2016 IL App (2d) 150871-U
No. 2-15-0871
Order filed August 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CATHERINE A. RAJCAN, d/b/a Efficiency Reporting,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 14-SC-5699
ROBIN ZAHRAN,	)	Honorable Peter W. Ostling,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Zahran was properly served with process, so the trial court did not err in denying his first motion to vacate the default judgment against him. The trial court also did not err in entering the default judgment in the amount sought by Rajcan or in denying the portion of Zahran's subsequent section 2-1401 motion which alleged improper service of process. However, the trial court erred in ruling that the remainder of Zahran's claims in the section 2-1401 petition were forfeited. Finally, the trial court acted within in its discretion in denying Zahran's motion for sanctions, as no factual findings had been made in the case. Therefore, we affirmed in part, reversed in part, and remanded the cause for further proceedings.

¶ 2 Defendant, Robin Zahran, appeals from the trial court's rulings following a default judgment entered against him and in favor of plaintiff, Catherine A. Rajcan, d/b/a Efficiency

Reporting. On appeal, Zahran argues that: (1) the trial court lacked personal jurisdiction over him because he was not properly served with process; (2) the trial court erred in granting a default judgment that included interest and late fees absent sufficient evidentiary proof; (3) the trial court erred in denying his petition to vacate the judgment that was brought under sections 2-1301 and 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301, 2-1401 (West 2014)); and (4) the trial court abused its discretion in denying his motion for sanctions against Rajcan under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)).

¶ 3 We conclude that: the trial court did not err in ruling that Zahran was properly served with process, and thus did not err in denying Zahran's initial motion to vacate or the portion of his subsequent section 2-1401 petition that also alleged deficient service of process; the trial court did not err in granting Rajcan a default judgment in the amount of damages that she sought; and the trial court acted within its discretion in denying Zahran's petition for Rule 137 sanctions. However, we further conclude that the trial court erred in considering the remainder of Zahran's section 2-1401 claims forfeited. Accordingly we affirm in part, reverse in part, and remand the cause.

¶ 4 I. BACKGROUND

¶ 5 On November 24, 2014, Rajcan brought a *pro se* small claims complaint against Zahran. Rajcan alleged that Zahran owed her $4,126.70 plus court costs for court reporter services rendered on January 13, 2009, and January 20, 2009. The alleged damages included pre-judgment interest totaling $2,094.15.

¶ 6 A summons was issued the same day and directed to defendant at 721 Acorn Hill Drive, Oakbrook, Illinois. The return, dated December 7, 2014, stated that Zahran was not served. It listed six attempts at service and the comment, "NO ONE IS EVER HOME."

¶ 7 On December 19, 2014, the trial court entered an order appointing Illinois Process Service, Inc., as a special process server. An alias summons was issued that day.

¶ 8 At a hearing on January 23, 2015, Rajcan stated that she had not been able to serve the summons. She stated that according to the special process server, the house was being remodeled, and it did not look like anyone was living there. Rajcan further stated that she went to the county building, where she learned that the property was in Zahran's name and was current with its property tax bills. Finally, Rajcan stated that the previous year, she sent Zahran "a 30-day letter certified mail," and he received it. The trial court gave Rajcan permission to issue another alias summon, which she did that day, and permission to attempt to serve Zahran by process server, certified mail, and/or regular mail.

¶ 9 At a February 27, 2015, hearing, Rajcan stated that the service by mail showed that it was "undeliverable," which could mean several different things, and that the post office was "letting [her] down" because it could not find the document. Rajcan further stated that 721 Acorn Hill Drive had a building permit with the Village of Oak Brook that showed that Zahran was the property's owner. Rajcan advised that she had a form to provide the Oak Brook post office to see if it had a forwarding address for Zahran. The trial court gave Rajcan a date of March 27, 2015, for a return on a new alias summons, and it stated that she could attempt service by process server, certified mail, and/or regular mail.

