



affirm.

¶ 3

### FACTS

¶ 4 On November 24, 2010, U.S. Bank filed a two-count complaint in the chancery division seeking foreclosure and declaratory judgment. The complaint described the property:

"Lot Four (4) in the Plat of Lake Moses Manor Estates as shown on the plat recorded November 26, 1997 as Document No. 97-8757 and re-recorded as Document No. 98-2129 except the \*\*\* mineral and non-mineral estate, situated in Franklin County, IL. Commonly known as 14808 Moses Court, Benton, IL 62812  
Permanent Index No: 08-04-379-004"

¶ 5 Ronald W. Winemiller and Whitney G. Winemiller were listed as the present owners of the real estate. Included in the list of other persons whose interest in or lien on the real estate was:

"Tim E. Jones Construction, Inc., by virtue of the Lis Pendens Notice filed on March 9, 2009 as document number 2009-1163 regarding an alleged Claim for Mechanics Lien which is invalid and ineffective due to non-compliance with the Illinois Mechanics Lien Act."

In the count for foreclosure, U.S. Bank requested a judgment to foreclose its mortgage and an order granting possession.

¶ 6 In the count for declaratory action, U.S. Bank alleged that Jones Construction had placed a lien pursuant to the Mechanics Lien Act (Act) (770 ILCS 60/1 (West 2010)) naming Mortgage Electronic Registration Systems, Inc. (MERS), U.S. Bank's predecessor in interest. Jones Construction filed the complaint on March 9, 2009, and obtained an amended judgment of foreclosure and sale on May 27, 2009 (No. 09-CH-28). A judicial sale was held on October 28, 2009.

¶ 7 U.S. Bank asserted that the foreclosure by Jones Construction was invalid regarding lot 4 of the property. U.S. Bank alleged:

"6. The underlying Statement of Claim for Mechanics Lien, which was attached as an exhibit to Jones's Complaint, refers to the property sought to be foreclosed in relevant part as 'Lot Five (5) in the Plat of Lake Moses Manor Estates as shown on the plat recorded November 26, 1997 as Document No. 97-8757 and re-recorded as Document No. 98-2129...' A single P.I.N. number (08-04-379-005) is referenced, as is the commonly known property address of 14808 Moses Court in Benton, IL.

7. Jones' Complaint and each subsequent document, in contrast, references in relevant part 'Lots Four (4) and Five (5) in the Plat of Lake Moses Manor Estates...', does not reference any P.I.N. number, and references the same street address of 14808 Moses Court, Benton, IL.

8. In fact, per the township assessor, Franklin County Collector, underlying deeds, and U.S. Bank's mortgage documents, the property commonly known to have the street address of 14808 Moses Court, Benton, IL has a complete legal description as follows:

Lots Four (4) and Five (5) in the Plat of Lake Moses Manor Estates as shown on the plat recorded November 26, 1997 as Document No. 97-8757 and re-recorded as Document No. 98-2129 except the \*\*\* mineral and non-mineral estate, situated in Franklin County, IL.

Furthermore, there are 2 P.I.N. numbers associated with this property, 08-04-379-005 and 08-04-379-004. Each parcel was conveyed to Ms. McGraw by a separate instrument, which instruments were not filed concurrently."

¶ 8 U.S. Bank next argued that Jones Construction had failed to comply with the Act.

U.S. Bank asserted that Jones Construction had given only part of the property description and P.I.N. in its claim for lien and this was an insufficient description for the property as a whole for purposes of the Act. Thus, Jones Construction lacked standing as to any claim as to lot 4 and the order of foreclosure was void for want of subject matter jurisdiction. U.S. Bank further alleged that, as Jones Construction had no interest to convey, the conveyance to the Winemillers was void. In the count for declaratory action, U.S. Bank asked the court to find its lien senior and superior to other liens of record and repeated the same relief requested in the count labeled foreclosure.

¶ 9 U.S. Bank attached a mortgage of July 13, 2007, showing the borrower as Kandis McGraw and the lender as CMA Mortgage Inc., with MERS as its nominee. The mortgage gave the property address of 14808 Moses Court, Benton, Illinois, with a legal description including "Lots Four (4) and Five (5)."

¶ 10 An assignment of mortgage dated January 4, 2010, transferred the lender's interest in the mortgage to U.S. Bank. The assignment gave the commonly known street address, as well as a legal description including both lots 4 and 5. The assignment was "As Is."

