

2018 IL App (1st) 172591-U

No. 1-17-2591

Order filed December 27, 2018

Fourth Division

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
FIRST DISTRICT

)	
BOARD OF TRUSTEES OF NORTHEASTERN)	
ILLINOIS UNIVERSITY, a body politic and corporate,)	
)	
Plaintiff,)	
)	
v.)	
)	
EMMANUEL PATHIEU, MAGDOLIN PATHIEU,)	Appeal from the
ABDEL ALSAWI, TAISIR NASSER, COOK COUNTY)	Circuit Court of
TREASURER MARIA PAPPAS, COOK COUNTY)	Cook County
CLERK DAVID ORR, and UNKNOWN OWNERS,)	
)	No. 14 L 050602
Defendants,)	
)	Honorable
(Abdel Alsawi and Ugly Hookah Bar, Inc.,)	James M. McGing,
)	Judge Presiding.
Petitioner-Appellant)	
)	
v.)	
)	
Board of Trustees of Northeastern Illinois University,)	
Emmanuel Pathieu, and Magdolin Pathieu,)	
)	
Respondents-Appellees).)	

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride concurred in the judgment.
Justice Gordon specially concurred.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court denying Alsawi's petition to vacate the final judgment in the Condemnation Proceeding where Alsawi executed a valid Disclaimer disclaiming his interest in the Property and therefore lacked standing to challenge the court's judgment.

¶ 2 In August 2014, Respondent Northeastern Illinois University (NEIU) filed a complaint for condemnation in the circuit court pursuant to the Eminent Domain Section of the Northeastern Illinois University Law (Law) (110 ILCS 680/25-42 (West 2014)). In the complaint, NEIU sought to acquire property located at 3413-3417 West Bryn Mawr Avenue in Chicago, Illinois (the Property) under the Law (Condemnation Proceeding). The complaint identified Respondents Emmanuel Pathieu and Magdolin Pathieu as the owners of the Property. NEIU subsequently amended the complaint, adding additional defendants, including Petitioner Abdel Alsawi. Alsawi subsequently signed a "Disclaimer of Interest of Tenant" (Disclaimer) disclaiming any award of just compensation and assigning any such interest to Emmanuel and Magdolin Pathieu. In an agreed order entered by the circuit court, the court found that Alsawi had disclaimed any interest in the Property by signing the Disclaimer, that NEIU would acquire the Property under the Law, and that Emmanuel and Magdolin Pathieu were entitled to \$525,000 of just compensation. The award of just compensation was disbursed to the Pathieus on May 13, 2016.

¶ 3 On June 27, 2017, Alsawi and his business Ugly Hookah Bar, Inc. (collectively, "Alsawi") filed an "Emergency Petition to Vacate Void Judgment" pursuant to section 2-1401(f) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401(f) (West 2016)). In his petition,

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Alsawi contended that he entered into a lease contract with Emmanuel, the owner of the Property, in April 2006. The lease term extended through May 2022, and Alsawi used the Property to run his business, Ugly Hookah. Alsawi asserted that the final judgment in the Condemnation Proceeding was void because the circuit court lacked personal jurisdiction over him. Alsawi asserted that he was never served with a copy of the complaint or a summons. In response, NEIU and Emmanuel and Magdolin Pathieu (collectively “Respondents”) contended that by signing the Disclaimer, Alsawi had notice of the Condemnation Proceeding and voluntarily disclaimed his interest. The circuit court agreed with Respondents and denied Alsawi’s petition.

¶ 4

I. BACKGROUND

¶ 5

A. The Condemnation Proceeding

¶ 6 On August 8, 2014, NEIU filed its initial complaint for condemnation of the Property under the Law naming Emmanuel and Magdolin Pathieu and unknown owners as the sole defendants. In its complaint, NEIU contended that it was necessary for it to acquire the Property in order to provide student housing for its students. On November 18, 2014, NEIU filed an amended complaint adding David Orr, in his capacity and Cook County Clerk, and Maria Pappas, in her capacity as Cook County Treasurer as defendants. On October 30, 2015, NEIU filed a second amended complaint adding Alsawi and Taisir Nasser as defendants.

