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THIRD DIVISION
June 28, 2017

No. 1-16-1283

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MUEBLERIA MIA LLC,)	
)	Appeal from the Circuit Court
Plaintiff-Appellant,)	of Cook County, Illinois,
)	County Department,
v.)	Chancery Division
)	
MTD PROPERTY MANAGEMENT, INC.; WINDY)	No. 15 CH 6254
CITY RE LLC, d/b/a CHICAGO INVESTMENTS)	
RE LLC; JAM RE LLC; and Unknown Owners and)	The Honorable
Non-Record Claimants,)	Thomas R. Allen,
)	Judge Presiding.
Defendants-Appellees.)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Cobbs concurred in the judgment.

ORDER

Held: The trial court did not err in dismissing the plaintiff's complaint for declaratory relief and damages. The complaint was a collateral attack on a prior judgment of the municipal court.

¶ 1 The plaintiff, Muebleria Mia LLC (hereinafter Muebleria), appeals from the circuit court's order dismissing its complaint against the defendants, MTD Property Management Inc. (MTD), Windy City RE LLC d/b/a Chicago Investments RE LLC (Windy City) and Jam RE LLC (Jam), seeking declaratory relief and damages for wrongful eviction and conversion of property in

connection with an underlying forcible entry and detainer action in case No. 13 M1 723054 (*MTD Property Management, Inc. v. Beddings and All Unknown Occupants*). The plaintiff argues that the trial court erred in dismissing its complaint because this was not a collateral attack on any prior judgment, and the claims were not barred by the doctrine of *res judicata*, or the doctrine of laches. For the reasons that follow, we affirm.

¶ 2

I. BACKGROUND

¶ 3

Initially, we note that the record provided to us on appeal is sparse, containing no transcript of the proceedings below. We have been able to glean the following facts and procedural history from the pleadings contained in the record before us.

¶ 4

On May 21, 2011, Muebleria, entered into a lease with Olivio B. Orquidea (Orquidea) for the first floor commercial space, basement and parking of the property located at 1136-1140 West 18th Street in Chicago, Illinois (the commercial lease). Under the commercial lease, Muebleria was to pay Orquidea \$500 a month in rent, and the lease was to terminate on April 30, 2016, with Muebleria having the option to renew the lease for another three years. The lease was signed by Orquidea and by Tizoc O. Cesar (Tizoc), on behalf of Muebleria.

¶ 5

On or about September 14, 2012, Orquidea lost her interest in the property pursuant to a judicial sale and subsequent sheriff's deed. The property was subsequently acquired by Metro Bank and later by North Community Bank as its successor in interest. On or about September 11, 2013, title to the property was conveyed to the defendant, Jam, with the defendant Windy City acting as the initial, and the defendant MTD acting as the subsequent, property manager.

¶ 6

A. The Underlying Action

¶ 7

On September 25, 2013, MTD filed an eviction action in the Municipal Department of the

circuit court (the municipal court) under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)) against "Bedkings and All Unknown Occupants" in case No. 13 M1 723054 (the underlying action). Service of process was effected on "Bedkings and All Unknown Occupants" at the premises located at 1140 West 18th Street (the premises) by notice of a posting on October 22, 2013. The notice by posting was directed to the underlying defendants, "Bedkings and All Unknown Occupants" for the premises.

¶ 8 On November 13, 2012, the municipal court entered an order for possession holding that MTD was entitled to possession of the premises from "Bedkings and All Unknown Occupants." The order of possession also noted that MTD voluntarily dismissed its claim for money damages without prejudice. Enforcement of the order was stayed until November 20, 2013.

¶ 9 Over 30 days later, on December 27, 2013, Muebleria through Tizoc O. Cesar, filed a *pro se* motion for "eviction challenge" in the municipal court. In that motion, Muebleria alleged that: (1) it was never notified of an eviction hearing prior to December 26, 2013; (2) it made timely rent payments to the landlord-owner as per the terms of the commercial lease for the premises; (3) its inventory and merchandize were locked inside the premises; and (4) it had never been contacted by the defendant property manager, Windy City, despite its attempts to amend the existing commercial lease with the current owner and build rapport.

