THIRD DIVISION
March 20, 2019

No. 1-17-0831

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WEST SUBURBAN BANK, Plaintiff-Appellant, v. ADVANTAGE FINANCIAL PARTNERS, LLC; UNKNOWN OWNERS & NON-RECORD CLAIMANTS, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County 08 CH 46485 Honorable William B. Sullivan Judge Presiding

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Trial court did not err by denying plaintiff's petition to vacate judgment due to lack of personal jurisdiction over defendant.

¶ 2 Something we don't see every day: After obtaining a foreclosure judgment against a defendant, a bank now wants to vacate that judgment, several years later, because it did not have personal jurisdiction over the defendant. We agree with the trial court that this jurisdictional objection was not the bank's to make. We affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 The facts of this case are well known to the court and have been thoroughly described in two related prior appeals: *West Suburban Bank v. Advantage Financial Partners, LLC*, 2014 IL App (2d) 131146 (*West Suburban Bank I*) and *West Suburban Bank v. Advantage Financial Partners, LLC*, 2015 IL App (1st) 142110-U (*West Suburban Bank II*). For the sake of brevity, we repeat only the facts necessary to understand the issues in this appeal.

¶ 5 Plaintiff West Suburban Bank (WSB) extended a $10 million-dollar line of credit to defendant Advantage Financial Partners, LLC (AFP). The line of credit was secured by over 20 separate mortgages on various properties. In 2008, AFP defaulted, and WSB sought to foreclose on each mortgage. This appeal relates to one of those foreclosure actions, the one concerning the property at 550 Quentin Road in Palatine, Illinois (the 550 Quentin Action). In nearly all the cases, including the 550 Quentin Action, WSB hired MSPI, Incorporated (MSPI) as the process server. AFP did not appear in any of these foreclosure actions.

¶ 6 WSB obtained default judgments in each of these cases, including, in 2009, a default judgment in the 550 Quentin Action. The case proceeded to judicial sale. The sheriff's report and certificate of sale indicated that WSB made a successful $5 million bid for the 550 Quentin property. WSB sought confirmation of the sale, and the court entered an order approving the sheriff's sale—for $5 million.

¶ 7 It was not until 2013, over three years after the default judgment, that WSB realized there was a significant error in the sheriff's report. WSB claims it did not bid $5 million, but only $125,000. Which meant the sum of $5 million, rather than $125,000, was being credited to AFP's account from the sale of the 550 Quentin property.

¶ 8 WSB made numerous attempts to correct the sheriff's error. For example, it tried to obtain an order *nunc pro tunc* to correct the supposed error. The trial court agreed with AFP, however, that the use of a *nunc pro tunc* order was improper in that context. This court affirmed that ruling. See *West Suburban Bank II*, 2015 IL App (1st) 142110-U.

¶ 9 Though AFP was obviously content with the foreclosure judgment in the 550 Quentin action, given the windfall it received, around this same time, AFP moved to vacate all the other foreclosure judgments on which MSPI was the process server, on the ground that MSPI had failed to properly serve AFP, and thus the court did not have personal jurisdiction over AFP. Our supreme court consolidated these actions in DuPage County, thus falling within the purview of the Second District Appellate Court. Ultimately, the Second District Appellate Court agreed with AFP that service of process was improper, that personal jurisdiction was lacking in each of those foreclosure actions, and thus that those judgments must be vacated. See *West Suburban Bank I*, 2014 IL App (2d) 131146. (We will refer to these invalidated foreclosure judgments as the "Void Foreclosure Judgments" from here on.)

¶ 10 At no time, however, has AFP moved to vacate the default judgment in the 550 Quentin Action. So WSB decided that it would try to do so.

¶ 11 That is, after the Second District's decision in *West Suburban Bank I*, WSB filed a petition pursuant to 735 ILCS 5/2-1401 (West 2014) to set aside its "void" judgment in the 550 Quentin Action. WSB's petition claimed that the court, in the 550 Quentin Action, lacked personal jurisdiction over AFP, as WSB used the same illegitimate process server to serve AFP there that it used in the Void Foreclosure Judgments. Thus, said WSB, just as those other judgments were void *ab initio* for lack of personal jurisdiction, so too was the judgment in the 550 Quentin Action.