¶ 7 On November 14, 2015, Alsawi signed the Disclaimer. The caption at the top of the Disclaimer matched the caption from NEIU’s first amended complaint and did not list Alsawi or Nasser as defendants. The Disclaimer provided:

“Abdel Alsawi, tenant of the property which is the subject of this eminent domain case, disclaims any interest in any award of Just Compensation in this proceeding and

hereby assigns any such interest to Emmanuel Pathieu and Magdolin Pathieu. Abdel Alsawi, however, does not disclaim his interest in or right to receive any relocation assistance and benefits.”

¶ 8 On December 3, 2015, the circuit court entered its “Agreed Final Judgment Order” (Final Judgment Order). In the order, the circuit court found with regard to Alsawi that,

“all parties defendant herein have been served with process in the manner and form mandated by statute; that defendant Abdel Alsawi having disclaimed any interest in the award of just compensation, and Plaintiff having moved to dismiss Abdel Alsawi and Tamir Nasser as defendants in this action, which motion is hereby granted; that Unknown Owners, being found as in cases of default, and that all defendants are before the Court.”

The court found that the remaining parties, the Pathieus and NEIU, had entered into a stipulation whereby the Pathieus would receive \$525,000 in exchange for the Property, and the court entered an order in accordance with that stipulation. The award of just compensation of \$525,000 was released to the Pathieus on May 25, 2016.

¶ 9 On September 26, 2016, NEIU, through its agent, Land Acquisitions, Inc. (LAI), sent a notice to Alsawi that as a “displaced person” he was eligible for relocation benefits. The notice informed Alsawi that NEIU had acquired a right to legal possession of the Property by condemnation, but Alsawi would not be required to move any sooner than 90 days from the date of the notice. After Alsawi did not vacate, NEIU, through LAI, sent Alsawi a second notice to vacate the Property on December 1, 2016. In that notice, NEIU informed Alsawi that he had until December 31, 2016, to vacate the Property. Alsawi did not vacate the Property by the deadline. Accordingly, on April 18, 2017, the circuit court entered an order for possession in favor on NEIU with regard to the Property.

¶ 10 B. Alsawi's Petition to Vacate Judgment

¶ 11 On June 27, 2017, Alsawi filed an "Emergency Petition to Vacate Void Judgment" pursuant to section 2-1401(f) of the Code. 735 ILCS 5/2-1401(f) (West 2016). In his petition, Alsawi contended that he entered into a lease with Emmanuel for the Property on April 12, 2006. The lease originally extended through May 31, 2011, but on June 1, 2011, Emmanuel and Alsawi entered into a lease rider, which extended the lease through May 31, 2022. Since the beginning of the lease term, Alsawi owned and operated Ugly Hookah on the premises. Alsawi contended that as a tenant, he was an "owner" for purposes of the Condemnation Proceeding, but NEIU never served process upon him personally, or upon Ugly Hookah by corporate service. Alsawi contended that as a tenant he was a necessary party to the Condemnation Proceeding as evidenced by the fact that NEIU added him as a defendant in its second amended complaint. Alsawi asserted that because he was never served and never appeared in the Condemnation Proceeding or otherwise waived service or submitted to the circuit court's jurisdiction, the December 3, 2015, agreed final order was void for lack of personal jurisdiction and should be vacated. Alsawi also attached an affidavit to his petition in which he averred that he was never served with process in the Condemnation Proceeding and as a result never entered an appearance or retained counsel to represent him in that proceeding.

¶ 12 In response¹, the Respondents filed a motion to strike and dismiss Alsawi's motion to vacate pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2016). In their response, Respondents contended that Alsawi's motion should be dismissed because he did not have standing to challenge the court's order. Respondents asserted that Alsawi's valid and voluntary exercise of the Disclaimer vitiated any claim or interest he had in the Property.

¹ The circuit court dismissed the emergency nature of the petition, but ordered the Respondents to respond to the substantive allegations in the petition.

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Respondents maintained that Alsawi could not now challenge the taking of the Property because he did not have any interest in the Property. Respondents noted that Alsawi failed to mention the Disclaimer in either his motion or affidavit, but the Disclaimer established both Alsawi's knowledge of the underlying Condemnation Proceeding and his participation in that proceeding. Respondents also asserted that Alsawi failed to satisfy the requirements of section 2-1401 because he did not raise a meritorious defense or claim and did not show due diligence in promptly pursuing that claim or defense.