¶ 10 On April 3, 2015, Rajcan filed a motion requesting to serve Zahran by alternate means. She outlined her unsuccessful attempts to serve Zahran and included exhibits. Specifically, she stated that four summonses had been issued; multiple attempts for each summons were made to personally serve Zahran; and copies of the complaint and summons sent by registered mail on January 23, 2015, and March 6, 2015, were returned "[r]efused." In an affidavit, Rajcan stated

that, among other things, she was told by an Oak Brook post office employee that 721 Acorn Hill Lane was still a " 'good' " address for Zahran, as confirmed by the carrier who serviced the address, and that no forwarding order was in place. Rajcan included a copy of a form she had filled out on February 27, 2015, seeking information for a change of address for the purpose of service of legal process. Rajcan additionally stated that she obtained a copy of the building permit for the address, which she attached, and that it was issued to Zahran. Following a hearing on April 3, 2015, the trial court entered an order allowing Rajcan to serve Zahran by posting a copy of the summons and complaint upon his door, and thereafter mailing a copy of the documents by regular and certified mail.

¶ 11 An affidavit of service by posting dated April 7, 2015, appears in the record. The record also contains an affidavit of service by mail dated April 8, 2015. Finally, the record contains another alias summons filed on April 13, 2015.

¶ 12 On April 27, 2015, the trial court entered a default judgment against Zahran for $4,126.70, plus costs of $429.14.

¶ 13 On June 2, 2015, Zahran filed a general appearance on his own behalf. He further filed a motion to vacate the default order based on lack of service of process. He alleged that: he had not been a resident of Illinois for the past two years; he received Rajcan's "complaint" by mail almost one year before, but he did not receive or waive proper service; he owned the property at 721 Acorn Hill Lane; contractors were working at the property when a man came to the premises without identifying himself; the man was told that he was trespassing and that he should wait for the police, but the man did not wait or leave any papers; and Zahran received notice of the judgment from a firm called "Bill Busters." Zahran attached a copy of the "Bill Busters" solicitation letter, which was addressed to 721 Acorn Hill Lane.

¶ 14 At a hearing on June 8, 2015, Zahran stated that he had been a Wisconsin resident for the previous two years and that his property at 721 Acorn Hill Lane "had been for sale and sold." He argued that Rajcan had no proof that he was properly served. The trial court noted that more than 30 days had passed since it had entered the judgment. It ruled that there was proper service based on its special order dated April 3, 2015, which authorized service by alternative means, and that the service was addressed to and served at the same address that Zahran admitted receiving the "Bill Busters" letter after the judgment was entered.

¶ 15 Zahran subsequently filed a motion to vacate the judgment under section 2-1301, or alternatively section 2-1401, of the Code (735 ILCS 5/2-1301, 2-1401 (West 2014)).[1] He incorporated the allegations from his motion to vacate. He further alleged that he had a meritorious defense to Rajcan's complaint, in that: the parties never agreed to interest or late fees; the parties had agreed that money Rajcan owed Zahran for using his offices would completely set off the court reporting fees; and Rajcan's action was time-barred under the statute of limitations for oral contracts. Zahran additionally asked that the trial court reconsider its denial of his motion to vacate. Finally, Zahran included as an exhibit a separate motion asking that the trial court sanction Rajcan or find her in direct contempt of court for filing false pleadings.

¶ 16 In her response, filed July 8, 2015, Rajcan argued that the trial court had already determined that Zahran was properly served. She further asserted that she had at all times acted in good faith and represented the controversy's circumstances to the trial court based on her information, knowledge, and belief. Rajcan alleged that the parties' business relationship was based on their long-standing practices, so the relevant limitation period was 10 years. She

[1] It is not clear from the record what date the motion was filed.

argued that Zahran never told her that he did not owe her money, but rather repeatedly told her that he would pay her. Rajcan alleged that the terms of her services, including late fees, were delineated on invoices remitted to Zahran dating back to at least January 24, 2002. According to Rajcan, she had used Zahran's conference room only once, and they never agreed to exchange court reporting services for the use of office space.

¶ 17 A hearing took place on July 27, 2015. The trial court denied Zahran's request to reconsider, stating that it did not believe that it erred in denying his motion to vacate. The trial court then stated that in Zahran's section 2-1401 motion and his motion for sanctions, he was attempting to present additional evidentiary material and factual arguments he did not previously raise, and he thereby forfeited them. Therefore, the trial court denied Zahran's section 2-1401 motion and his motion for sanctions.

¶ 18 Zahran timely appealed. Both parties have filed *pro se* briefs on appeal.