¶ 11 Defendants moved to dismiss. U.S. Bank failed to appear for a hearing, and the trial court dismissed the complaint with prejudice. U.S. Bank filed a motion to vacate, which the court denied. Defendants filed a motion for attorney fees and costs. U.S. Bank filed a notice of appeal, but the original appeal was dismissed. The trial court granted defendants' motion for attorney fees. U.S. Bank filed another notice of appeal.

¶ 12 ANALYSIS

¶ 13 The complaint is barred. In its complaint in No. 10-CH-129, U.S. Bank alleges that the previous complaint by Jones Construction, and each subsequent document, in No. 09-CH-28 refers to both lots and the street address of 14808 Moses Court. Nonetheless, U.S. Bank contends that the claim for mechanics lien, which was supposedly attached to the complaint

in No. 09-CH-28, lists the street address but does not refer to lot 4. On appeal, U.S. Bank contends that the claim for lien that was attached to the complaint in No. 09-CH-28 "clearly omits lot 4 and its corresponding P.I.N. number" and that "Lot 4 inexplicably makes its way into the contractor's pleadings."

¶ 14 U.S. Bank's assertion is suspect. The record on appeal does not contain any of the pleadings from No. 09-CH-28. As such, this court will not attempt to explain what U.S. Bank contends is inexplicable. The claim for lien, complaint, and order were not presented to assist in this court's review.

¶ 15 Fortunately, the resolution of this matter does not hinge on an explanation of the discrepancy asserted, but not substantiated, by U.S. Bank. On the basis of the allegations of its own allegations, the complaint by U.S. Bank is barred by *res judicata*.

¶ 16 Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction bars subsequent action between the same parties or their privies involving the same claim. *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 9, \_\_\_ N.E.2d \_\_\_. This bar extends to all matters offered to sustain the claim in the first litigation as well as to all matters that could have been offered for that purpose. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 338, 665 N.E.2d 1199, 1205 (1996). *Res judicata* will be not be applied in a manner inconsistent with fundamental fairness. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389, 757 N.E.2d 471, 478 (2001).

¶ 17 In order for the bar of *res judicata* to apply, three requirements must be met: (1) there must be a final judgment on the merits rendered by a court of competent jurisdiction; (2) there is an identity of cause of action; and (3) there is an identity of parties or their privies. *Wilson*, 2012 IL 112898, ¶ 9, \_\_\_ N.E.2d \_\_\_. Illinois uses the transactional test to determine whether there is an identity of cause of action. *Ross Advertising, Inc. v. Heartland Bank & Trust Co.*, 2012 IL App (3d) 110200, ¶ 34, 969 N.E.2d 966. Under the transactional

test, separate claims will be considered the same cause of action if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 310, 703 N.E.2d 883, 892 (1998). Claims are "considered part of the same cause of action even if there is not a substantial overlap of evidence, so long as they arise from the same transaction." *River Park, Inc.*, 184 Ill. 2d at 311, 703 N.E.2d at 893 (citing Restatement (Second) of Judgments § 24, cmt. b, at 199 (1982)). The bar is not limited to those matters actually raised, but extends to matters that could have been decided. *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18, \_\_\_ N.E.2d \_\_\_; *Kosydor v. American Express Centurion Services Corp.*, 2012 IL App (5th) 120110, ¶ 19, 979 N.E.2d 123.

¶ 18 U.S. Bank contends that the previous judgment is void as to lot 4. A judgment is void if a trial court exceeds its jurisdiction. *Cooney*, 2012 IL 113227, ¶ 26, \_\_\_ N.E.2d \_\_\_; *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 529, 759 N.E.2d 509, 518 (2001). Subject matter jurisdiction is conferred by our state constitution and may not be waived. *Belleville Toyota Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333, 770 N.E.2d 177, 184 (2002).

¶ 19 As a statute in derogation of common law, the circuit court's authority was confined by the Act. U.S. Bank points out that the Act should be construed strictly. See *Bale v. Barnhart*, 343 Ill. App. 3d 708, 713, 798 N.E.2d 750, 754 (2003). From this premise, U.S. Bank asserts that the absence of lot 4 in the legal description of the claim for lien made the subsequent judgment void. This assumption is not supported by the plain language of the Act.

¶ 20 The premise that the subject matter jurisdiction of a court is limited to an exact legal description of property in a claim for lien is belied from the very beginning of the Act. In instances where the owner of improved property possesses several adjacent lots, the

contractor has a lien on the adjacent lots. 770 ILCS 60/1 (West 2010). Section 1 of the Act provides that a contractor "has a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner constituting the same premises and occupied or used in connection with such lot or tract of land as a place of residence or business." 770 ILCS 60/1(a) (West 2010). After establishing this broad empowerment to contractors, the Act provides procedures for the enforcement of liens.