¶ 13 Alsawi filed a response to Respondents' motion to dismiss in which he again contended that he was never served, never waived service, and did not voluntarily submit to the circuit court's judgment in the Condemnation Proceeding. With regard to the Disclaimer, Alsawi contended that it was "unknown under what circumstances Alsawi signed this Disclaimer. The circumstances surrounding this purported Disclaimer are murky and uncertain at best and may give rise to a multitude of other claims, such as fraud." Alsawi noted that on the Disclaimer, he was not identified as a defendant in the case caption, and was not represented by counsel or given an opportunity to consult with counsel before signing the Disclaimer. Alsawi also contended that the Disclaimer was unconscionable because it was one-sided in the Pathieus' favor. Alsawi also contended that he was not a native English speaker and the Disclaimer was written in complex "legalese," so it is unknown whether Alsawi understood the meaning of the Disclaimer.

¶ 14 Following additional briefing, the circuit court denied Alsawi's motion to vacate. In so ruling, the court found Alsawi lacked standing to challenge the taking of the Property. The court noted that Alsawi did not address the Disclaimer in his motion to vacate and his "utter silence implicitly shows he wants this Court to ignore" the Disclaimer. The court found that the

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Disclaimer was “crucial” because it established Alsawi’s knowledge of the Condemnation Proceeding and his participation in those proceedings. The court determined that the Disclaimer demonstrated that Alsawi waived his rights to the condemnation award and no longer had any interest in the Property, and, thus, service was unnecessary. The court further found that Alsawi had failed to set forth any facts to support his contention that the Disclaimer was procured by fraud. The court found that Alsawi was at least required to plead the elements of a claim for fraud, including what misrepresentations were made, when they were made, who made the misrepresentations, and to whom they were made. The court noted that Alsawi himself was in the best position to provide a factual basis for his claims, but he failed to provide any support for his claims in his affidavit. The court determined that there was “not a shred of evidence that the Disclaimer was procured improperly.” The court concluded that because Alsawi voluntarily executed the Disclaimer, he was no longer a necessary party to the Condemnation Proceeding and was properly dismissed. Accordingly, the court found that Alsawi lacked standing to contest the circuit court’s Final Judgment Order of December 3, 2015. Alsawi now appeals.

¶ 15

II. ANALYSIS

¶ 16 On appeal, Alsawi contends that he has standing to challenge the circuit court’s Final Judgment Order because he was a necessary party to the Condemnation Proceeding. He asserts that the court’s Final Judgment Order is void because the court did not have personal jurisdiction over him because he was never served, never waived service, and never made an appearance or submitted to the court’s jurisdiction. Alsawi asserts that the Disclaimer is invalid because it is procedurally and substantively unconscionable, and thus could not terminate his property rights.

¶ 17

A. Standard of Review

¶ 18 Section 2-1401 of the Code provides a comprehensive statutory procedure by which final judgments may be vacated more than 30 days after their entry. *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). Generally, to obtain relief under section 2-1401, the petitioner must set forth the existence of a meritorious defense, due diligence in presenting the defense to the circuit court, and due diligence in filing the section 2-1401 petition. *Id.* at 220-21. Here, however, Alsawi brought his petition to vacate judgment pursuant section 2-1401(f), which challenges a final judgment on the grounds that it is void. 735 ILCS 5/2-1401(f) (West 2016); *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). Under that section, “the general rules pertaining to section 2-1401 petitions—that they must be filed within two years of the order or judgment, that the petitioner must allege a meritorious defense to the original action, and that the petitioner must show that the petition was brought with due diligence—do not apply.” *Sarkissian*, 201 Ill. 2d at 104. Nonetheless, the circuit court in this case denied Alsawi’s petition in part because he failed to present a meritorious defense and failed to show due diligence in pursuing his claim. Respondents contend before this court that the circuit court properly “converted” Alsawi’s petition to vacate void judgment into a section 2-1401 petition because his challenge to the Final Judgment Order was fact-dependent.

¶ 19 The supreme court addressed this issue in *Warren County Soil and Water Conservation District v. Walters*, 2015 IL 117783. The *Warren County* court explained that where a section 2-1401 petition seeks to vacate a void judgment, which is a purely legal issue, the petitioner does not need to establish a meritorious defense or satisfy the due diligence requirements. *Id.* ¶ 48 (citing *Sarkissian*, 201 Ill. 2d at 104). However, where a section 2-1401 petition raises a “fact-dependent challenge to a final judgment or order [the petition] must be resolved by considering the particular facts, circumstances, and equities of the underlying case.” *Warren County*, 2015 IL

117783, ¶ 50. In such a situation, the petitioner must set forth factual allegations supporting the existence of a meritorious defense, due diligence in presenting that defense, and due diligence in filing the section 2-1401 petition. *Id.* ¶ 51 (citing *Airoom*, 114 Ill. 2d at 221). Thus, the question is whether Alsawi's petition presented a purely legal challenge to the Final Judgment Order or a fact-dependent challenge.

