2016 IL App (1st) 153129-U

No. 1-15-3129

Fourth Division
August 25, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WIGBERTO RIVERA, Individually and on behalf of all others similarly situated, Plaintiff-Appellant, v. LATIN UNITED COMMUNITY HOUSING ASSOCIATION and HUMBOLDT PARK RESIDENCES LP, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Chancery Division. No. 15 CH 2700 Honorable Neil H. Cohen, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Plaintiff was collaterally estopped from attacking the validity of an agreed order where a previous trial court had denied his request to vacate the order.

¶ 2 Plaintiff Wigberto Rivera appeals the trial court's dismissal of his class action complaint against defendants Latin United Community Housing Association ("the Association") and Humboldt Park Residences LP ("HPR"). The court dismissed plaintiff's claims based upon a

mutual release in an agreed order from separate proceedings between the parties. In the current appeal, plaintiff contends that the trial court erroneously applied collateral estoppel, because the doctrine is not applicable to agreed orders. We affirm.

¶ 3 BACKGROUND

¶ 4 The Prior Forcible Detainer Action

¶ 5 Plaintiff was formerly a tenant in a single-room-occupancy building owned by HPR. HPR's partnership interests are wholly owned by the Association. On December 16, 2014, defendants filed a forcible detainer action against plaintiff, alleging that plaintiff had breached his lease. On January 20, 2015, the trial court entered an agreed settlement order put forth by defendants' counsel. The agreed order states that the parties agree to terminate plaintiff's lease and in multiple areas states that the parties desire to settle and terminate "any potential claims" between them. Specifically, the order states that plaintiff:

> "agrees to *** release, indemnify, and hold harmless [defendants] from any and all claims which have or could have been made or that in any way arise between the Parties, including but not limited to any claims arising out of the Tenancy, and/or any current or future claims arising out of the Fair Housing Act (both Illinois, Administrative, and Federal claims), and including claims under the City of Chicago Residential Landlord Tenant Ordinance."

¶ 6 Plaintiff filed a motion to vacate the settlement order on March 20, 2015, which he amended on March 26, 2015. In his motion, plaintiff alleged that in settlement discussions, the parties had approved an agreed order solely referring to possession of the apartment in question and a sealing order. He asserted that there was never an agreement to include a mutual release, and that the order given to the court by defendants' counsel was incorrect.

The trial court *sua sponte* converted plaintiff's motion to vacate into a motion to enforce settlement on the terms put forth in the motion.

¶ 7 The parties filed briefs regarding the issue and the court held oral arguments on May 5, 2015. At arguments, defendants' counsel noted that the confusion in settlement terms stemmed from plaintiff's counsel erroneously sending an offer to her own email account, rather than to defendants' counsel. Plaintiff's counsel noted that after she noticed that the filed order was not what she perceived the agreement to be, she prepared a motion to address the issue, but failed to file it until two months after the judgment. The trial court noted, "Okay, I'm going to assume that there was confusion here and each side thought they had a settlement all on different terms. So a mistake was made apparently, but *** there are ways to fix that." The court also stated, "[T]here seems to be no meeting of the minds here on what the settlement was." Ultimately, the trial court held, "[T]he motion to enforce the settlement is denied because I don't have proof of a clear settlement on the terms [proposed by plaintiff's attorney.]" When plaintiff's counsel asked the court to rescind the agreed order, the court also responded, "I'm not going to throw out what [defendants' attorney] thought the settlement was and enter what you thought the settlement was." Plaintiff did not appeal the denial.

¶ 8 The Class Action Suit

¶ 9 During the litigation of the detainer action, plaintiff filed the class action lawsuit which is the subject of the current appeal. On February 17, 2015, he filed a complaint asserting that defendants had failed to disclose the name and address of the financial institution holding plaintiff's and other tenants' security deposits, a disclosure required by subsection 5-12-080(a)(3) of the Chicago Residential Landlord Tenant Ordinance. Chicago Municipal Code §

5-12-080(a)(3) (eff. July 28, 2010). The trial court entered an agreed order staying the suit until resolution of the prior detainer action.

¶ 10 Following the resolution of the detainer action, the trial court in this case lifted the stay and defendants filed a motion to dismiss. In a written order, the court dismissed plaintiff's complaint with prejudice. It explained that the mutual release in the detainer court's order prohibited plaintiff from raising his claim and that the previous court had not vacated that order. The court also explained that plaintiff could not subsequently attack the order in a collateral matter. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Plaintiff contends that the trial court erroneously dismissed his complaint because the agreed order entered in the forcible detainer action was not a judgment, but rather "nothing more than [an] alleged contract governed by contract law." He further asserts that the detainer court explicitly found that there was no meeting of the minds regarding the agreed order, and thus the mutual release clause was invalid and the trial court in the class action case erred in enforcing it. He also argues that because the agreed order was not a judicial determination of rights, collateral estoppel and *res judicata* principles are inapplicable. Defendants respond that the trial court correctly held that the agreed order is not subject to collateral attack as agreed orders are subject to collateral estoppel. They also argue that the detainer court did not find that there was no meeting of the minds because its remarks were ambiguous and it ultimately refused to vacate the agreed order.

