2018 IL App (1st) 172342-U

THIRD DIVISION
September 19, 2018

No. 1-17-2342

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).

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BLACK KNIGHT PARTNERS, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16 L 7408
	)	
BMO HARRIS BANK, N.A., and GIAN PAUL DeBLASIO,	)	
	)	The Honorable
	)	Thomas Mulroy,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Lavin concurred in the judgment.

ORDER

HELD: Trial court properly dismissed amended complaint with prejudice as all three factors of *res judicata* were present where there was final judgment on merits, there was an identity of parties, and there was an identity of cause of action, since initial foreclosure suit and instant suit for breach of fiduciary duty and inducement clearly arose from single group of operative facts. Additionally, trial court did not abuse its discretion in denying motion to reconsider where no newly discovered facts were introduced, and it did not abuse its discretion in denying motion for leave to file second amended complaint where final judgment, with prejudice, had been entered. Finally, having taken motion to strike portions of reply brief with this case, we deny it and stand on our decision herein.

¶ 1 Upon the trial court's grant of defendants-appellees BMO Harris Bank, N.A.'s and Gian Paul DeBlasio's (defendants or as named) individual motions to dismiss plaintiff-appellant Black Knight Partners, Inc.'s (plaintiff) amended complaint with prejudice, plaintiff filed a motion to reconsider and for leave to file a second amended complaint. The trial court denied this motion. Plaintiff appeals, contending that the trial court erred in dismissing its amended complaint with prejudice and that the trial court erred in refusing to allow it to file its second amended complaint. Plaintiff asks that we reverse the trial court's decision dismissing the amended complaint and/or its decision denying leave to file a second amended complaint. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff was incorporated in 2002. Its president, Mark Henderson, and DeBlasio were each 50% shareholders. DeBlasio, meanwhile, was also involved in the operations a separate corporation, known as FA Development Company, Inc.

¶ 4 Plaintiff held equitable interest in three properties located in Will County, Illinois. However, by 2010, plaintiff defaulted on loans which secured its interests and Harris Bank commenced foreclosure proceedings. In September 2011, after filing its appearance, plaintiff, via its president Henderson, filed an "Emergency Motion for Leave to File Counterclaim and Cross-Claim," attaching the proposed counterclaim against Harris and cross-claim against DeBlasio to its motion. In Counts I and II, plaintiff alleged fraudulent concealment against Harris and DeBlasio, asserting that the two conspired to secure additional loans on the Will County properties without Henderson's consent, that Harris knew DeBlasio had no authority to

execute these loans on plaintiff's behalf, that DeBlasio owed a duty to plaintiff to disclose any such loans, that Henderson discovered their actions in 2007, and that their actions led to the foreclosure. In Count III, plaintiff also alleged breach of fiduciary duty against DeBlasio, again asserting that he owed plaintiff a fiduciary duty to disclose any additional loans and not take action to devalue the properties for his own benefit, that he breached that duty by securing such loans without Henderson's consent, that plaintiff consequently lost its equity in the properties and that this led to the foreclosure.

¶ 5 In February 2012, a sheriff's sale was conducted in the foreclosure case, and FA Development was the successful bidder. Harris Bank filed a motion to confirm the sheriff's sale. Plaintiff did not object and, accordingly, on March 20, 2012, a trial court in Will County entered an order approving the sale. In its order, the court made clear that the "sale was conducted in accordance with the terms of the judgment and the law" and that it was "fair and properly made." The court ordered title of the properties to FA Development and a deficiency judgment of $224,898.17 against plaintiff.

¶ 6 Four years later, in July 2016, plaintiff filed its complaint in the instant cause in Cook County. In the factual background portion of its complaint, plaintiff insisted that DeBlasio used FA Development (a company he owned) to gain possession of the Will County properties, that Harris knew DeBlasio owned FA Development, and that DeBlasio "actively hid his ownership in FA" from plaintiff. Plaintiff further claimed that it had no knowledge that DeBlasio owned FA at the time of the foreclosure. Plaintiff's complaint comprised two counts. Count I alleged breach of fiduciary duty against DeBlasio, asserting that DeBlasio, as plaintiff's 50% shareholder, owed

it a fiduciary duty to act with "good faith, loyalty, honesty and fairness;" that he breached this duty when he caused plaintiff to default on the loans and purchased the Will County properties through FA without plaintiff's knowledge resulting in the foreclosure and deficiency judgment against it; and that DeBlasio "usurped other *** business opportunities" belonging to plaintiff. Count II alleged inducement of breach of fiduciary duty against Harris Bank, asserting that Harris Bank induced DeBlasio to breach his fiduciary duty to plaintiff through its knowledge of DeBlasio's ownership of FA, its approval of the sale of plaintiff's Will County properties to FA, and its acceptance of the proceeds of DeBlasio's purchase which, again, resulted in the foreclosure and deficiency judgment against plaintiff.