¶ 12 AFP opposed the 2-1401 petition, of course, claiming that they have never objected to personal jurisdiction in the 550 Quentin Action and never will. Regardless, AFP argued, WSB did not have standing to raise a jurisdictional objection that belonged to AFP and only to AFP.

¶ 13 In reply, WSB argued that personal jurisdiction can only be waived prospectively and can't be used retroactively to validate a void judgment. It also claimed that judicial estoppel prevented AFP from taking a position in the 550 Quentin Action that was completely opposite the position it took regarding the other foreclosure cases where MSPI was the process server.

¶ 14 Then our supreme court issued its decision in *People v. Matthews*, 2016 IL 118114 (2016). The trial court ordered the parties to brief what effect, if any, the *Matthews* decision had on WSB's 2-1401 petition. After a second round of briefing, the trial court issued a memorandum order, relying on the holding in *Matthews*, to find that WSB lacked standing to vacate the default judgment in the 550 Quentin Action based on a lack of personal jurisdiction over AFP. The court refused to consider the judicial estoppel argument because, in its view, as it was ruling on cross-motions for judgment on the pleadings, it could not consider an argument which did not appear on the face of the pleadings.

¶ 15 WSB timely appealed. AFP initially failed to file a brief and filed a motion requesting we reset the briefing schedule. In response to AFP's motion, WSB sought leave to file a supplemental brief. We granted both motions, allowing WSB to file a supplemental brief and allowing AFP to file a brief responding to both WSB's initial and supplemental briefs.

¶ 16 ANALYSIS

¶ 17 I. Voidness for Lack of Jurisdiction

¶ 18 We begin with WSB's ability to raise a personal-jurisdiction challenge to the final judgment in the 550 Quentin Action, via this section 2-1401 action.

¶ 19 When a section 2-1401 petition is brought on voidness grounds, "the general rules pertaining to section 2-1401 petitions—that they must be filed within two years of the order or judgment, that the petition must allege a meritorious defense to the original action, and that the petition must show that the petition was brought with due diligence—do not apply." *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002). Any judgment entered without jurisdiction is void and may be challenged at any time, either directly or collaterally. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. Jurisdictional issues arise as questions of either subject-matter or personal jurisdiction, the latter of which is pertinent here.

¶ 20 Personal jurisdiction "is derived from the actions of the person sought to be bound." *Owens v. Snyder*, 349 Ill. App. 3d 35, 40 (2004). "[P]ersonal jurisdiction can vest in the trial court if a party, by his actions, consents to or waives personal jurisdiction." *Id.* "When a trial court fails to obtain personal jurisdiction over a litigant, it is deprived of the authority or power to impose judgment against that litigant." *In re Dar. C.*, 2011 IL 111083, ¶ 60.

¶ 21 WSB is correct that improper service results in a lack of personal jurisdiction, and an order is void if the court lacked personal jurisdiction over the defendant. See *Mitchell*, 2014 IL 116311, ¶¶ 17-18. And because the fatal defect in service of process occurred in the 550 Quentin Action just as it did in the other Void Foreclosure Judgments, there is no dispute that AFP would have a meritorious objection based on personal jurisdiction, if it chose to raise it, in the 550 Quentin Action.

¶ 22 But of course, AFP never raised it, and never will. Here, the party claiming the judgment is void for lack of personal jurisdiction is WSB, the *plaintiff* in the underlying action who obtained the default judgment in its favor (though a pyrrhic victory, to be sure, given the error in the confirmation of sale).

¶ 23 The respective positions of the parties make all the difference in the world. Effective service, leading to personal jurisdiction, "is a means of protecting an *individual's* right to due process by allowing for proper notification of interested individuals and an opportunity to be heard." (Emphasis added.) *In re Dar. C.*, 2011 IL 111083, ¶ 61. WSB's argument "fails to recognize that personal jurisdiction, unlike subject-matter jurisdiction, can be waived." *People v. Matthews*, 2016 IL 118114, ¶ 18.