¶ 13 We first note that plaintiff cites only two cases in his initial appellate brief: *Elliot v. LRSL Enterprises, Inc.*, 226 Ill. App. 3d 724 (1992), and *Cooper v. Bi-State Development Agency*, 158 Ill. App. 3d 19 (1987). He cites both for the proposition that an agreed order is not a

judicial determination of parties' rights, but a contract between litigants with its construction governed by contract law. See *Elliot*, 226 Ill. App. 3d at 728-29; *Cooper*, 158 Ill. App. 3d at 22-23. Neither case involves a challenge to the validity of an agreed order or the collateral estoppel doctrine. Plaintiff's subsequent conclusion that the collateral estoppel doctrine is inapplicable to agreed orders, his entire argument regarding contract principles, and his assertion that the trial court in the class action suit was bound by the oral statements of the trial court in the detainer action all lack any citation to legal authority. Supreme Court Rule 341(h)(7) requires an appellant to support his or her arguments with citations to authority. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). It is well settled that an argument without a corresponding citation to authority does not satisfy the requirements of Rule 341(h)(7). *In re Marriage of Johnson*, 2011 IL App (1st) 102826, ¶ 25. Consequently, plaintiff's failure to adequately support his arguments is sufficient in and of itself to defeat his appeal.[1] See *id.* ("[B]are contentions that fail to cite any authority do not merit consideration on appeal.")

¶ 14 Even if we were to disregard the flaws in plaintiff's brief, his claim must still fail. In reviewing the grant of a motion to dismiss, we must determine whether the pleadings, when taken in the light most favorable to the non-moving party, set forth a cause of action for which relief may be granted. *Young v. Bryco Arms*, 213 Ill. 2d 433, 440-41 (2004).

¶ 15 The doctrine of collateral estoppel bars relitigation of an issue that has already been adjudicated in a prior case. *Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010). The applicability of collateral estoppel presents a question of law which is reviewed *de novo*. *In re A.W.*, 231 Ill. 2d 92, 99 (2008). Collateral estoppel acts as a bar to relitigation where three requirements

[1]Plaintiff has attempted to circumvent this shortcoming by expanding his arguments and citing new authority in his reply brief. Such new arguments may not be raised for the first time in a party's reply brief, and are deemed waived. *CCP Ltd. Partnership v. First Source Financial, Inc.*, 368 Ill. App. 3d 476, 485 (2006); see also Ill. S. Ct. R. 341(g) (eff. Jan. 1, 2016).

are met: "(1) the issue decided in the prior adjudication is identical to the one presented in the current suit; (2) a final judgment on the merits was entered in the prior adjudication; and (3) the party against whom estoppel is asserted was a party to or was in privity with a party to the prior adjudication." *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 910 (2009).

¶ 16 A split has emerged in the appellate court concerning whether agreed orders constitute a final judgment on the merits and therefore are subject to collateral estoppel. See *Currie v. Wisconsin Central, Ltd.*, 2011 IL App (1st) 103095, ¶ 29. However, this split does not affect the disposition in this case, as we are not directly concerned with the original agreed order. Instead, we focus on the detainer court's judgment in response to plaintiff's subsequent motion regarding the agreed order.

¶ 17 In his appellate brief, plaintiff concedes that the detainer court's judgment regarding his motion to enforce the agreed order is subject to collateral estoppel, yet he appears to overlook the dispositive nature of this concession. Plaintiff originally filed his motion as a motion to vacate the agreed order based upon a lack of agreement between the parties. Although the trial court recharacterized the motion as a motion to enforce the agreed orders on plaintiff's suggested terms, the motion still turned on the validity of the original agreed order. At the hearing on the motion, the parties' arguments focused on the order's validity and plaintiff specifically requested that it be rescinded. The detainer court denied that request, resolving the issue of the order's validity. Thus, plaintiff received a final ruling on the merits regarding the validity of the agreed order and collateral estoppel bars relitigation of that issue.

¶ 18 It is important to note that the correctness of the detainer court's ruling is not at issue in the current appeal. Plaintiff had multiple opportunities to challenge the detainer court's

ruling, but he chose not to do so. In its ruling, the detainer court explicitly noted that plaintiff could refile a motion to vacate the agreed order under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)), but plaintiff chose not to do so. He also had the opportunity to directly appeal the detainer court's decision, but plaintiff chose not to pursue that course of action either. Having failed to seek further review through proper channels, plaintiff cannot now try to undermine the agreed order through a collateral attack.

¶ 19 The parties do not dispute that the mutual release in the agreed order, if valid, fully bars plaintiff's claims. Because we hold that plaintiff is estopped from challenging the validity of the release, the trial court did not err in granting defendants' motion to dismiss.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.