

NOTICE
Decision filed 07/25/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150437-U

NO. 5-15-0437

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

CHARLES C. CASHNER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Bond County.
)	
v.)	No. 11-L-13
)	Consolidated with
SPEED LUBE, LLC, a Limited Liability)	No. 13-MR-32
Company, DOUGLAS DRAPER, STEVEN C.)	
DUGAN, and ROBERT M. HARBISON,)	Honorable
)	John Knight,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE MOORE delivered the judgment of the court.
Justices Welch and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court's order granting defendant's motion to dismiss two counts of plaintiff's complaint affirmed where plaintiff lacked standing to litigate those claims.

¶ 2 The plaintiff, Charles C. Cashner, appeals the February 20, 2015, order of the circuit court of Bond County that granted the motion of defendants Douglas Draper, Steven C. Dugan, and Robert M. Harbison, to dismiss counts II and III of Cashner's complaint because Cashner lacked standing to litigate the claims raised in those counts.

For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On December 23, 2011, Cashner filed in the circuit court a three-count complaint against the defendants. Count I is not subject to this appeal. Count II sought the dissolution and winding up of defendant Speed Lube, LLC, a limited liability company (Speed Lube), and count III sought a declaratory judgment that Cashner is and remains a member/manager of Speed Lube and is therefore entitled to all corresponding rights under the amended Operating Agreement. All proceedings were stayed on counts II and III, pending the outcome of litigation in the circuit court of Jefferson County, Missouri (Missouri litigation). The Missouri litigation commenced before Cashner filed the complaint in the instant case and was expected to adjudicate Cashner's interest, if any, in Speed Lube.

¶ 5 On May 2, 2013, defendants Dugan, Draper, and Harbison filed a motion to dismiss counts II and III of the complaint, pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2012)). The motion alleged that a judgment entered in the Missouri litigation on April 4, 2013, held that Cashner's interest in Speed Lube was "effectively assigned to" Draper. The motion further alleged that because Cashner was no longer a member of Speed Lube, he lacked standing to maintain counts II and III of his complaint. On May 8, 2013, Speed Lube filed a motion to dismiss, pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)), which set forth the same allegations as Dugan, Draper, and Harbison's motion to dismiss.

¶ 6 On February 20, 2015, the circuit court entered an order granting Dugan, Draper, and Harbison's motion to dismiss counts II and III of the complaint. The circuit court

stated in the order that "the [j]udgment in the Missouri case, affirmed with appeals exhausted, is certainly 'outcome determinative of the issues at bar in Counts II and III' " and "[t]he Missouri [j]udgment transfers the Speed Lube *** ownership interests of *** Cashner to *** Draper." The circuit court further stated that the Missouri judgment divested Cashner of all ownership and any member/manager rights in Speed Lube and that "Cashner now lacks the standing necessary to assert rights that are solely available to members/managers of the LLC." The circuit court deemed Speed Lube's motion to dismiss moot, given that Dugan, Draper, and Harbison's motion to dismiss counts II and III was granted. Cashner filed a motion for leave to file late notice of appeal, which this court granted on January 8, 2016.

¶ 7

ANALYSIS

¶ 8 The issue on appeal is whether the circuit court erred by dismissing counts II and III of Cashner's complaint. "An order granting a motion to dismiss based on lack of standing presents a question of law which we review *de novo*." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004).

¶ 9 Section 2-619(a)(9) of the Code provides that a defendant may file a motion to dismiss if "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2012). "The phrase 'affirmative matter' refers to something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Schlenker*, 209 Ill. 2d at 461. "Our precedent makes clear that lack of standing qualifies as 'affirmative matter' within

the meaning of section 2-619(a)(9) and may properly be challenged through a motion to dismiss under that statute." *Id.* "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). "The doctrine assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Id.* "Under Illinois law, a plaintiff need not allege facts establishing standing. Rather, it is the defendant's burden to plead and prove lack of standing." *Schlenker*, 209 Ill. 2d at 461.