¶ 21 Section 7 of the Act sets forth the requirements for making a claim for lien. Section 7 sets several guidelines, including a timeline for filing a claim and a requirement that a contractor must verify by affidavit any claim for lien. 770 ILCS 60/7 (West 2010). Of most importance to the case at hand, the Act does not demand an exacting description of the property. The claim for lien "shall consist of a brief statement of the claimant's contract, the balance due after allowing all credits, and a sufficiently correct description of the lot, lots or tracts of land to identify the same." 770 ILCS 60/7(a) (West 2010).

¶ 22 The language setting the standard for description of property in section 7 is permissive and expansive, not restrictive and exacting. The requirement is simply that the description is "sufficiently correct" to allow identification. Moreover, section 7 allows the claim for lien to be as broad as the contracted work: "In the event the contract relates to 2 or more buildings on 2 or more lots or tracts of land, then all of these buildings or tracts of land may be included in one statement of claims for a lien." 770 ILCS 60/7(b) (West 2010). The section does not state that a contractor "must" include a legal description of all lots. Instead, if the contractor worked on several tracts, buildings, or lots, the work "may be" placed in one claim. 770 ILCS 60/7 (West 2010).

¶ 23 U.S. Bank's assertion that the description of property must be exact and legally precise runs counter to the longstanding rule in Illinois. Illinois has long recognized that a lien is sufficiently correct if the description would enable a person familiar with the neighborhood

to identify the property. *Springer v. Kroeschell*, 161 Ill. 358, 368, 43 N.E. 1084, 1088 (1896); *Donkle & Webber Lumber Co. v. Rehrmann*, 310 Ill. App. 17, 25, 33 N.E.2d 709, 712 (1941); see 26 Ill. L. & Prac., *Mechanics' Liens* § 72; see also *In re Acme Metals Inc.*, 257 B.R. 714, 720 (Bankr. D. Del. 2000). *Donkle* explained:

"Finally the appellants contend that the descriptions in the original complaint and in the notices of lien filed by the appellees are inaccurate and insufficient to create a lien on either of the tracts involved in this suit. It appears that a small portion of the Turner tract was located on section 17, whereas the notice of lien and the original complaint described the property as being in section 16. The larger portion of the tract was in fact located on section 16. However, the designation of the eight-acre tract lying south of the railroad right of way of the Alton Railroad Company owned by Joe Rayman was information coupled with the inaccurate description by which any person familiar with the neighborhood could identify the land intended to be described. In the case of *Springer v. Kroeschell*, 161 Ill. 358, it was stated that 'A description is sufficient if there is enough in it to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty.' In our judgment the descriptions complained of fulfilled such requirements." *Donkle & Webber Lumber Co. v. Rehrmann*, 310 Ill. App. 17, 25, 33 N.E.2d 709, 712 (1941).

U.S. Bank gives no reason why the statement in the original action, which gave the street address, was not a sufficiently correct description to allow its predecessor in interest to identify the property and defend the action for foreclosure on 14808 Moses Court.

¶ 24 The question on appeal, however, is not whether the lien as originally filed by Jones Construction was defective in some manner, but whether the trial court in the previous suit had subject matter jurisdiction. The answer to this question is that, even assuming the allegations in U.S. Bank's complaint, the Act gave the trial court subject matter jurisdiction

over all of the property covered by the contract between Jones Construction and the previous owner.

¶ 25 Section 9 sets the standards for a suit to enforce a lien. If a contractor files a claim for lien, the subject matter jurisdiction liberally extends to the contract:

"§ 9. If payment shall not be made to the contractor having a lien by virtue of this act of any amount due when the same becomes due, then such contractor may bring suit to enforce his lien in the circuit court in the county where the improvement is located, and in the event that the *contract* relates to two or more buildings or two or more lots or tracts of land, then all of said buildings and lots or tracts of land may be included in one complaint." (Emphasis added.) 770 ILCS 60/9 (West 2010).

Consistent with section 9, section 11 sets the requirements for pleadings. Section 11 requires the pleading asserting a claim for lien to contain a brief statement of the contract, the dates of contracting and services rendered, and the amount due. For the property, the pleading should contain "(v) a description of the premises." 770 ILCS 60/11(a)(v) (West 2010).