¶ 19 II. ANALYSIS

¶ 20 A. Motions Taken with the Case

¶ 21 We initially address two motions, and corresponding objections, that we ordered taken with the case. First, Zahran filed a motion to strike Rajcan's brief. He argues that her statement of facts is replete with argument and contains allegations that are not part of the record, contrary to Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016). Zahran argues that Rajcan's argument section also violates Rule 341, in that it is confusing, misstates the record, refers to matters and alleged facts outside of the record, advances arguments not raised in the trial court, and fails to cite any controlling legal precedent.

¶ 22 We agree with Zahran that Rajcan's statement of facts is composed almost entirely of argument, contrary to Rule 341(h)(6) (eff. Jan. 1, 2016) (the statement of facts "shall contain the

facts necessary to an understanding of the case, stated accurately and fairly without argument or comment"). Rajcan's statement of facts further contains improper reference to alleged facts outside of the record. See *Paluch v. United Parcel Service, Inc.*, 2014 IL App (1st) 130621, ¶ 23 (arguments relying on facts outside of the record will not be considered). We may strike a statement of facts that fails to comply with Rule 341. See *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. We recognize that petitioner is not represented by an attorney, but courts do not apply more lenient standards to *pro se* litigants. *In the Interest of A.H.*, 215 Ill. App. 3d 522, 529-30 (1991). Therefore, we grant Zahran's request to strike Rajcan's statement of facts. While the argument section of Rajcan's brief also contains numerous improper references to alleged facts outside of the record, it further responds to Zahran's arguments, with some citations to relevant authority. Therefore, we decline to strike the argument section, though we will disregard any improper factual references and any exhibits not contained within the record.

¶ 23 Next, Rajcan has filed a motion for sanctions against Zahran under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). Rajcan alleges that Zahran sent her an email in May 2016 saying that he would file a defamation action against her for making a false record in court. Rajcan alleges that she considers the e-mail to be an act of harassment and intimidation, and that Zahran's actions from the time Rajcan filed her complaint have been performed with the intent of causing unnecessary delay and needlessly increasing litigation costs.

¶ 24 Zahran filed a late response to Rajcan's motion for sanctions, which also includes a request for Rule 375(a) (Ill. S. Ct. R. 375(a) (eff. Feb. 1, 1994)) sanctions; we grant Zahran's request to file the response *instanter*. Zahran argues that Rajcan's motion consists of baseless arguments and that her brief contains false statements and exhibits outside the record.

¶ 25 Rajcan brought her motion for sanctions under Rule 375(b), which governs appeals that are frivolous, not taken in good faith, or for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). "An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." *Id.*

¶ 26 Here, Zahran's appeal is well-grounded in fact and existing law, to the extent that we ultimately reverse part of the trial court's judgment and remand for further proceedings. Therefore, Rule 375(b) sanctions against Zahran are clearly not warranted, and we deny Rajcan's motion.

¶ 27 Regarding Zahran's request for Rule 375(a) sanctions against Rajcan for filing her motions for sanctions and for deficiencies in her brief, we note that such sanctions apply to a party or attorney who "is determined to have willfully failed to comply with the appeal rules." Ill. S. Ct. R. 375(a) (eff. Feb. 1, 1994). "Sanctions may be awarded against *pro se* litigants under sufficiently egregious circumstances." *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87. While Rajcan's motion for sanctions is misinformed, it does not appear that she willfully failed to comply with any rules. As for her brief, we believe that striking her statement of facts and disregarding her improper factual references within the argument section is sufficient, and we decline to impose any additional sanctions.

¶ 28 B. Trial Court's Rulings

¶ 29 1. Service of Process

¶ 30 We now address the appeal's merits. Zahran first argues that Rajcan failed to effect service on him under Illinois law governing service of process on an out-of-state defendant. He

maintains that he has been a Wisconsin resident since July 2011. He argues that section 2-208 of the Code (735 ILCS 5/2-208 (West 2014)) governs non-Illinois residents and requires that they be served in the county in which they reside, which Rajcan failed to do. Zahran argues that section 2-208 also requires that nonresidents be given 30 days to respond, but here the trial court entered the default judgment only 20 days after service upon his vacant house. Zahran contends that Rajcan knew that his prior residence was uninhabited and under construction and that he never signed for the certified mail, but she "never attempted to pursue finding his new address or forwarding addresses through the postal service or any other method in today's age of the internet." Zahran analogizes this situation to *City of Chicago v. Yellen*, 325 Ill. App. 3d 311, 316 (2001), where the court held that the record lacked evidence of statutorily sufficient service of process, because the only copy of the summons lacked the clerk's seal or signature.