¶ 10 In this case, counts II and III of the complaint were stayed by the circuit court pending the outcome of the Missouri litigation. Subsequently, Draper, Dugan, and Harbison filed their motion to dismiss under section 2-619, alleging that Cashner lacked standing to bring counts II and III because the judgment entered in the Missouri litigation—that was subsequently affirmed by the Missouri Court of Appeals—divested Cashner of all ownership interest and member/manager rights in Speed Lube. We find that Dugan, Draper, and Harbison met their burden of proving that Cashner lacked standing to bring counts II and III (see *Schlenker*, 209 Ill. 2d at 461), that the circuit court correctly determined the findings of the Missouri judgment—that Cashner's ownership and membership interests in Speed Lube were transferred to Draper—resulted in Cashner's lack of standing, which is an affirmative matter that defeats counts II and III and negates Cashner's cause of action concerning those counts. See 735 ILCS 5/2-619(a)(9) (West 2012). See also *Schlenker*, 209 Ill. 2d at 461. Cashner's lack of standing precludes him from proceeding in the litigation because he has no interest in the outcome of the controversy. *Glisson*, 188 Ill. 2d at 221.

¶ 11 Cashner's arguments on appeal include a series of attempts to collaterally attack the Missouri judgment by citing several ways he deems that judgment inapplicable and/or incorrect. "The full faith and credit clause of the United States Constitution [citation] provides that full faith and credit must be given to the judicial proceedings of every other State." *Practice Management Associates, Inc. v. Thurston*, 225 Ill. App. 3d 470, 473 (1992). "A lawsuit which has been pursued to judgment should be as conclusive in every other court as it is in the court where judgment was entered." (Internal quotation marks omitted.) *Id.* Moreover, "[w]here a court has jurisdiction of the parties and the subject matter, its judgment regularly entered, *even though erroneous*, is valid until reversed on appeal and cannot be subject to collateral attack in another state." (Emphasis added.) *Miller v. Balfour*, 303 Ill. App. 3d 209, 216 (1999) (quoting *Sobina v. Busby*, 62 Ill. App. 2d 1, 6 (1965)). "A collateral attack may not be made upon a foreign judgment except in two instances: the defenses of lack of jurisdiction in the foreign court or fraud in the procurement of the judgment may be raised." *Practice Management Associates*, 225 Ill. App. 3d at 474.

¶ 12 Here, the Missouri judgment was affirmed in the Missouri Court of Appeals and is still valid. See *Miller*, 303 Ill. App. 3d at 216. It declared that Cashner's ownership/membership interests in Speed Lube were divested and that finding was applied by the circuit court to dismiss counts II and III of the complaint. Those counts had been stayed by the circuit court pending the Missouri court's adjudication of Cashner's ownership interest in Speed Lube. When that issue was disposed of in the Missouri litigation, Cashner's standing in the instant case ceased. Even assuming,

arguendo, that the Missouri judgment is erroneous in the ways Cashner suggests, the judgment is nonetheless still in force and not subject to collateral attack in Illinois. *Id.* Furthermore, Cashner may not collaterally attack the Missouri judgment because he raised neither lack of jurisdiction in the Missouri litigation nor fraud in the procurement of the Missouri judgment as defense. *Practice Management Associates*, 225 Ill. App. 3d at 474. Accordingly, Cashner has no grounds on which to attempt to bring any collateral attack on the Missouri judgment and we disregard all such arguments. *Id.*

¶ 13 Besides the attempted collateral attack on the Missouri judgment, Cashner's remaining arguments entail reasons why the circuit court erred in dismissing count II regarding his right to seek the liquidation of Speed Lube and count III in which he requested the circuit court to declare his rights and duties as a member of Speed Lube. To bring these counts, it is essential for Cashner to be a member of Speed Lube. Because Cashner is no longer a member of Speed Lube, he has no interest in the outcome of the controversy and is thereby precluded from proceeding on his complaint. See *Glisson*, 188 Ill. 2d at 221. As already discussed, the Missouri judgment divesting Cashner of his Speed Lube membership is valid and enforceable and we refuse to entertain any argument which requires membership status to proceed. Accordingly, the circuit court did not err by dismissing counts II and III of Cashner's complaint.

¶ 14

CONCLUSION

¶ 15 For the foregoing reasons, we affirm the February 20, 2015, order of the circuit court of Bond County.

¶ 16 Affirmed.