¶ 10 On January 14, 2014, the municipal court struck Muebleria's motion to stay eviction for lack of jurisdiction.

¶ 11 On February 25, 2014, Muebleria filed a petition for relief from judgment pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1404 (West 2012)) asking the municipal court to vacate the order for possession. According to that petition, "Muebleria

Mia, LLC, an Illinois limited liability company, d/b/a 'Bedkings' "was the lessee of the premises. Muebleria argued that it was never formally made aware of any alleged default on its commercial lease terms so as to justify the entry of the order of possession. Muebleria asserted that while it was attempting to ascertain the identity of the new owner of the premises it continued to tender all rent payments to the property management company for the months of June, July and August 2013, the period forming the basis of the forcible entry and detainer action. In addition, Muebleria alleged that the summons had not been properly directed to Muebleria, the entity that had the actual right to possession of the premises, but rather to "Bedkings and Other Unknown Occupants." Muebleria also asserted that its registered agent and lone managing member, Tizoc, was never served with a notice of default.

¶ 12 In support of its section 2-1401 petition, Muebleria attached, *inter alia*: (1) a copy of the commercial lease dated May 21, 2011, for the premises; (2) a letter dated September 27, 2013, sent by Muebleria's agent to Windy City; and (3) an affidavit by Tizoc.

¶ 13 The September 27, 2013, letter sent by Muebleria's "Agent" asked that Windy City provide Muebleria with "proof of ownership" and leave any correspondence on the "corner desk near the front entrance" of the premises. The letter also requested a name and mailing address for further rent payments and any future correspondence.

¶ 14 The letter further noted that it appeared that there were now two distinct owners of the commercial spaces at 1136 and 1140 West 18th Street, and requested that each new owner provide it with a lease addendum. Because Muebleria had paid \$500 for both commercial spaces under the original commercial lease it offered to pay \$250 to each new owner, noting that if the owners agreed, it would forego any claim that it had arising from the flooding that occurred on

the premises in February 2013. The letter also attached copies of the last three rent payment invoices that Muebleria had paid on the commercial lease.

¶ 15 In his affidavit, dated February 25, 2014, Tizoc averred that he was the "managing member " of Muebleria and that he caused "the aforesaid company to enter" into the commercial lease for the premises. Tizoc further averred that at his direction, his attorney researched the Cook County Recorder of Deeds and informed him that his company, Muebleria, was a defendant in the forcible entry and detainer action. Tizoc further stated that he was never provided with a notice of default of the commercial lease and in fact caused all payments due and owing under that lease to be paid through and including August 2013. Tizoc finally averred that he was not named in the summons, nor personally served with a copy of the summons or complaint.

¶ 16 On June 11, 2014, by agreed order, Muebleria's section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) was withdrawn.

¶ 17 On August 15, 2014, "Cesar Olivio d/b/a Muebleria Mia" filed an amended section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)) again asking the municipal court to vacate the order of possession. That petition alleged that "Cesar Olivio d/b/a Muebleria Mia" was the lessees of the premises pursuant to the commercial lease, and that he operated the premises with the signage of "Bedkings." The petition alleged that prior to MTD filing a forcible entry and detainer action, "Cesar Olivio d/b/a Muebleria Mia" attempted to ascertain the identity of the new owner of the premises, which had changed several times since the inception of the commercial lease, and tendered to the alleged property management company proof of his

payments for June 2013 through August 2013. The petition alleged that MTD nonetheless subsequently initiated the forcible entry and detainer action.¹

¶ 18 The amended section 2-4014 petition further alleged that MTD acted in contravention of the Forcible Entry and Detainer Act (735 ILCS 5/9-102, 9-211 (West 2012)) by, *inter alia*, failing to provide Muebleria with any notice of default, and serving such notice on "Cesar Olivio" personally. The petition further alleged that summons in the forcible entry and detainer action was not served on the entity entitled to possession, *i.e.*, "Cesar Olivio d/b/a Muebleria Mia," nor the entity's registered agent or managing member, but was rather addressed to "Bedkings." See 735 ILCS 5/9-102, 9-106 (West 2012)).