¶ 31 Zahran argues that within 10 days of learning of the default order through attorneys soliciting his business, and within 35 days of the default order's entry, he filed a motion to vacate the judgment for lack of jurisdiction based on improper service of process. Zahran maintains that if he had been properly served, he would not have disputed the court's jurisdiction over him, because he did business in Illinois. Zahran cites *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12, where the court stated, "Failure to effect service as required by law deprives a court of jurisdiction over the person and any default judgment based on defective service is void."

¶ 32 We begin by observing that although Zahran entered a general appearance on June 2, 2015, that appearance operates as a waiver to only prospective judgments, meaning that he preserved his objection to the service of process. See *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 43.

¶ 33 We next note that Zahran filed his motion to vacate 35 days after the default judgment. Postjudgment motions filed more than 30 days after the judgment must be treated as section 2-1401 petitions. *OneWest Bank, FSB v. Hawthorne*, 2013 IL App (5th) 110475, ¶ 16. Section 2-1401 allows for relief from final orders and judgments more than 30 days but less than two years after their entry. 735 ILCS 5/2-1401 (West 2014). However, this two year period does not apply where the petitioner alleges that the judgment is void. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). Under section 2-1401, a party may challenge a final judgment by bringing to the trial court's attention issues of fact outside the record which, if known when the judgment was entered, would have affected the judgment. *In re Marriage of Morreale*, 351 Ill. App. 3d 238, 241 (2004). A section 2-1401 petition may alternatively bring a legal challenge to a final judgment or order. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 31. In general, to obtain relief under section 2-1401, a party must set forth specific factual allegations showing (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim in the original action; and (3) due diligence in filing the section 2-1401 petition. *Id.* ¶ 37. The allegations of a section 2-1401 petition must be proved by a preponderance of the evidence. *Id.* Where the petition presents a fact-dependent challenge to the final judgment or order, we apply an abuse-of-discretion standard. *Id.* ¶ 51. However, where, as here, the petition presents solely a legal claim, such as that the judgment should be vacated as void, we review the ruling on the petition *de novo*. *Id.* ¶¶ 47-48. For such challenges, the petitioner does not need to allege a meritorious defense and due diligence. *Sarkissian*, 201 Ill. 2d at 104. We similarly apply a *de novo* standard of review to the question of whether the trial court obtained personal jurisdiction, where there is no material evidentiary conflict. *Abbington Trace Condominium Ass'n v. McKeller*, 2016 IL App (2d) 150913, ¶ 10; see

also *Illinois Service Federal Savings & Loan Ass'n of Chicago v. Manley*, 2015 IL App (1st) 143089, ¶ 36 (appellate court reviews *de novo* a trial court's ruling on a jurisdictional issue where there was no evidentiary hearing and the trial court relied on the parties' written submissions and arguments in ruling on a motion to quash).

¶ 34 A court must have personal jurisdiction over the parties in order to enter a valid judgment. *U.S. Bank National Ass'n v. Johnston*, 2016 IL App (2d) 150128, ¶ 27. Personal jurisdiction may be established by either service of process as provided by statute or by a party's voluntary submission to the court's jurisdiction. *BAC Home Loans Servicing, LP*, 2014 IL 116311, ¶ 18. Section 2-203 of the Code allows for service of process by leaving a copy of the summons with the defendant personally, or by leaving a copy at the defendant's usual place of abode with a family member or a person residing there age 13 or older, along with a mailing of the summons to that address. 735 ILCS 5/2-203 (West 2014). If such service is impractical, the plaintiff may request that the trial court allow for alternative service under section 2-203.1 of the Code (735 ILCS 5/2-203.1 (West 2014)). The plaintiff's motion for service under section 2-203.1 must include an affidavit stating the type of investigation made to determine the defendant's whereabouts and why service is impractical under section 2-203, "including a specific statement showing that a diligent inquiry as to the location of the individual defendant was made and reasonable efforts to make service have been unsuccessful." *Id.* The court may allow service in any manner consistent with due process. *Id.* "Courts do not favor those who seek to evade service of summons." *In re Marriage of Schmitt*, 321 Ill. App. 3d 360, 370 (2001).