¶ 20 In his petition, Alsawi contended that the Final Judgment Order was void because the circuit court lacked personal jurisdiction over him where he was never served. Alsawi contended that the record was clear that NEIU never even attempted to serve him and thus his petition would appear to present a purely legal question not subject to the meritorious defense and due diligence requirements. However, as Respondents noted in their motion to dismiss, and as the circuit court noted in its order, Alsawi's section 2-1401 petition entirely ignores the Disclaimer. In asserting that the Disclaimer did not defeat his petition, Alsawi raised several fact-dependent issues such as his ability to understand the Disclaimer, the overall clarity of the Disclaimer for a lay person, and the circumstances under which he signed the Disclaimer. Once these issues entered into consideration, Alsawi's petition no longer presented a purely legal challenge to the Final Judgment Order. Rather, his challenge to the Final Judgment Order had to be resolved by considering the particular facts, circumstances, and equities of the underlying case. *Warren County*, 2015 IL 117783, ¶ 50. Alsawi contends that the Disclaimer was raised as a defense by Respondents and since his petition did not rely on the Disclaimer, he was not required to refute it before it was even raised as an issue.

¶ 21 However, the Disclaimer was indisputably signed by Alsawi and would clearly defeat his claims if valid. Alsawi cannot avoid the mandates of section 2-1401 simply by ignoring a crucial piece of evidence that was undeniably part of the record in the Condemnation Proceeding.

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Although not included in his petition, when the issue was raised by NEIU and responded to by Alsawi, his section 2-1401 petition became a fact-dependent challenge to the Final Judgment Order. This court has recognized that in certain circumstances the circuit court may, in its discretion, consider a pleading in light of its substance, rather than its form. See, *e.g.*, *In re Marriage on Lewin*, 2018 IL 170175, ¶¶ 10-11 (circuit court properly “converted” section 2-615 motion to dismiss to section 2-619 motion). In this case, it was proper for the circuit court to “convert” Alsawi’s petition into a section 2-1401 petition where he presented fact-dependent challenge to the Final Judgment Order. As such, Alsawi was required to set forth specific factual allegations showing “(1) the existence of a meritorious defense; (2) due diligence in presenting this defense; and (3) due diligence in filing the section 2-1401 petition for relief.” *Warren County*, 2015 IL 117783, ¶ 51 (citing *Airoom*, 114 Ill. 2d at 221). The burden was on Alsawi, as petitioner, to establish these elements by a preponderance of the evidence and we review the circuit court’s ruling on the petition for abuse of discretion. *Id.*

¶ 22

B. The Disclaimer

¶ 23 The dispositive issue before us is the validity of the Disclaimer. As a tenant of the Property, Alsawi was unquestionably an “owner[]” in the constitutional sense and a necessary party in the Condemnation Proceeding. *Chef’s No. 4, Inc. v. City of Chicago*, 117 Ill. App. 3d 410, 413 (1983). However, if the Disclaimer was valid and Alsawi voluntarily executed the Disclaimer and waived his right to any compensation, he would no longer be a necessary party and he would lack standing to challenge the Final Judgment Order. The Disclaimer would also show that Alsawi had notice of the Condemnation Proceeding and voluntarily submitted himself to the court’s jurisdiction. Accordingly, we will focus our review on the validity of the Disclaimer and Alsawi’s execution of it.

¶ 24

1. Unconscionability²

¶ 25 Alsawi contends that the Disclaimer is invalid because it is both procedurally and substantively unconscionable. “Procedural unconscionability refers to a situation where a term is so difficult to find, read, or understand that the plaintiff cannot fairly be said to have been aware he was agreeing to it, and also takes into account a lack of bargaining power.” *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 100 (2006). “Substantive unconscionability refers to those terms which are inordinately one-sided in one party’s favor.” *Id.* A contract provision will not be enforced if it is found to be either procedurally or substantively unconscionable. *Williams v. Jo-Carroll Energy, Inc.*, 382 Ill. App. 3d 781, 784 (2008). Whether a term is unconscionable is a question of law to be determined by the court. *Razor*, 222 Ill. 2d at 99.