¶ 24 In *Matthews*, the defendant tried to vacate an adverse ruling on his section 2-1401 petition because he failed to properly serve the State, and thus the court lacked personal jurisdiction over the State. *Id*. The supreme court held "that defendant lacks standing to challenge the validity of the circuit court's dismissal order based on lack of personal jurisdiction over the State." *Id*. ¶ 20. In reaching this conclusion, the court referenced an earlier holding that, "because objections to personal jurisdiction and improper service may be waived, 'a party may 'object to personal jurisdiction and improper service of process *only* on behalf of himself or herself.' ' " *Id*. ¶ 19 (quoting *In re M.W.*, 232 Ill. 2d 408, 427 (2009)).

¶ 25 That earlier decision, *In re M.W.*, 232 Ill. 2d at 413, involved a juvenile proceeding at which the circuit court adjudicated the minor delinquent. The juvenile challenged the adjudication, among other things, by claiming that the circuit lacked personal jurisdiction over her father. Our supreme court rejected that argument, reasoning that "a party may 'object to personal jurisdiction or improper service of process only on behalf of himself or herself, since the objection may be waived.' " *Id.* at 427 (quoting *Fanslow v. Northern Trust Co.*, 299 Ill. App. 3d 21, 29 (1998)).

¶ 26 *Matthews*, in particular, stands for the proposition that, in seeking to void a judgment, a plaintiff may not object on the defendant's behalf to a lack of personal jurisdiction over the defendant. That is precisely the set of facts before us. The result must be the same.

¶ 27 WSB says these facts are different, and thus *Matthews* is distinguishable. The argument goes like this: *Matthews* involved a direct appeal in the same action where the alleged jurisdictional defect occurred; it happened to be a section 2-1401 proceeding where the petitioner allegedly failed to serve the State, and on direct appeal of that section 2-1401 proceeding, the petitioner tried to object on personal jurisdictional grounds. *Matthews*, 2016 IL 118114, ¶ 18. The jurisdictional objection, in other words, was raised within the same action. Here, in contrast, the 550 Quentin Action has come and gone. A new section 2-1401 action has been filed (the action before us), which is a separate action (see *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002)), and it is in this separate and independent section 2-1401 action that WSB is raising the jurisdictional challenge.

¶ 28 We see no meaningful difference. A voidness challenge due to lack of personal jurisdiction can be raised at any time. *Mitchell*, 2014 IL 116311, ¶ 17. It can be raised directly (that is, during the original action), and it can be raised collaterally (in a section 2-1401 action). *Id*. The timing of the objection, and the procedural vehicle by which it is raised, is irrelevant.

¶ 29 So if WSB could not have objected to lack of personal jurisdiction over AFP during the 550 Quentin Action, per *Matthews*, it could not do so collaterally under a section 2-1401 petition, either. To hold otherwise would make a mockery of *Matthews*. A rule that said a plaintiff/petitioner lacks standing to object on a defendant's behalf to lack of personal jurisdiction during the initial case, but that this party *does* have standing to do so in a later collateral proceeding, would not only be nonsensical but would reward inefficiency and delay.

¶ 30 The reasoning of *Matthews*, that personal jurisdiction is part of an individual's guarantee of due process, and one subject to waiver, apply just as much in a collateral section 2-1401 proceeding as it would in the original underlying action.

¶ 31 WSB argues that a judgment in an action where a plaintiff never obtained personal jurisdiction over the defendant is void *ab initio*, and that a court has a *sua sponte* duty to vacate void judgments. These statements, as general propositions, may be true in some contexts, but they do not support WSB's position here.

¶ 32 First, courts at any level have an independent duty to consider jurisdiction over the *subject matter* and must vacate any orders or judgments that are void for lack of subject-matter jurisdiction. The case on which WSB relies for this independent duty, *Wierzbicki v. Gleason*, 388 Ill. App. 3d 921, 931 (2009), is such a case. The trial court lost *subject-matter* jurisdiction over the case after the defendants filed a notice of appeal from the trial court's order. *Id*.

¶ 33 Subject-matter jurisdiction can never be waived. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333 (2002). So yes, questions of subject-matter jurisdiction can be raised at any time by the parties or *sua sponte* by a court at any level. *Id*.