¶ 19 In support of this pleading "Cesar Olivio d/b/a Muebleria Mia" attached numerous documents, including, *inter alia*: (1) the commercial lease; (2) the September 27, 2013 letter from Muebleria to Windy City; and (3) an affidavit from "Tizoc O. Cesar," dated August 14, 2014. In that affidavit Tizoc stated that his name is "Tizoc O. Cesar a/k/a Tizoc Olivio Cesar a/k/a Cesar Olivio, and that he is doing business as Muebleria Mia and operates his business under such registered d/b/a/." He stated that he was not registered as "Bedkings," and "Bedkings" had no claim to the premises during the commercial lease. He averred that his attorney explained to him that "Bedkings" was named as a party to the lawsuit because of a "sign in the window." He further averred that he was never provided with a notice of default, and could not have been because he never defaulted on the commercial lease, but rather caused all

¹Contrary to the allegations in the pleading, however, the supporting exhibits reveal that Muebleria's letter to Windy City, attempting to ascertain the owner of the premises and providing proof of rent payment was sent on September 27, 2013, two days after the forcible entry and detainer action was filed in the municipal court on September 25, 2013.

payments due under the lease to be paid in full through December 2015. He further averred that he was never named in the summons, nor personally served with either a copy of the summons or the complaint.

¶ 20 On September 4, 2014, the municipal court denied the amended section 2-1401 petition to vacate the order of possession, finding that "Cesar Olivio" had not met the diligence requirement of section 2-1401 (735 ILCS 5/2-1401 (West 2012)).

¶ 21 On October 24, 2013, "Tizoc O. Cesar a/k/a Tizoc Olivio Cesar a/k/a Cesar Olivio d/b/a Bedkings d/b/a Muebleria Mia" filed a *pro se* section 2-1401 petition for relief from judgment (735 ILCS 5/2-1401 (West 2012)) again seeking to vacate the order of possession. This petition alleged that "Tizoc O. Cesar" was the lessee of the premises pursuant to the commercial lease, and that he signed the commercial lease on behalf of "Muebleria Mia." According to the petition, the actual party with a claim on the premises was "Muebleria Mia." Therefore, the petition asked that the order of possession entered against "Tizoc O. Cesar d/b/a Muebleria Mia d/b/a Bedkings" be vacated.

¶ 22 In support of his *pro se* petition for relief from judgment, (735 ILCS 5/2-1401 (West 2012)) Tizoc attached, *inter alia*: (1) the commercial lease; (2) the September 27, 2013 letter to Windy City; (3) cashier's checks to Windy City proving rent payments were made for October, November and December 2013; and (4) Tizoc's affidavit dated August 14, 2014.

¶ 23 On November 13, 2014, the municipal court struck the *pro se* section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)) for lack of jurisdiction.

¶ 24 On January 2, 2015, Muebleria, still proceeding in municipal court, and represented by new counsel filed a combined motion: (1) to quash service of process on "Bedkings"; (2) to intervene; (3) to dismiss the forcible entry and detainer action pursuant to section 2-615(a) of the Code (735

ILCS 5/2-615 (a) (West 2012)) for MTD's failure to name Muebleria as a necessary party to the suit; and (4) to vacate any previously entered orders pursuant to section 2-1401 (735 ILCS 5/2-1401 (West 2012)). In this motion, Muebleria alleged, *inter alia*, that MTD wrongfully deprived it of its peaceful enjoyment of the premises and "prevented it from accessing" and "attempted to convert its inventory of new home furnishings."

¶ 25 An amended combined motion to quash service, intervene and dismiss was filed on January 5, 2015, to correct non-substantive errors. The trial court denied that motion on February 18, 2015.