¶ 26 Moreover, the Act does not revoke subject matter jurisdiction if a defect in the claim for lien is found during the course of litigation. The Act specifically allows for liberal amendment of pleadings and does not place special restrictions on the subject matter jurisdiction of the court. The broad powers of the court are outlined in section 12:

"§ 12. The court shall permit amendments to any part of the pleadings, and may issue process, make all orders, requiring parties to appear, and requiring notice to be given, that are or may be authorized in other civil actions and shall have the same power and jurisdiction of the parties and subject matter, and the rules of practice and proceedings in such cases shall be the same as in other civil cases, except as is otherwise provided in this act." 770 ILCS 60/12 (West 2010).

¶ 27 If the allegations in U.S. Bank's complaint are taken as true, the trial court

undoubtedly had subject matter jurisdiction to hear the previous claim and enter the judgment of foreclosure. U.S. Bank acknowledges that the Jones Construction complaint, as well as the claim for lien attached to the complaint, refers to the street address. U.S. Bank also alleges that the Jones complaint, and all of the subsequent descriptions of the property contained in the pleadings, refers to both lots 4 and 5. The Act gave the court the authority to hear the complaint. The judgment of foreclosure on 14808 Moses Court was rendered by a court of competent jurisdiction.

¶ 28 The second prerequisite for application of the bar of *res judicata* is an identity of cause of action. Illinois applies a transactional test asking whether the actions arise from the same set of operative facts. *Cooney*, 2012 IL 113227, ¶ 21, \_\_\_ N.E.2d \_\_\_. The bar of *res judicata* extends beyond matters that were contested. The bar of *res judicata* extends to all matters that could have been offered to sustain the claim in the first litigation. *Kosydor*, 2012 IL App (5th) 120110, ¶ 19, 979 N.E.2d 123. Technical questions regarding the sufficiency of a claim for lien can be waived. *Donkle*, 310 Ill. App. at 25, 33 N.E.2d at 712. Although the pleadings from No. 09-CH-28 were not presented to this court for review, any failure of U.S. Bank's predecessor in interest to contest the exactness of the legal description of 14808 Moses Court is irrelevant to the bar of *res judicata*.

¶ 29 The third prerequisite for application of the bar of *res judicata* is an identity of parties or their privies. *Cooney*, 2012 IL 113227, ¶ 33, \_\_\_ N.E.2d \_\_\_. The requirement brings to light the inadequacy of U.S. Bank's claims. Notably, U.S. Bank's complaint rests on the assertion that the trial court lacked jurisdiction to enter the previous order of foreclosure because of an alleged defect in the claim for lien, but not from any impropriety in the recording or notice of the foreclosure sale. See *Mountain States Mortgage Center, Inc. v. Allen*, 257 Ill. App. 3d 372, 380, 628 N.E.2d 1052, 1058 (1993). Moreover, U.S. Bank's standing rests on the assumption of the rights of its predecessor in interest, but any such

standing is doubtful as its legal interest derives from an "as is" assignment. See *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 635, 732 N.E.2d 723, 726 (2000).

¶ 30 On appeal, U.S. Bank asserts that extending the contractor's claim for lien to lot 4 would be "akin to a lender such as U.S. Bank National Association N.D. attempting to foreclose on a piece of property which was never described within, or encumbered by, the mortgage." U.S. Bank, however, stands in the shoes of its privy, who actually litigated the complaint for foreclosure. U.S. Bank's predecessor in interest had full opportunity to challenge the previous complaint for foreclosure and make the same arguments that U.S. Bank later presented through a collateral attack.

¶ 31 If U.S. Bank's predecessor in interest had subsequently attacked the judgment in No. 09-CH-28 making the same allegations of lack of notice and subject matter jurisdiction, the frivolity of such a suit would be apparent from the face of the complaint. The trial court's reaction would have surely been severe and any decision on appeal much more concise. Illinois Supreme Court 137 (eff. Feb. 1, 1994) empowers trial court to award attorney fees for such frivolous suits. See *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 307 Ill. App. 3d 92, 98, 716 N.E.2d 829, 836 (1999), *aff'd*, 193 Ill. 2d 560, 739 N.E.2d 1263 (2000). The record shows no reason why a suit by U.S. Bank is less frivolous. U.S. Bank stands on the shoulders of its predecessor in interest, and any claim of good faith rests on U.S. Bank being less knowledgeable than its predecessor about the foreclosure sale prior to the assignment. U.S. Bank never asserts ignorance of the foreclosure sale, nor that the sale was not recorded. The award of attorney fees was not an abuse of discretion.

¶ 32 Accordingly, the order of the circuit court of Franklin County is hereby affirmed.

¶ 33 Affirmed.