¶ 34 Objections to personal-jurisdiction can be raised at any time, as well, but those objections *may* be waived by the defendant. *Matthews*, 2016 IL 118114, ¶ 18. So a court does not have a duty to consider the issue of *personal* jurisdiction *sua sponte*. And if a defendant chooses not to object to personal jurisdiction, or affirmatively waives that objection, there is no basis (at least no jurisdictional one) on which to invalidate the resulting judgment.

¶ 35 Thus, while it is undoubtedly true that a court must vacate any orders that are void for want of personal jurisdiction, a court must first *rule* that personal jurisdiction is lacking. And for

that to happen, the defendant—the party whose due-process rights were supposedly violated—must ask the court to make that ruling. That, if nothing else, is the lesson of *Matthews*.

¶ 36 WSB also argues that AFP's attempt to waive its objection now, in the context of this section 2-1401 proceedings, cannot operate as a retroactive waiver. Its argument is misplaced. First set forth in *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989), the rule about "prospective-only personal jurisdiction" is to "protect parties' due process rights by preventing entry of a judgment without prior notice and an opportunity to be heard." *Mitchell*, 2014 IL 116311, ¶ 28. To accomplish this goal, the court held that " 'a party who submits to the court's jurisdiction does so only prospectively and the appearance does not retroactively validate orders entered prior to that date.' " *Id*. ¶ 26 (quoting *Verdung*, 16 Ill. 2d at 547).

¶ 37 In other words, if a defendant comes into a proceeding late because it hadn't been properly served, it would be grossly unfair to penalize that defendant by retroactively validating all previous orders entered in the case, *before* the court had jurisdiction over that defendant. To hold otherwise and impose a retroactive waiver would waive a defendant's potentially valid jurisdictional argument the moment it was raised. It would give the defendant no due process right at all. It would have the effect of " 'depriv[ing] the defendant of his day in court,' " preventing it from effectively defending itself through no fault of its own. See *Mitchell*, 2014 IL 116311, ¶ 43 (quoting *J.C. Penney Co., Inc. v. West*, 114 Ill. App. 3d 644, 647 (1983)).

¶ 38 But the question of retroactive versus prospective waiver has no relevance here. That question arises when, for example, a defendant files a postjudgment motion to attack the judgment for lack of personal jurisdiction, and the plaintiff then claims that this postjudgment filing constitutes a waiver of a jurisdictional objection both retroactively and prospectively. Those were the facts in *Mitchell*, 2014 IL 116311, ¶¶ 6-14.

¶ 39 That's not our situation. The defendant here (AFP) isn't coming into court postjudgment to invalidate anything. AFP is perfectly happy with the judgment in the 550 Quentin Action. It obviously had no intention of doing anything whatsoever to challenge that judgment, on jurisdictional grounds or otherwise. The only effect of AFP's "waiver"—which came only in response to WSB's section 2-1401 action—was to permanently memorialize that intention. The only effect, in other words, is that instead of simply doing nothing to challenge the 550 Quentin Action, by its "waiver," AFP has now formally advised the court that it never will.

¶ 40 AFP doesn't need that "waiver" to be retroactive to validate the judgment in the 550 Quentin Action. That judgment is already valid, and now that AFP has formally advised the court that it waives any jurisdictional objection, it will remain valid. The doctrine governing retroactive waiver has no application here.

¶ 41 For all of these reasons, the trial court did not err in determining that WSB lacked standing to raise a personal-jurisdiction objection to the judgment in the 550 Quentin Action.

¶ 42 II. Judicial Estoppel

¶ 43 WSB argues that AFP is judicially estopped from waiving the jurisdictional defect in the 550 Quentin Action, because it *challenged* the Void Foreclosure Judgments based on the very objection it is *waiving* here. AFP is judicially estopped, in WSB's view, from taking these contrary positions.

¶ 44 Judicial estoppel is designed to " 'promote[] truth and protect[] the integrity of the court system by preventing a litigant from deliberately shifting positions to suit the exigencies of the moment.' " *AMCO Insurance Co.* v. *Erie Insurance Exchange*, 2016 IL App (1st) 142660, ¶ 34 (quoting *United Automobile Insurance Co. v. Buckley*, 2011 IL App (1st) 103666, ¶ 35).