¶ 26 B. The Instant Action

¶ 27 Two months later, on April 15, 2015, Muebleria filed the instant three count complaint in the Chancery Division of the circuit court (the chancery court), alleging: (1) declaratory judgment against MTD, Windy City, and Jam; and (2) wrongful eviction and conversion against MTD.

¶ 28 In the complaint, Muebleria alleged that at all relevant times it leased the premises under the commercial lease and was the party entitled to and in possession of the premises. Muebleria alleged that it was dispossessed from the premises without notice, even though it tendered proof of payment of its rent to Windy City as manager for MTD. It further alleged that upon investigating, its owner, Tizoc Olivio Cesar, learned that MTD had brought a forcible entry and detainer action against "Bedkings." According to the complaint, Muebleria was not served with a summons or complaint and was not given any verbal or written notice of the underlying action. The complaint alleged that all "purported" notice was by posting, and served on "Bedkings," which is a trade name and not a party in possession or entitled to possession of the premises. In addition, the complaint alleged that the "notice to quit" posted on the premises was illegal because the premises were not vacant but were in use on a daily basis for Muebleria's business.

Muebleria also asserted that because it was not a named party to the forcible entry and detainer action, the municipal court had no jurisdiction to enter the order of possession and that the order was void *ab initio*.

¶ 29 Muebleria further alleged that after the eviction the locks were changed and all of its property was removed from the premises. Although Muebleria demanded the return of its belongings, it remains dispossessed of both its personal property and lease space.

¶ 30 Under these alleged facts, Muebleria sought that the chancery court declare that it was the rightful tenant and occupant of the premises and that it was not legally responsible for any financial liabilities associated with the premises during the time it was dispossessed. It also sought an order that all of the defendants vacate and return possession of the premises to Muebleria. In addition, with respect to the defendant MTD alone, Muebleria asserted that MTD wrongfully evicted it from the premises and committed conversion as to its personal property. Accordingly, Muebleria sought both compensatory and punitive damages against MTD.

¶ 31 On August 13, 2015, the defendants Windy City and Jam moved to dismiss Count I of Muebleria's complaint pursuant to a combined section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2012)). Windy City and Jam argued that: (1) the declaratory relief sought was for possession and as such could be brought only under the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)) as a motion to vacate the order of possession, which had already been done without success; (2) the complaint was an impermissible collateral attack on a prior judgment; and (3) the claims were barred by the doctrine of laches. Windy City and Jam further argued that should the court choose not to dismiss the complaint it should consolidate the matter with the underlying 2013 action so that the complaint could properly be construed as

an additional *de facto* section 2-1401 petition (735 ILCS 5/2-1401 (West 2012)). Muebleria filed a response to the motion on September 11, 2015.

¶ 32 On September 17, 2015, the defendant MTD filed a combined section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2012)), adopting the arguments set forth in Windy City's and Jam's motion to dismiss. In addition, MTD argued that Muebleria did not have an absolute and unconditional right to the immediate possession of its personal property and inventory as required to plead conversion because the order of possession in the underlying action gave the Cook County Sherriff the lawful right to enter the premises and assume control of the items on the premises. Muebleria filed a response to MTD's motion to dismiss on September 30, 2015.

¶ 33 On September 18, 2015, all three defendants (MTD, Windy City and Jam) filed a supplemental motion to dismiss the complaint pursuant to section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2012)), alleging that Muebleria was not a corporate entity with the capacity to sue. The motion included an online record from the Illinois Secretary of State reflecting that "Muebleria Mia, LLC," which was formed on December 17, 2012, had been involuntarily dissolved on June 13, 2014.

¶ 34 On October 15, 2015, the chancery court entered an order stating Muebleria was to reinstate "Muebleria Mia, LLC" with the State of Illinois and that the complaint was amended to reflect the plaintiff as "Muebleria Mia, LLC." The trial court also entered and continued all motions to dismiss.