¶ 26

a. Procedural Unconscionability

¶ 27 Alsawi contends that the Disclaimer is procedurally unconscionable because he is a non-native English speaker, had no knowledge of the Condemnation Proceeding when he signed the Disclaimer, and was not aware of its significance. He also asserts that it is unclear what the circumstances were at the time he signed the Disclaimer and was not represented by an attorney or given the opportunity to seek legal counsel where the Disclaimer was “full of legalese and littered with a variety of complex legal concepts.” Alsawi asserts that it is unclear how his signature for the Disclaimer was obtained and it is unknown what representations Emmanuel or his attorney made to him in order to convince him to sign the Disclaimer.

² Respondents contend that Alsawi waived the argument that the Disclaimer was invalid because it was unconscionable by failing to raise the issue before the circuit court. The record shows, however, that Alsawi raised this argument in his response to Respondents’ surreply and the circuit court addressed this issue in its written order denying Alsawi’s petition. Accordingly, we reject Respondents’ argument that Alsawi waived this issue for review.

¶ 28 Alsawi's claim for procedural unconscionability appears to be conflated with a claim for fraudulent misrepresentation, which was addressed by the circuit court below. To prevail on a claim of fraudulent misrepresentation, a plaintiff must establish: "(1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to Law; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance." *Bonhomme v. St. James*, 2012 IL 112393, ¶ 35. Essentially, Alsawi contends that not only did he not understand the Disclaimer, but he was somehow fraudulently induced into signing it by Emmanuel or his attorney. These contentions make it evident that Alsawi's contentions are truly fact-dependent despite the fact that questions of unconscionability are generally questions of law. While some of Alsawi's contentions relate to procedural unconscionability, others are clearly claims for fraudulent misrepresentation. Again, Alsawi attempts to hide the true nature of his argument by couching it under a different heading.

¶ 29 With regard to the fraudulent misrepresentation aspects of Alsawi's claim, he has failed to present any evidence to support his claim. As the circuit court stated, Alsawi "has not set forth any factual allegations relative to fraud in the procurement of the Disclaimer in this matter, but to present his position by way of argument and innuendo." The court noted that Alsawi himself would be in the best position to present evidence showing that his signature on the Disclaimer was procured by fraud, but his affidavit is silent on that issue. We agree with the circuit court that Alsawi's fraudulent misrepresentation claims are conclusory, at best. He suggests that it is unknown what representations were made to him at the time he signed the Disclaimer and that it is unknown what the circumstances were, but Alsawi makes these arguments without any factual

support and seems to ignore the well-established fact that it was his burden to present evidence in support of his claims.

¶ 30 With regard to Alsawi's contentions that actually raise a claim for procedural unconscionability, we find that he has failed to demonstrate that the Disclaimer is so difficult to read or understand that it could not be fairly said that Alsawi understood that he was agreeing to. *Kinkel v. Cingular Wireless, LLC*, 223 Ill. 2d 1, 22 (2006). Alsawi contends that the relatively short Disclaimer contained a variety of "complex legal concepts" and "legalese," but a fair reading of the Disclaimer shows that these contentions are baseless. The Disclaimer is two sentences, identifies the Condemnation Proceeding and Alsawi as a tenant in the eminent domain case. It further provides that Alsawi "disclaims any interest in any award of Just Compensation in this proceeding and hereby assigns such interest to Emmanuel Pathieu and Magdolin Pathieu." The Disclaimer finally provided that Alsawi did not "disclaim his interest in or right to receive any relocation assistance and benefits." There is simply nothing unconscionable about either the terms of the Disclaimer or the procedure under which Alsawi signed the agreement. *Williams v.*, 382 Ill. App. 3d at 784-85. Nor does the record demonstrate that Alsawi had a lack of bargaining power with regard to the Disclaimer where he allegedly had a valid lease agreement that ran through 2022.