¶ 35 Section 2-208 is entitled "Personal Service outside State." It provides:

> "(a) Personal service of summons may be made upon any party outside the State. If upon a citizen or resident of this State or upon a person who has submitted to the

jurisdiction of the courts of this State, it shall have the force and effect of personal service of summons within this State; otherwise it shall have the force and effect of service by publication.

(b) The service of summons shall be made in like manner as service within this State, by any person over 18 years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

(c) No default shall be entered until the expiration of at least 30 days after service. A default judgment entered on such service may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered on personal service within this State." 735 ILCS 5/2-208 (West 2014).

¶ 36 Service of process protects a party's right to due process through proper notification and providing an opportunity to be heard. *Johnston*, 2016 IL App (2d) 150128, ¶ 28. "[A] failure to effect service as required by law deprives a court of jurisdiction over the person, and any default judgment based on defective service is void." *Id.* This is true irrespective of whether the defendant had actual knowledge of the proceedings. *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 24. A default judgment that is void due to lack of personal or subject matter jurisdiction may be attacked at any time in any court, either directly or collaterally. See *R.W. Sawant & Co. v. Allied Programs Corp.*, 111 Ill. 2d 304, 309 (1986).

¶ 37 Contrary to Zahran's argument, section 2-208 does not technically govern service of process on out-of-state defendants. Rather, it covers service that is made on any party outside of Illinois. 735 ILCS 5/2-208 (West 2014). It requires services of summons in the same manner as

service within Illinois. Thus, out-of-state residents will typically be served at their out-of-state homes, but section 2-208 does not explicitly require this. Zahran points out that section 2-208 states that a default judgment may not be entered until the expiration of at least 30 days after service, which did not occur here, but this requirement would apply only if Zahran was served outside of Illinois, which he was not. We now turn to whether the service within Illinois was proper.

¶ 38 There is no indication in the record that, prior to Zahran's appearance, Rajcan knew that he had allegedly moved out-of-state. Rather, she attempted service numerous times, through process servers and regular and certified mail, at a residence that Zahran owned. Although there was remodeling work going on, Rajcan stated that Zahran's name was on the building permit. Moreover, contrary to Zahran's claim that Rajcan "never attempted to pursue finding his new address or forwarding addresses through the postal service or any other method," Rajcan averred in her April 2015 request to serve Zahran by alternate means that she was told by an Oak Brook post office employee that 721 Acorn Hill Lane was still a " 'good' " address for Zahran, as confirmed by the carrier who serviced the address, and that no forwarding order was in place. Rajcan included a copy of a form she had filled out on February 27, 2015, seeking information for a change of address for the purpose of service of legal process.

¶ 39 Under these circumstances, we find this case distinguishable from *Mugavero v. Kenzier*, 317 Ill. App. 3d 162 (2000), where this court held that the plaintiffs did not fulfill the diligent inquiry requirement of section 2-203.1 for alternative service. Specifically, the plaintiffs there did not include an affidavit with their motion requesting such service, and the only affidavit on file was one by a private detective stating that the defendant had moved from the address listed and had left no forwarding address. *Id.* at 165. Here, in contrast, at the time Rajcan sought

alternative service: she submitted her own affidavit; there was no definitive evidence that Zahran had moved; Rajcan looked up the building permit and found that was in Zahran's name; and Rajcan sought a forwarding address from the post office but was told that there was none and that, according to the mail carrier servicing the home, it was still a "good" address for Zahran. This case is also distinguishable from *Yellen*, 235 Ill. App. 3d at 316, cited by Zahran, because the summonses here have the clerk's seal and signature.

¶ 40 Based on Rajcan's attempts to serve Zahran, the trial court did not err in allowing her to use an alternate method of service under section 2-203.1, specifically by posting a copy of the summons and complaint on the door and thereafter mailing the documents by regular and certified mail. For notice to satisfy due process, it must be reasonably calculated to apprise the defendant of the action and afford him an opportunity to present his objections. *O'Halloran v. Luce*, 2013 IL App (1st) 113735, ¶ 32. Zahran never claims that he left a forwarding address with the post office, and the fact that he was receiving mail from 721 Acorn Hill Drive is shown by his statement that he learned of the default through the "Bill Busters" solicitation, which was sent to 721 Acorn Hill Drive. Through his assertions that contractors told someone that came to the house that he was trespassing, Zahran seems to contend that no one left a summons at the property. However, the process server's return affidavit indicating service is *prima facie* evidence of proper service, and it will not be set aside unless impeached by clear and convincing evidence. *Manley*, 2015 IL App (1st) 143089, ¶ 37. A party needs affirmative evidence to impeach the affidavit of service, and a party's uncorroborated account, including the contention that he or she never received the summons and complaint, does not defeat the presumption of the validity of the process server's affidavit. *Id.* ¶ 37, 39. Here, the process server filed an affidavit stating that he left the summons and complaint at the front door of 721 Acorn Hill Lane on April