¶ 35 On November 16, 2015, the chancery court entered an order, *inter alia*, noting that Muebleria had provided it with a certificate of reinstatement and that an oral motion to dismiss on the basis of a dissolved corporation was now moot.

¶ 36 On December 2, 2015, all three defendants (MTD, Windy City and Jam) filed a joint second

motion to dismiss pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)), alleging that Muebleria could not sue for relief for rights of possession it allegedly acquired under the lease because it was not organized as a corporate entity until December 17, 2012, a year and half after the lease was signed by Tizoc O. Cesar on behalf of "Muebleria Mia."

Muebleria filed a response to this motion on January 7, 2016.

¶ 37 On April 7, 2016, following a hearing, the chancery court dismissed Muebleria's complaint in its entirety with prejudice "for the reasons stated on record by the Court." Muebleria now appeals.

¶ 38 II. ANALYSIS

¶ 39 On appeal, Muebleria first contends that dismissal was improper because its complaint for declaratory judgment, wrongful eviction and conversion was not an improper collateral attack on any prior judgment pursuant to section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2012)). Muebleria argues that because its proper legal name was not used both when it was named as a defendant in the underlying forcible entry and detainer action, and when service in that action was made by public notice, no personal jurisdiction was ever obtained in that action and the resulting order of possession was void *ab initio*, and could not have precluded its present action for declaratory relief and damages in chancery court. We disagree.

¶ 40 Section 2-619(a)(4) of the Civil Code of Procedure permits the involuntary dismissal of a cause of action on the basis that it "is barred by a prior judgment." 735 ILCS 5/2-619(a)(4) (West 2012); see also *Marvel of Illinois v. Marvel Containment Control Industries, Inc.*, 318 Ill. App. 3d 856, 863 (2001) (citing *People ex rel. Burriss v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 294 (1992)). Section 2-619(a)(4) incorporates the doctrine of *res judicata*, which has three essential elements (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.

Marvel, 318 Ill. App. 3d at 863. If all three elements are met, then the prior action is conclusive as to all issues that were, or properly might have been, raised in that action. *Marvel*, 318 Ill. App. 3d at 863 (citing *Burris*, 151 Ill. 2d at 294). We review the grant of a section 2–619 motion to dismiss *de novo*, and may affirm the dismissal on any proper basis in the record. *Barber v. American Airlines, Inc.*, 398 Ill. App. 3d 868, 878 (2010); *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55.

¶ 41 In the present case, reviewing the sparse record before us, containing only the parties' pleadings in the underlying and instant actions, we are compelled to conclude that Muebleria's complaint was an improper collateral attack on the orders entered by the municipal court in the underlying forcible entry and detainer action, namely the order of possession and the numerous subsequent denials of postjudgment relief filed by various parties on Muebleria's behalf.²

¶ 42 Under the well-established collateral-attack doctrine, once a court of competent jurisdiction renders a final judgment, it is not open to contradiction or impeachment in any collateral proceeding. *Malone v. Cosentino*, 99 Ill. 2d 29, 32 (1983); see also *Apollo Real Estate Investment Fund, IV, L.P. v. Gebler*, 403 Ill. App. 3d 179, 188 (2010). Rather, as our supreme court has explained, "that judgment can only be attacked on direct appeal, or in one of the

² These include the parties challenging the order of possession in the municipal court by way of postjudgment proceedings, all purportedly having the rights to occupy the premises, and variously identified as: Muebleria, "Tizoc O. Cesar," "Muebleria Mia, LLC," "Cesar Olivio d/b/a Muebleria Mia," "Tizoc O. Cesar a/k/a Tizoc Olivio Cesar a/k/a Cesar Olivio d/b/a Beddings d/b/a Muebleria Mia."

traditional collateral proceedings * * * defined by statute," (including *habeas corpus*, postconviction and section 2–1401 proceedings) and will remain binding upon the parties until it is reversed through such a proceeding. *Malone*, 99 Ill. 2d at 32–33; see also *Apollo Real Estate*, 403 Ill. App. 3d at 188.