¶ 45 Generally, five prerequisites must be met before a court can invoke judicial estoppel: "The party to be estopped must have (1) taken two positions, (2) that are *factually* inconsistent, (3) in separate judicial or quasi-judicial administrative proceedings, (4) intending for the trier of fact to *accept the truth of the facts alleged*, and (5) have succeeded in the first proceeding and received some benefit from it." (Emphasis added.) *Seymour v. Collins*, 2015 IL 118432, ¶ 37. Judicial estoppel involves statements of fact; it does not apply to "legal opinions or conclusions." *AMCO Insurance Co.*, 2016 IL App (1st) 142660, ¶ 34; *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 41 (judicial estoppel inapplicable where "defendants do not assert any factual position in this litigation that is contrary to a position taken in the underlying case."); *Construction Systems, Inc. v. FagelHaber, LLC*, 2015 IL App (1st) 141700, ¶ 42 (alternative legal arguments, with no factual inconsistencies, do not implicate judicial estoppel).

¶ 46 Judicial estoppel has no application here. AFP isn't asserting facts here that directly contradict the position it took in the Void Foreclosure Judgments it challenged. AFP is not saying here that service was *proper*, that MSPI was a proper process server. AFP is merely declining to make a legal argument, waiving a meritorious legal objection.

¶ 47 Nor is AFP claiming, here, that its waiver has retroactive effect, whereas in the other cases in DuPage, it argued prospective-only waiver. AFP is not claiming a retroactive waiver here, period. It doesn't need to, as we've explained above. So even if taking contrary *legal* positions could invoke judicial estoppel, AFP is not doing so. AFP is simply asserting an objection in one consolidated group of cases and choosing to waive that same objection, for strategic reasons, in another. Judicial estoppel does not prevent AFP from doing so.

¶ 48 So regardless of whether the trial court was correct in rejecting the judicial-estoppel argument as improperly raised in the context of cross-motions for judgment on the pleadings, we

reject the argument on the merits. See *Lofthouse v. Suburban Trust & Savings Bank of Oak Park*, 185 Ill. App. 3d 889, 892 (1989) (reviewing court may affirm judgment on pleadings on any basis in record).

¶ 49 III. *Res Judicata*

¶ 50 Finally, WSB argues that *res judicata* bars any argument AFP could raise in opposition to WSB's section 2-1401 petition. Specifically, WSB points to a restitution action that AFP filed in the circuit court of Cook County (the Restitution Action), in which AFP sought to recover restitution for WSB's receipt of money and property based on the Void Foreclosure Judgments.

¶ 51 The circuit court dismissed AFP's complaint, and AFP did not appeal (or at least did not adequately prosecute its appeal; this court dismissed that appeal for want of prosecution). Thus, the Restitution Action resulted in a final judgment. See *Woodson v. Chicago Board of Education*, 154 Ill. 2d 391, 397 (1993). According to WSB, the dismissal of the Restitution Action is a final order that bars "the arguments AFP raised or could have raised *** in opposition to WSB's § 2-1401 petition." AFP responds that this issue is forfeited, as it was not raised in the trial court. WSB argues that forfeiture is inapplicable, as the issue could not have been raised below—the judgment in the Restitution Action did not become final until briefing before this court.

¶ 52 "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars a subsequent action between the same parties or their privies involving the same cause of action." *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 21 (emphasis added). Known as "claim preclusion," it prevents a party "from taking more than one bite out of the same apple" by re-litigating the same cause of action in a "later action." *Hayes v. State Teacher Certification Board*, 359 Ill. App. 3d 1153, 1161 (2005). "A cause of action is

defined by the facts that give rise to a *right to relief*." (Emphasis added.) *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 10 (2012).

¶ 53 Claim preclusion extends to all matters that were offered to sustain the claim in the first action, as well as those that could have been offered. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). The burden of establishing the doctrine is on the party invoking it. *Hayes*, 359 Ill. App. 3d at 1161.

