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2015 IL App (3d) 140718-U

Order filed September 30, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

JODY D. KIMBRELL,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois.
)	
v.)	
)	
WELLS FARGO MULTIFAMILY CAPITAL)	
& COMMERCIAL MORTGAGE SERVICING;)	
FORESITE REALTY PARTNERS, LLC;	)	Appeal No. 3-14-0718
CAROL KING; ROYAL BANK OF CANADA;	)	Circuit Nos. 14-MR-272; 14-MR-296;
FEDERAL NATIONAL MORTGAGE ASS'N;	)	14-MR-297; 14-MR-419;
JAMIE HADAC; KIMBERLY SARFF;	)	14-MR-422
KAREN KONSTANT; RBC CAPITAL)	
MARKETS OF CHICAGO; ANTHONY)	
GIANNINI; ADAM TRZYNKA)	
PATTI BURNETT; and CLINT BAGWELL,)	
	)	Honorable
Defendants-Appellees.	)	Michael P. McCuskey
	)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed Plaintiff's claims against mortgagee where Plaintiff raised the same claims, which the trial court rejected, in mortgage foreclosure

action. All other claims raised by Plaintiff in amended complaint were forfeited because she failed to raise them on appeal.

¶ 2 After Defendant Federal National Mortgage Association (Fannie Mae), foreclosed on a mortgage for property owned by Plaintiff, Plaintiff filed causes of action against Fannie Mae and other Defendants for their roles in the foreclosure proceedings. The trial court dismissed Plaintiffs' claims. We affirm.

¶ 3 **FACTS**

¶ 4 In 2012, Defendant Fannie Mae filed a foreclosure action against Plaintiff Jody Kimbrell, her mother, Anna Isaacs, and Kimbrell Realty/Jeth Court LLC, a limited liability company managed and primarily owned by Plaintiff, seeking to foreclose on an apartment complex.

¶ 5 In the foreclosure action, Plaintiff raised many issues and defenses, asserting that (1) the original mortgagee was an unlicensed lender, (2) her mortgage and note were not authenticated by a licensed notary, (3) Fannie Mae or a previous mortgagee created and filed a fraudulent allonge, (4) the mortgagee created a fraudulent survey of the property, (5) she was deceived into transferring ownership of her buildings to an LLC, (6) unlicensed individuals were hired to manage her property, and (7) the mortgage was void and unenforceable. Fannie Mae moved for summary judgment on its foreclosure complaint.

¶ 6 The trial court entered summary judgment in favor of Fannie Mae and ordered the foreclosure and sale of the property owned by Kimbrell, Isaacs and Kimbrell's LLC. Thereafter, Plaintiff and Isaacs filed five separate complaints against Defendants Wells Fargo Multifamily Capital & Commercial Mortgage Servicing, Foresite Realty Partners, LLC, Carol King, Fannie Mae, Jamie Hadac, Kimberly Sarff, Karen Konstant, RBC Capital Markets of Chicago, Roger Daniels, Anthony Giannini, Adam Trzynka, Patti Burnett, Christopher Kevit, and Clint Bagwell.

Those complaints alleged wrongdoing by Defendants in the mortgage foreclosure proceeding. All Defendants filed motions to dismiss, which the trial court granted without prejudice.

¶ 7 In July 2014, Plaintiff and Isaacs filed an amended complaint that combined their five prior complaints. The amended complaint was filed against all of the prior Defendants, as well as one new Defendant, Royal Bank of Canada, and contained nine counts: (1) declaratory judgment, (2) slander of title, (3) trespass, (4) unlicensed practice of real estate, (5) cover-up of fraudulent conveyance of real property, (6) use of fraudulent mortgage documents, (7) deceptive business practice, forgery and fraud, (8) breach of fiduciary duty, and (9) gross negligence and defamation of character. All Defendants again filed motions to dismiss. The trial court granted Defendants' motions to dismiss with prejudice, finding that all of Plaintiff's and Isaacs' claims related to the foreclosure action and had already been heard and denied in the foreclosure proceeding.

¶ 8 Plaintiff and Isaacs filed a notice of appeal, which stated that Defendants Adam Trzynka, Patti Burnett, Clint Bagwell, Jamie Hadac and Kimberly Sarff are "hereby dismissed from the appeal." Those Defendants filed motions to dismiss the appeal, asserting that we lacked jurisdiction over them. We granted their motions to dismiss.

¶ 9 Plaintiff appeals, arguing that the trial court erred in granting summary judgment to Fannie Mae in its foreclosure action because the lender that originated the mortgage, Royal Bank of Canada, was unlicensed. She seeks reversal of the trial court's orders of foreclosure and sale.

¶ 10

ANALYSIS

¶ 11 The only issue raised by Plaintiff in her appellate brief is the propriety of the trial court's order granting summary judgment to Fannie Mae in its foreclosure proceeding. Points not

argued in an appellant's opening brief are forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Thus, all of the other claims Plaintiff raised in her amended complaint are forfeited. *Id.*

¶ 12 *Res judicata* is a judicial doctrine created to protect litigants from the burden of retrying an identical cause of action and to promote judicial economy by prohibiting repetitive litigation. *LaHood v. Couri*, 236 Ill. App. 3d 641, 647 (1992). "The doctrine of *res judicata* provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). For the doctrine to apply, there must be (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity of cause of action, and (3) an identity of parties or their privies. *Eighteen Investments Inc. v. Nationscredit Financial Services Corp.*, 376 Ill. App. 3d 527, 533 (2007). 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. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998).

¶ 13 The doctrine of *res judicata* extends to all matters that were offered to sustain or defeat the claim in the first action, as well as matters that could have been offered. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). *Res judicata* bars claims that were or could have been raised by a mortgagor in a prior mortgage foreclosure action. *Eighteen Investments Inc.*, 376 Ill. App. 3d at 534. A trial court must reject a mortgagor's attempt to collaterally attack a mortgage foreclosure judgment by filing a new action. See *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 16.

¶ 14 Here, all of the requirements for *res judicata* are met. The trial court rendered a final judgment on the merits in the foreclosure action. Plaintiff and Fannie Mae were opposing parties

in that action. The cause of action was the same in both the foreclosure action and Plaintiff's lawsuit. The claims in both arose from a single group of operative facts – the facts concerning the ownership of the mortgage and note, the validity of the mortgage and note, and the allegedly fraudulent mortgage procedures employed by Fannie Mae. The same claims that Plaintiff alleges against Fannie Mae in her amended complaint were already litigated in Fannie Mae's foreclosure action against Plaintiff. The doctrine of *res judicata* applies to Plaintiff's amended complaint. The trial court properly granted Defendants' motions to dismiss.

¶ 15

CONCLUSION

¶ 16

The judgment of the circuit court of Peoria County is affirmed.

¶ 17

Affirmed.