¶ 43 In *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104–105 (2002), our supreme court specifically held that a pleading to challenge a void judgment based on invalid service of process must be brought under section 2–1401 of the Code (735 ILCS 5/2–1401 (West 2012)). See also *OneWest Bank, FSB v. Topor*, 2013 IL App (1st) 120010, ¶ 14. It is axiomatic that such a pleading must be brought in the same proceeding in which the order or judgment was entered, and not, as here, in a separate cause of action before a different judge in a different branch of the circuit court. See *e.g.*, *People v. Vincent*, 226 Ill. 2d 1, 7 (2007) ("Section 2–1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered * * * . [Citation.]"); *Glavinskas v. William L. Dawson Nursing Center, Inc.*, 392 Ill. App. 3d 347, 353 (2008) (same).

¶ 44 Accordingly, Muebleria's attempt to relitigate the issue of invalid service and notice is improper in this forum, and was a defense that should have been asserted in the underlying forcible entry and detainer action. In that respect, the record reflects that Muebleria must have known this, since on February 25, 2014, it attempted to raise this issue before the municipal court, by way of a section 2-1401 petition to vacate the order of possession (735 ILCS 5/2-14014 (West 2012)), but then inexplicably withdrew this request. Muebleria cannot now avoid the consequences of its imprudent decision by couching the same issues in terms of a declaratory judgment and wrongful eviction actions in a new forum, since both causes of action are

undeniably predicated upon the purported lack of a valid order of possession (based upon improper service and notice).

¶ 45 For similar reasons, Muebleria is barred from collaterally attacking the municipal court orders by way of its instant civil conversion claim. First, just as the wrongful eviction and declaratory judgment actions the conversion claim is premised upon the invalidity of the original order of possession. To establish conversion, Muebleria was required to prove, among other things, that it has an absolute and unconditional right to the possession of the premises. See *Howard v. Chicago Transit Authority*, 402 Ill. App. 3d 455, 461 (2010) ("To assert a claim for conversion, a plaintiff must establish that: (1) he has a right to the property at issue; (2) he has an absolute and unconditional right to the immediate possession of that property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property.").

¶ 46 What is more, the record reflects that in its January 2, 2015, motion to vacate the order of possession before the municipal court, Muebleria alleged that MTD wrongfully deprived it of its peaceful enjoyment of the premises and "prevented it from accessing" and "attempted to convert" the personal property it had on the premises, namely "its inventory of new home furnishings." Because the municipal court denied that petition to vacate, under the record we have before us, we can presume that the trial court already considered this issue and dismissed Muebleria's concerns.

¶ 47 In that respect, we note that, Muebleria, as the appellant, has the burden of presenting this court with a record sufficient to support its claims of error, and any doubts arising from an incomplete record must be construed against it. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). The record here contains neither a transcript of the proceedings before the chancery court, nor

the transcripts of any of the numerous proceedings in the underlying action in the municipal court. Nor does the record contain an agreed statement of facts (see Illinois Supreme Court Rule 323(d) (eff.Dec.13, 2005)), or a bystander's report, certified by the circuit court, of any of these proceedings (Illinois Supreme Court Rule 323(c) (eff.Dec.13, 2005)).

¶ 48 In its written order dismissing Muebleria's complaint, the chancery court justified the dismissal "for the reasons stated on record by the Court." Without a transcript of the proceedings below, we are not at liberty to hazard what those reasons were. When presented with such an incomplete record on appeal, we must indulge every reasonable presumption in favor of the judgment appealed from. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757–58 (2006); *Foutch*, 99 Ill. 2d at 392. Accordingly, for all of the aforementioned reasons, we presume that the trial court properly dismissed Muebleria's complaint as an improper collateral attack on the municipal court's prior judgments (735 ILCS 5/2-619 (West 2012)).

¶ 49 III. CONCLUSION

¶ 50 We therefore affirm the judgment of the circuit court.

¶ 51 Affirmed.