¶ 31 b. Substantive Unconscionability

¶ 32 Alsawi contends that the Disclaimer is substantively unconscionable because it is one-sided in favor of the Pathieus, and Alsawi received nothing in exchange for signing the Disclaimer even though his lease agreement extended through 2022. Alsawi contends that the Disclaimer should therefore fail for lack of consideration. Illinois courts generally address contentions of substantive unconscionability with regard to mandatory arbitration clauses. See,

e.g., *Kinkel*, 223 Ill. 2d at 1, *Tortoriello v. Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214 (2008); *Wigginton v. Dell, Inc.*, 382 Ill. App. 3d 1189 (2008). In such situations, substantive unconscionability can be shown by “ ‘contract terms so one-sided as to oppress or unfairly surprise an innocent party, an overall imbalance in the obligations and rights imposed by the bargain, and significant cost-price disparity.’ ” *Kinkel*, 223 Ill. 2d at 28 (quoting *Maxwell v. Fidelity Financial Services, Inc.*, 184 Ariz. 82, 89 (1995)). Although the terms of the Disclaimer seem to favor the Pathieus over Alsawi, there is no suggestion of oppression or surprise necessary to show substantive unconscionability. The terms of the Disclaimer are not buried in an overly long legal document or hidden in a subsection of a terms and conditions contract, but are spelled out in two sentences in plain English. Again, Alsawi raises his inability to understand English and suggests that the terms of the Disclaimer were not clear and conspicuous, but as we have already found, the terms of the Disclaimer are not unconscionable and Alsawi has failed to present any evidence suggesting that he did not understand the Disclaimer at the time he signed it or was otherwise fraudulently induced into signing the Disclaimer. Alsawi’s claim for lack of consideration fails for similar reasons. As the circuit court found, Alsawi was in the best position “to attest there was no consideration in his execution of the Disclaimer, yet he makes no mention of such in his affidavit.” There is simply nothing inherently unconscionable about the Disclaimer, and Alsawi has failed to present any evidence supporting his claims of unconscionability. Accordingly, we find that the circuit court properly found that the Disclaimer was not unconscionable.

¶ 33

C. Standing

¶ 34 Because we find that the Disclaimer was a valid assignment of Alsawi’s interest in the Property, we find that he lacks standing to challenge the Final Judgment Order. Alsawi contends

that he was never served, and thus the court lacked personal jurisdiction over him, but the record his clear that he signed the Disclaimer. Although he was not identified as a defendant in the caption listed on the Disclaimer, the Disclaimer identifies the case name and number and identifies Alsawi as the “tenant of the property which is the subject of this eminent domain case.” Alsawi was twice given information on relocation assistance, but declined to do anything with regard to the Condemnation Proceeding. The court found that Alsawi had been properly served with notice of the proceeding and that he had validly disclaimed any interest in the award of just compensation. His execution of the Disclaimer vitiated any interest he had in the Property, and thus he was no longer a necessary party for the Condemnation Proceeding. Accordingly, we find that the circuit court did not err in finding that Alsawi had no standing to contest the Final Judgment Order.

¶ 35 Even assuming Alsawi had standing, the Disclaimer serves to defeat any of his claims challenging the Final Judgment Order. In addition, as discussed, Alsawi failed to satisfy the standards of the section 2-1401 petition. Alsawi failed to present a meritorious defense because he did not present any factual evidence to show the invalidity of the Disclaimer. He also failed to demonstrate he exercised due diligence both pursuing his defense and in filing the petition where he waited more than two years after the Final Judgment Order was entered to file his petition seeking to vacate the judgment. We therefore find that the circuit court did not err in denying Alsawi’s petition.

¶ 36

III. CONCLUSION

¶ 37 For the reasons stated, we affirm the judgment of the circuit court Cook County.

¶ 38 Affirmed.

¶ 39 JUSTICE GORDON, specially concurring:

¶ 40 I agree with the decision and analysis of the majority but I must write separately on Alsawi's claim that the disclaimer fails for lack of consideration. In all contracts, there must be consideration in order for the agreement to be a valid contract. *Carter v. SSC Odin Operating Co.*, 2012 IL 113204, ¶ 21. " 'Consideration' is the 'bargained-for exchange of promises or performances, and may consist of a promise, an act or a forbearance.' " *Carter*, 2012 IL 113204, ¶ 23 (quoting *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 487 (1997)). In the case at bar, the consideration was his right to receive relocation assistance and benefits, which the disclaimer agreement did not affect. Alsawi is a businessman operating a tavern and, although he claims no knowledge in condemnation procedures, he knew enough to exclude any rights he would have in relocation expenses, which implies that he knew he had to leave the premises and relocate. The affirmance by this court of the trial court's order does not in any way affect any of Alsawi's rights, if any, against his landlord for relocation expenses.