances are not now before us.

¶ 48 We base our decision on Tucker's failure to establish due diligence. But, even if Tucker had established diligence, we also find that he failed to plead facts that, if true, would have established a meritorious defense. In establishing a meritorious defense, it is not enough to simply attest "I have a meritorious defense;" a petitioner must plead supporting facts. *People ex rel. McGraw v. Mogilles,* 136 Ill. App. 3d 67, 73 (1985). Here, Tucker pleaded that he did not

pay the full contract amount because there were "some" unfinished items. In the face of G.T. Landscaping's detailed invoice that listed many projects, this assertion is conclusory and vague and, therefore, insufficient. *Cf. Kell v. Kosta*, 106 Ill. App. 2d 172, 178 (1969) (in light of the plaintiff's lack of detail in the complaint, the defendant raised a meritorious defense merely by matching the plaintiff's level of detail). Tucker's defense is that G.T. Landscaping did not fully perform on the contract, but Tucker pleaded no facts to support that assertion. He failed to state which tasks were not performed. As to the *quantum meruit* claim, Tucker states that he "disputes" the extras. This is not a statement that, if believed by, and known to, the trier of fact at the time of judgment, would have entitled Tucker to relief. Similarly, Tucker's allegation that he never "signed" for the extras is non-responsive to the *quantum meruit* claim. A *quantum meruit* claim is based on the implied promise to pay for valuable services. See, *e.g.*, *Much, Shelist, Freed, Denenberg, & Ament, P.C. v. Lison*, 297 Ill. App. 3d 375, 379 (1998). While a signature may establish that there was a promise to pay for services, a signature is not necessary to a *quantum meruit* claim. See *id.* at 382. Thus, the absence of a signature is not a meritorious defense to a *quantum meruit* claim.

¶ 49 Finally, we must note that Tucker improperly attached "evidence" to the appendix of his appellate brief that was never properly before the trial court. It seems Tucker wishes for us to view this "evidence" as "assertions of fact" in support of his alleged meritorious defense. However, this "evidence" was never part of the common law record. We strike this portion of the brief for failing to comply with, among other rules, Illinois Supreme Court Rule 324 (eff. May 30, 2008) (concerning certification of the record on appeal).

¶ 50 III. CONCLUSION

¶ 51 For the aforementioned reasons, we reverse the trial court's grant of the section 2-1401 petition, reinstate the default judgment against Tucker, and remand for continued hearing of the citation, rule, body attachment, and garnishment proceedings.

¶ 52 Reversed and remanded.