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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

LISA ANDERSON,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff and Counterdefendant-)	
Appellant,)	
)	
v.)	No. 07-CH-1088
)	
PATRICIA A. SMITH,)	
)	Honorable
Defendant and Counterplaintiff-)	Mitchell L. Hoffman,
Appellee.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* The circuit court had subject-matter jurisdiction to enforce a settlement agreement between Illinois residents concerning real property located in the State of Florida.
- ¶ 2 Plaintiff, Lisa Anderson, appeals from an order making certain findings regarding a settlement agreement concerning real property located in the State of Florida. Plaintiff asserts that, notwithstanding her agreement to litigate all disputes related to the settlement agreement in the circuit court of Lake County, the court lacked subject-matter jurisdiction to enforce said agreement. For the reasons that follow, we affirm.

¶ 3 Though this appeal concerns the circuit court's exercise of jurisdiction over a settlement agreement relating to real property located in the Florida, a brief overview of the events preceding the entry of the agreement is helpful. The following facts were gleaned from the common law record and the report of proceedings concerning the hearing on defendant's motion to enforce settlement agreement.

¶ 4 Anderson is the daughter of defendant, Patricia A. Smith (Smith). Both parties are Illinois residents. On April 15, 2004, Anderson entered into a real estate contract with 1106 Waves Corporation to purchase a condominium located at 9455 Collins Avenue, Unit 1106, Surfside, Florida, 33164 (the property), for \$490,000. At Anderson's request, Smith agreed to take out a \$450,000 mortgage from SunTrust Mortgage (SunTrust) and sign a promissory note to SunTrust in order to assist Anderson in purchasing the property. Anderson closed on the property on October 24, 2004, and she thereafter executed an assignment transferring all of her rights, title, and interest in the property to Smith. The title and the mortgage were thus in Smith's sole name. The parties agreed that Anderson would make all payments associated with the property, including the mortgage, real estate taxes, insurance premiums, and condominium assessments.

¶ 5 On April 20, 2007, Anderson filed a multi-count complaint in Lake County, Illinois, against Smith concerning certain personal and real property. She alleged as follows. Anderson, as grantor, entered into an irrevocable trust with Smith on October 4, 2004, wherein Smith was both the trustee and primary beneficiary. Smith executed a document on November 19, 2004, stating that she held the property in trust for the beneficial interest of Anderson. The document further stated that Smith was in the process of transferring the real property to Anderson, "who is the true owner and provided the down payment." Anderson made all of the payments associated

with the property since the closing, but Smith revoked Anderson's power of attorney on January 10, 2007. On January 26, 2007, Smith sent a letter to the tenant of the property, wherein she indicated that she was the legal owner of the property and that Anderson no longer had authority to act on Smith's behalf. Smith's letter requested that the tenant send her a copy of her rental agreement with Anderson, as well as that the tenant remit all future rent payments to Smith. Smith refused Anderson's demands to transfer ownership of the property to her. Among other relief prayed for in the complaint, Anderson sought that a constructive trust be imposed on the property, that she be declared the beneficial owner of the property, and that Smith be ordered to convey and transfer the property to Anderson.

¶ 6 Smith filed an answer and counterclaim, wherein she denied the existence of an irrevocable trust between the parties, denied executing a document stating that she held the property in trust for the benefit of Anderson, and denied that Anderson made all the payments associated with the property. In her counterclaim, Smith alleged that she loaned various monies to Anderson totaling \$648,547 from March 1997 to October 2005, that Anderson had agreed to repay the loans, plus interest, and that said loans remained unpaid.

¶ 7 While this litigation was pending, SunTrust filed a mortgage foreclosure action against Smith with respect to the property. In May 2008, Smith paid SunTrust \$22,871.38 to dismiss the suit, and \$4,014.94 for the June 2008 mortgage payment. The condominium association also brought suit against Smith for unpaid assessments, and Smith paid \$4,888.06 to settle that suit.

¶ 8 On September 15, 2008, Anderson and Smith entered into a settlement agreement, and the pending complaint and counterclaim were thus dismissed with prejudice. With respect to the property, the settlement agreement provided, in pertinent part, as follows. Anderson would make all payments associated with the property, including the payments due to SunTrust Mortgage

pursuant to the promissory note (SunTrust Note) executed in its favor by Smith, insurance premiums (with Smith named as an insured), real estate taxes, repair costs, and assessments owed to the condominium association (collectively the “condominium payments”). So long as she did not breach any of her obligations, Anderson had the exclusive right to use the property, including the right to lease it to a third-party in exchange for the payment of rent at a fair market rate. If Anderson leased the property to a tenant, she was to transmit the rental payments to SunTrust as a pre-payment on the outstanding principal balance due on the SunTrust Note. Until such time as the SunTrust Note was retired and the mortgage released, Smith would be entitled to claim all mortgage interest and property tax deductions.