7, 2015. Zahran's motions and affidavit do not even specify what date an unidentified man came to the house, much less provide independent evidence, so they are not sufficient to defeat the presumption that the process server's affidavit is valid. Given the evidence that Zahran owned the residence at issue, that he did not leave a forwarding address with the post office, that he was receiving mail addressed to the residence, that numerous summonses with complaints were mailed to the property, and that the process server's affidavit stated that he left a summons and complaint at the door, we conclude that Zahran was properly served, such that the trial court acquired personal jurisdiction over him. Thus, we affirm the trial court's denial of Zahran's first motion to vacate the default judgment.

¶ 41 2. Entry of Default Judgment

¶ 42 Zahran next argues that the trial court erred as a matter of law in granting Rajcan a default judgment in the amount she requested where Rajcan failed to show that the parties had either a written or oral contract that included late fees or interest.

¶ 43 Section 2-1301(d) states 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." 735 ILCS 5/2-1301(d) (West 2014). A default admits the facts the plaintiff alleged against the defendant in the complaint. *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 66. Here, Rajcan alleged in her complaint and accompanying exhibits that Zahran owed her interest/late charges. It was within the trial court's discretion whether to require proof of such allegations (see *American Service Insurance Co. of Chicago v. City of Chicago*, 404 Ill. App. 3d 769, 779 (2010)), meaning that it was not required to do so. Zahran also claims that Rajcan's action was time-barred, but the "expiration of a statute of limitations is an affirmative defense, which is forfeited if not timely

raised in the trial court." *Jenna R.P. v. City of Chicago School District No. 229*, 2013 IL App (1st) 112247, ¶ 75. Accordingly, the trial court did not err in entering the default judgment for the amount claimed by Rajcan.

¶ 44 3. Section 2-1401 Petition

¶ 45 We next address Zahran's arguments that the trial court erred in denying his second motion to vacate the judgment, which he explicitly brought under sections 1301 or 1401 of the Code (735 ILCS 5/2-1301, 2-1401 (West 2012)). We initially note that section 1301 states, in relevant part:

> "The court may in its discretion, before final order or judgment, set aside any default, and *may on motion filed within 30 days after entry thereof* set aside any final order or judgment upon any terms and conditions that shall be reasonable." (Emphasis added.) 735 ILCS 5/2-1301 (West 2014).

Here, Zahran did not file a posttrial motion within 30 days of the judgment's entry, so section 2-1301 does not apply.

¶ 46 Regarding section 2-1401, Zahran argues that in addition to not being properly served, he asserted meritorious defenses to Rajcan's claim, including the statute of limitations, non-existence of a written contract, improper charges for late fees and interest, and improper amounts claimed. He maintains that he acted with due diligence in filing motions to vacate the default judgment, in that: he learned of the default judgment on May 22, 2015, from attorneys soliciting his business; he immediately visited the clerk's office and inspected the file; and he then promptly filed his motion to vacate the judgment on June 2, 2015. According to Zahran, the record confirms that neither the court clerk nor Rajcan provided him notice of the default

judgment's entry. Zahran argues that Rajcan improperly concealed the default judgment from him in order to prevent a determination on the merits and to avoid a counter-claim.

¶ 47 The trial court denied Zahran's section 2-1401 motion on the basis that he had forfeited the arguments by failing to raise them in his June 2, 2015, motion, the latter which we have construed as Zahran's initial section 2-1401 petition. However, a party may file more than one timely section 2-1401 petition attacking the same judgment, without the court's leave. *People v. Walker*, 395 Ill. App. 3d 860, 869 (2009). That is, there is no bar to filing successive section 2-1401 petitions, other than the doctrine of *res judicata*. *People v. Vari*, 2016 IL App (3d) 140278, ¶ 18. Thus, the trial court improperly denied what we have labeled as Zahran's second 2-1401 petition based on forfeiture. Still, we may affirm the trial court's decision on any basis appearing in the record, regardless of the trial court's reasoning. *Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 27. As we have already affirmed the trial court's ruling that Zahran was properly served with process, and Zahran repeated this argument in his second section 2-1401 petition, we affirm the trial court's denial of the petition on this issue.