¶ 7 In September 2016, Harris Bank filed a motion to dismiss count II of plaintiff's complaint as against it pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)). It argued that plaintiff had not pled the elements of inducement of breach of fiduciary duty pursuant to section 2-615 of the Code, and that plaintiff's claim should be dismissed based on *res judicata* pursuant to section 2-619 of the Code. The trial court granted Harris' motion. With respect to section 2-615, the court held that, even construing plaintiff's allegations in the light most favorable to it, it had not pled sufficient facts to support a claim of collusion between Harris Bank and DeBlasio. The court made clear that "mere knowledge" on Harris Bank's part that DeBlasio had an interest in FA and its agreement to sell the properties to FA were not sufficient for a collusion claim, and thus, it dismissed plaintiff's claim on that ground. Additionally, with respect to section 2-619, the court further concluded that dismissal was appropriate based on *res judicata*. It noted that plaintiff never alleged it was unaware of

DeBlasio's interest in FA before the entry of the Will County court's order approving sale, only that it was unaware at the time of the sheriff's sale. It further noted that the "determinative point is any time prior to the entry of the order approving the Sheriff's sale." Therefore, it reasoned, had plaintiff raised the issue of DeBlasio's ownership interest in FA before then, that court could have determined whether Harris Bank had a conflict of interest; since plaintiff never alleged in its complaint that it was unaware of DeBlasio's interest in FA at the time the Will County court entered the order approving the sheriff's sale, its contentions against Harris Bank were now barred by *res judicata*.

¶ 8 When the trial court issued its order dismissing plaintiff's complaint as against Harris Bank, DeBlasio had yet to be served. Harris Bank moved for an Illinois Supreme Court Rule 304(a) finding with respect to the trial court's order dismissing plaintiff's complaint as against it, noting that because the court dismissed it based on *res judicata*, there should be a final and appealable order. Plaintiff, meanwhile, moved the court to appoint a special process server with respect to DeBlasio. The trial court granted plaintiff's motion and issued an alias summons for DeBlasio; it therefore continued Harris Bank's motion.

¶ 9 Later, plaintiff filed a motion to reconsider the dismissal of its complaint as against Harris Bank or, in the alternative, leave to file an amended complaint, asserting that Harris Bank's motion to dismiss "misapprehended the facts as to the nature of the complaint" and that the trial court "adopted Harris' mistaken interpretation" when it dismissed the complaint. It insisted that it was not "trying to 'unwind' " the foreclosure action and that it had referenced the "usurpation of business opportunities apart from the foreclosure case" that should have been addressed. In

response, and once DeBlasio was properly served, the trial court granted plaintiff leave to file an amended complaint.

¶ 10 Plaintiff's amended complaint again alleged a claim against DeBlasio for breach of fiduciary duty and a claim against Harris Bank for inducement of breach of fiduciary duty. In its Count I against DeBlasio, plaintiff repeated the same assertions as its original complaint with respect to the foreclosure, claiming that DeBlasio caused it to default on the loans securing the Will County properties, allowed an order of foreclosure to be entered, and purchased the properties through FA, all without plaintiff's knowledge. Plaintiff then identified two other "business opportunities" which it claimed DeBlasio usurped. First, it alleged that in 2009, FA purchased property on Haddow Avenue in Arlington Heights, Illinois (the Haddow Project) for development by using plaintiff's "assets." However, plaintiff did not identify these assets, nor did it allege that it had the resources to pursue the Haddow Project or that it was incident to its business. Second, plaintiff alleged that DeBlasio was involved in Sallyport Global Holdings, Inc., a government contractor, and asserted that FA aided DeBlasio in pursuing opportunities with Sallyport through use of property and assets held by FA, which had been previously owned by plaintiff. Again, plaintiff did not identify these assets, nor did it allege that it had the resources to pursue these opportunities or that they were incident to its business.

¶ 11 In Count II against Harris Bank, plaintiff's amended complaint repeated many of the same allegation as its original complaint, particularly with respect to the Will County foreclosure. Plaintiff asserted that Harris Bank induced DeBlasio to breach his duty through its knowledge that DeBlasio had allowed plaintiff to default on the loans, that the properties were being

foreclosed upon, and that DeBlasio was buying them through FA, and that this all culminated when Harris Bank approved the sale. Additionally, plaintiff asserted that Harris Bank induced DeBlasio to breach his fiduciary duty by assisting him in using plaintiff's assets for the Haddow Project and the acquisition of equity in Sallyport, as well as other projects, all of which caused it to lose significant profits, as well as the Will County properties.

¶ 12 DeBlasio and Harris Bank each filed motions to dismiss plaintiff's amended complaint pursuant to section 2-619.1 of the Code. Following oral argument, the trial court granted these motions. The court noted that the facts in plaintiff's amended complaint alleged a breach of fiduciary duty and an inducement of that breach relating to conduct "in a foreclosure proceeding and subsequent sheriff's sale," which had already been "confirmed." Accordingly, it held that, because "[p]laintiff's claims in this case could have been raised in the previous foreclosure action, which terminated with a final judgment on the merits," *res judicata* now barred them. At the conclusion of its order, the court made clear that plaintiff's amended complaint was "dismissed with prejudice" and that the matter was "disposed of in its entirety."