¶ 9 With respect to the business loans, the settlement agreement provided that Anderson would execute an unsecured promissory note (Smith Note), representing the agreed current balance of the loans, in the amount of \$229,314.18, plus 6.75% annual interest. An attached payment schedule provided for 120 consecutive equal amortized monthly installment payments of \$2,633.08. The Smith Note was executed by Anderson and attached as an exhibit to the settlement agreement.

¶ 10 Upon satisfaction of all of Anderson’s obligations, including satisfaction of the SunTrust and Smith Notes, the settlement agreement provided that Smith would transfer title to the property to Anderson within 30 days. However, in the event of an uncured breach with respect to either such obligation, the agreement provided that any obligation by Smith, including the transfer of the Florida property, would be deemed void, and Anderson would forfeit her claim to obtain title to the property under the agreement. Any uncured breach would also entitle Smith to enter a confession of judgment against Anderson in the amount of \$450,000, less any amounts paid on the Smith Note, prior to the uncured breach. With respect to payments due under both

the Smith Note and the condominium payments, the settlement agreement provided that Anderson would have one opportunity each to cure a material breach per calendar year.

¶ 11 Finally, the settlement agreement provided that it would be construed and interpreted under Illinois law, and that the parties consented to exclusive jurisdiction and venue in the circuit court of Lake County, Illinois. The parties also entered an agreed order providing that the court would retain jurisdiction to enforce the agreement.

¶ 12 On May 15, 2009, Smith filed a motion to enforce the settlement agreement, wherein she alleged multiple delinquent payments under both the Smith and SunTrust Notes. The parties entered into an agreed order on August 27, 2009, wherein Anderson agreed to pay Smith \$7,363.35 as and for the delinquent payments.

¶ 13 On October 14, 2014, Smith filed another motion to enforce the settlement agreement. There, she alleged that Anderson failed to make several payments due to SunTrust Mortgage and the association, failed to obtain insurance for the property, and failed to advance an estimated \$104,000 in rental income she received to prepay the mortgage pursuant to the terms of the settlement agreement. She also maintained that Anderson had exceeded the number of permitted breaches.

¶ 14 The circuit court held a hearing on the motion on February 26, 2015. The court thereafter granted in part the relief sought by Smith, and found that Anderson had breached the agreement, that any obligation by Smith, including the transfer of the condominium, was void, and that Anderson forfeited her claim to obtain title to the property pursuant to the agreement. After a prove-up hearing on December 10, 2015, the court entered judgment by confession against Anderson in the amount of \$229,580.32. Anderson timely appealed.

¶ 15 Anderson raises just one issue on appeal, namely that the circuit court of Lake County lacked subject-matter jurisdiction to enforce the settlement agreement concerning the real property located in the State of Florida. Anderson does not contest any of the circuit court's substantive rulings, including the breach, the judgment amount, or the declaration of voiding rights under the settlement agreement. Thus, based solely on jurisdictional grounds, Anderson seeks to vacate and declare void the February 26, 2015, order, as well as all subsequent orders.

¶ 16 In support of her claims, Anderson asserts that when the subject matter of litigation concerns specific real property, jurisdiction may be had only where the property is situated. She acknowledges that the parties agreed to litigate all disputes concerning the settlement agreement in Lake County, but cites various cases that stand for the general principal that subject-matter jurisdiction cannot be conferred upon a court by stipulation or consent of the parties, nor can the lack of subject-matter jurisdiction be waived. Though the circuit court commented specifically that it was declining to adjudicate ownership of the property, Anderson argues that the practical effect of the court's ruling was to assign to Smith clear and free title to the property, beyond the court's jurisdiction.