¶ 54 WSB cannot carry that burden here. For one, AFP has not filed a "claim" in any sense of that word in this section 2-1401 petition. AFP wasn't the petitioner in that action. WSB filed that action. AFP merely responded to it. AFP did nothing more than defend that singular judgment (the 550 Quentin Action) under collateral attack, noting that it never challenged that judgment for lack of jurisdiction and that, for the record, it never will—it has waived that objection.

¶ 55 Nor does AFP's position in the section 2-1401 relate in any meaningful way to the Restitution Action. The section 2-1401 petition concerns one very narrow, discrete issue: the validity of the judgment in the 550 Quentin Action. It does not impact the validity or invalidity of the other 21 foreclosure judgments invalidated by the Second District in *West Suburban I*.

¶ 56 Likewise, nothing in the one-count Restitution Action would impact the disposition of the section 2-1401 petition before us. That action (filed *after* the 2-1401 petition was filed) does not concern the validity of the judgment in the 550 Quentin Action in any meaningful way. The Restitution Action concerns the *other* foreclosure cases spawned by AFP's default, the 21 foreclosure judgments invalidated by the Second District's decision.

¶ 57 In a nutshell, the Restitution Action pleaded that, because AFP's service of process was legally defective on those 21 foreclosure judgments, WSB wrongly foreclosed, and thus wrongly received cash for the sale of those 21 properties (or, in some instances, bought those properties

itself at the sheriff's sale and re-sold them for money). That complaint referenced only the 21 foreclosure judgments that were consolidated in DuPage County, on which the Second District ruled, in *West Suburban I*, that service of process was invalid, and thus personal jurisdiction over AFP was lacking. In all, AFP pleaded that WSB had been "unjustly enriched" to the tune of nearly $3.5 million, based on foreclosure judgments that were "illegal" and wrongful.

¶ 58 Nothing in that complaint, so far as we can see, references the 550 Quentin Action (which, of course, AFP has never claimed was invalid for any reason).

¶ 59 In its successful motion to dismiss the Restitution Action, WSB raised several arguments:

- The parties' relationship was governed by contract, thus barring the equitable claim of restitution;
- The application of sale proceeds to AFP's debt to WSB could not be "unjust" as a matter of law;
- The "voluntary payment" doctrine barred this claim;
- The claim was time-barred; and
- A release in the contract between the parties barred the restitution claim.

¶ 60 As shown above, just as the complaint in the Restitution Action made no mention of the 550 Quentin Action, neither did WSB reference that action, in any way, in its arguments to dismiss the Restitution Action.

¶ 61 No doubt, this section 2-1401 petition and the Restitution Action share a common background. All these properties secured the same note. The same (unlicensed) process server was used on each foreclosure case. And each case relied, in a different way, on the Second District decision invalidating the 21 foreclosure judgments in *West Suburban I*. In the section 2-1401 petition before us, WSB was trying to bootstrap the Second District's decision onto the 550

Quentin Action, while in the Restitution Action, AFP was trying to parlay the invalidation of those 21 foreclosure judgments into a monetary recovery.

¶ 62 But the actions were clearly distinct. Simply put, the section 2-1401 petition before us involved one and only one foreclosure case, the 550 Quentin Action. The Restitution Action, in stark contrast, involved all of the foreclosure actions on which MSPI was the process server *except* the 550 Quentin Action. Whatever the overlap in factual background, we could not possibly accuse AFP of "taking two bites out of the same apple" (*Arvia*, 209 Ill. 2d at 534) by offering a simple defense in the section 2-1401 action involving one particular foreclosure judgment and by filing a cause of action in the Restitution Action concerning 21 separate and distinct foreclosure actions.

¶ 63 We thus reject WSB's *res judicata* argument.

¶ 64 CONCLUSION

¶ 65 If WSB is correct about the error in the sheriff's report of sale of the 550 Quentin property, then a glaring mistake has been made. And WSB's attempts to remedy that mistake before this court have failed. That does not mean we are unsympathetic. It only means the law does not permit the relief WSB seeks. We would hasten to add that, however AFP may be attempting to profit (so to speak) from this error, it was not AFP who moved the court to confirm a sale based on a grossly incorrect amount, nor was it AFP who failed to notice that error for over three years.

¶ 66 The judgment of the circuit court is affirmed.

¶ 67 Affirmed.