¶ 48 Zahran's remaining allegations presented a fact-dependent challenge to the default judgment, which we would generally review for an abuse of discretion. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 51. As stated, in such a challenge, a party must set forth specific factual allegations showing (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim in the original action; and (3) due diligence in filing the section 2-1401 petition. *Id.*, ¶ 37. A meritorious defense is based on facts that would have prevented entry of the judgment if they had been known by the trial court. *Forest Preserve District of Cook County v. Chicago Title & Trust Co.*, 2015 IL App (1st) 131925, ¶ 71. Due diligence is present when the petitioner has a reasonable excuse for failing to act within the

appropriate time. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 223 (1986). The trial court may apply equitable considerations to relax the due diligence standards under appropriate circumstances. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 51. However, in this case the trial court did not consider the merits of Zahran's allegations, because it improperly considered them forfeited. Moreover, Rajcan vigorously contested Zahran's factual allegations. "[W]hen the facts supporting the section 2-1401 petition are challenged by the respondent, a full and fair evidentiary hearing should be held." *Id.* Such a hearing did not take place here. Finally, there is no indication in the record that Zahran was notified of the default judgment. A failure to notify a defendant of the entry of a default judgment will not render it void, though it may make it more vulnerable to a petition to vacate. *Wilson v. TelOptic Cable Construction Co.*, 314 Ill. App. 3d 107, 113 (2000). Accordingly, we conclude the trial court abused in discretion in not further considering Zahran's fact-dependent claims. We reverse this portion of the trial court's ruling and remand for further proceedings.

¶ 49 4. Motion for Rule 137 Sanctions

¶ 50 Last, Zahran argues that the trial court abused its discretion in denying his motion for sanctions against Rajcan. Zahran argues that Rajcan falsely verified her pleadings, in that she falsely alleged that there was a written contract in an attempt to escape the otherwise applicable limitations period, and she falsely alleged that the contract included late fees.

¶ 51 In the trial court, Zahran sought sanctions under Rule 137. The rule allows a court to sanction a party or attorney who has filed a pleading that is either not well-grounded in fact or law, or that is interposed for an improper purpose. Ill. S. Ct. R. 137 (eff. July 1, 2013); *Zagorski v. Allstate Insurance Co.*, 2016 IL App (5th) 140056, ¶ 37. The rule is not intended to punish litigants for making losing arguments or for alleging facts adverse to the factual findings

ultimately determined in the case. *Father & Sons Home Improvement II, Inc.*, 2016 IL App (1st) 143666, ¶ 57. The party seeking sanctions bears the burden of proof. *Deutsche Bank National Trust Co. v. Ivicic*, 2015 IL App (2d) 140970, ¶ 24. Whether to grant sanctions under Rule 137 is within the trial court's discretion. *Father & Sons Home Improvement II, Inc.*, 2016 IL App (1st) 143666, ¶ 58.

¶ 52 Here, there had not been any factual findings regarding the nature and terms of the parties' contract, much less any credibility determinations. Accordingly, the trial court did not abuse its discretion in denying Zahran's motion for Rule 137 sanctions. Although the trial court did not rely on this rationale in denying Zahran's motion, as stated, we may affirm the trial court's decision on any basis appearing in the record, regardless of the trial court's reasoning. *Father & Sons Home Improvement II, Inc*, 2016 IL App (1st) 143666, ¶ 27; see also *People v. Dunmore*, 389 Ill. App. 3d 1095, 1109 (2009) (applying this principle to a discretionary decision).

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the Du Page County circuit court's denial of Zahran's June 2, 2015, motion to vacate the default judgment, as we have determined that Zahran was properly served with process. We also affirm the entry of the default judgment in the amount of damages sought by Rajcan. We further affirm the circuit court's denial of the portion of Zahran's subsequent section 2-1401 motion that alleged improper service of process. However, the trial court erred by ruling that the remainder of the allegations in that petition were forfeited, so we reverse this portion of its ruling and remand for further proceedings. Finally, we affirm the trial court's denial of Zahran's motion for Rule 137 sanctions.

¶ 55 Affirmed in part and reversed in part; cause remanded.