¶ 17 In response, Smith argues that the court did not act directly upon the property, but merely adjudicated the rights of the parties under the settlement agreement. She asserts that Illinois courts have jurisdiction to adjudicate disputes between Illinois litigants that touch upon or that generally concern real estate located in other jurisdictions. Further, she maintains that the court did not make any findings as to title of the property, noting that the court struck portions of the prepared order directing Anderson to turn over keys to the property and finding that Smith owned the property free and clear from any claim of Anderson. Smith stresses that it was Anderson who brought the initial suit in the circuit court of Lake County, and that she now seeks

to avoid the consequences of breaching the settlement agreement that she helped negotiate and freely entered into.

¶ 18 Whether a circuit court has subject matter jurisdiction to hear a claim presents a question of law which we review *de novo*. *McCormick v. Robertson*, 2015 IL 118230, ¶ 18. Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). The lack of subject matter jurisdiction can be raised at any time, and may even be raised for the first time on appeal. *In re Marriage of Adamson & Cosner*, 308 Ill. App. 3d 759, 764 (1999).

¶ 19 It has generally been held that Illinois courts are without jurisdiction to directly affect title to out-of-state real property. *Chirekos v. Chirekos*, 33 Ill. App. 3d 606, 607 (1975). Nevertheless, where the court has *in personam* jurisdiction over all interested parties, and the court's equitable powers are invoked, it may indirectly affect property outside of the court's territorial jurisdiction by acting directly on the interested parties. *In re Estate of Medlen*, 286 Ill. App. 3d 860, 865 (1997); *De Licea v. Reyes*, 87 Ill. App. 3d 704, 707 (1980); *In re Hansen's Estate*, 109 Ill. App. 2d 283, 291-92 (1969). Under such circumstances, for example, an Illinois trial court may compel those persons subject to its jurisdiction to do some act in relation to out-of-state property in accordance with the laws of the state where the property is situated. *Chirekos*, 33 Ill. App. 3d at 609. Having personal jurisdiction over all interested parties, a court may also order a conveyance of foreign real estate and enforce that order, it may sequester the rents or profits of foreign real estate, and it may impose an equitable lien upon the property. *In re Marriage of Miller*, 108 Ill. App. 3d 63, 67 (1982). Moreover, and pertinent to the instant

matter, a trial court may adjudicate the rights and interests of those parties in the out-of-state land. *Chirekos*, 33 Ill. App. 3d at 609.

¶ 20 Here, the circuit court was within its power to enforce the settlement agreement, as it properly had personal jurisdiction over the parties (both of whom were Illinois residents), and the court's findings were limited only to the rights of the parties under that agreement. Though the complaint and counterclaim were dismissed with prejudice upon entry of the agreement, the court entered an order explicitly retaining jurisdiction for purposes of enforcement on September 15, 2008. Moreover, the settlement agreement itself provided that the court retained jurisdiction. Even in the absence of the foregoing, the court's jurisdiction would remain, as trial courts are vested with the inherent power to enforce their own orders where further performance by the parties is contemplated. *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 589-90 (2010). Such was the case here.

¶ 21 Further, we disagree with Anderson that the court's order of February 26, 2015, directly affected title to the property, as the court did not order a modification of title or any change in ownership over the property. Indeed, the record is clear that the title and mortgage were in Smith's sole name for greater than ten years prior to the entry of the order Anderson now seeks to have declared void, and the court's February 26 findings and order in no way alters that arrangement. Here, the court adjudicated the parties' contractual rights under the terms of the settlement agreement, and found that Anderson's various breaches thereof resulted in the forfeiture of her potential future contractual rights under the agreement.

¶ 22 The circuit court also correctly acknowledged that "there is a limit to what [it could] order," and declined to grant any of the relief sought by Smith relating directly to ownership and possession of the property. Specifically, the court declined to hold that Smith owned the

condominium free and clear from any claim from Anderson, and declined to order that Anderson relinquish possession of the property or turn over the keys thereto. The court also made clear to the parties that ownership of the property could only be adjudicated by a Florida court. Though the circuit court found that “Anderson has forfeited her claim to obtain title to the Condominium,” the court was clear that it was ruling only on the parties’ relative contractual rights under the settlement agreement. Indeed, this finding was merely a corollary to the court’s finding that Smith’s obligation to transfer the property to Anderson was voided by Anderson’s various breaches, as contemplated in the agreement. Thus, we reject Anderson’s assertion that the court made findings directly affecting title.

¶ 23 In short, the circuit court had subject-matter jurisdiction to find that Anderson breached the agreement such that any obligation by Smith, including the transfer of the Florida property, was void. Accordingly, the judgment of the circuit court of Lake County is affirmed.

¶ 24 Affirmed.