¶ 13 Plaintiff filed a motion to reconsider and for leave to file a second amended complaint. It again insisted that the trial court had "misapprehend[ed]" the facts of its cause of action when it issued its dismissals, claiming it has nothing to do with the foreclosure action; therefore, plaintiff "omit[ted] any and all references to any foreclosure action" in its proposed second amended complaint and believed the court should allow its filing. The trial court denied plaintiff's motion, again in its entirety. With respect to reconsideration, the court clarified that such motions asks the court to reconsider its ruling based on newly discovered evidence, changes in the law, or

errors in the court's application of existing law. It noted that plaintiff had not suggested in its motion to reconsider that there had been changes in the law or that the court had misapplied existing law, and, thus, its motion was most akin to an argument relating to newly discovered evidence. The court reasoned, however, that plaintiff's motion did "not bring to light facts that were unavailable at the previous hearing," and, accordingly, it should be denied. Then, turning to plaintiff's request for leave to file a second amended complaint, the court noted that after a final judgment, pleadings may only be amended to conform them to the proof. It further noted that, because plaintiff's amended complaint had been dismissed with prejudice without leave to amend, this resulted in a final judgment and, thus, "plaintiff no longer has a statutory right to amend" and its motion must be denied.

¶ 14 ANALYSIS

¶ 15 Plaintiff appeals the trial court's denial of its motion to reconsider the order dismissing its amended complaint with prejudice, and its accompanying denial of leave to file its second amended complaint. First, it contends that the trial court misapplied *res judicata* because its instant cause of action has nothing to do with the underlying foreclosure action, insisting that the former deals solely with the breach of fiduciary duty and the inducement of that breach while the latter deals solely with the failure to make mortgage payments. Second, it contends that the trial court erred in refusing to allow it to file its second amended complaint, since it was not based on (nor referred to) the foreclosure action. We disagree with both contentions.

¶ 16 We begin with the applicable standards of review, to which the parties agree. Briefly, a motion to dismiss pursuant to section 2-619.1 of the Code combines a section 2-615 motion to

dismiss and a section 2-619 motion to dismiss. See *Cohen v. McDonald's Corp.*, 347 Ill. App. 3d 627, 632 (2004). A motion to dismiss under section 2-615 attacks the legal sufficiency of the complaint by alleging defects on its face. See *Bunting v. Progressive Corp.*, 348 Ill. App. 3d 575, 580 (2004). Upon review of a section 2-615 motion, we examine the allegations of the complaint in the light most favorable to the plaintiff and accept as true all well pled facts and reasonable inferences therefrom. See *Bunting*, 348 Ill. App. 3d at 380. If these are not sufficient to state a cause of action upon which relief may be granted, then dismissal of the cause is appropriate. See *Pecoraro v. Balkonis*, 383 Ill. App. 3d 1028, 1033 (2008); *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007) (to survive dismissal, complaint must allege facts that set out all essential elements of cause of action). A motion to dismiss pursuant to section 2-619, meanwhile, admits the legal sufficiency of the complaint but raises defects or other matters either internal to or external from the complaint that would defeat the cause of action. See *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 85 (1995); *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (2003). While a trial court should not grant such a motion unless it is clear that there is no way a plaintiff may recover (see *Ostendorf v. International Harvester Co.*, 89 Ill. 2d 273, 280 (1982)), dismissing a cause pursuant to section 2-619 efficiently allows for the disposal of issues of law or easily proved facts early in the litigation process. See *Coles-Moultrie Electric Cooperative v. City of Sullivan*, 304 Ill. App. 3d 153, 158 (1999). We review appeals from dismissals pursuant to both sections, as well as from combined section 2-619.1, *de novo*. See *Morris v. Williams*, 359 Ill. App. 3d 383, 386 (2005); accord *Bunting*, 348 Ill. App. 3d at 580; see also *Cohen*, 347 Ill. App. 3d at 632 (grant of section

2-619.1 combined motion to dismiss is reviewed *de novo*); accord *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10.

¶ 17 Appeals from the denials of motions for leave to amend and motions to reconsider, meanwhile, are reviewed pursuant to an abuse of discretion standard. See *McNerney v. Allamuradov*, 2017 IL App (1st) 153515, ¶ 47 (motion for leave to amend "lies in the discretion of the trial court" and will be reversed only if that discretion is abused); see also *Peregrine Financial Group, Inc. v. TradeMaven, L.L.C.*, 391 Ill. App. 3d 309, 320 (2009), and *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20 (same for motion to reconsider, unless dealing with request to reevaluate the trial court's application of the law). This discretion is broad (see *McNerney*, 2017 IL App (1st) 153515, ¶ 47), and abuse occurs only when the trial court's ruling is arbitrary, fanciful, unreasonable or when no reasonable person would adopt its view (see *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009)).

¶ 18 Based upon our review of the instant record, we find both that plaintiff's amended complaint was properly dismissed based on *res judicata* and that the trial court did not abuse its discretion in denying plaintiff's motion to reconsider and leave to file a second amended complaint.

¶ 19 I. Dismissal of Amended Complaint and *Res Judicata*

¶ 20 We turn first to the trial court's dismissal of plaintiff's amended complaint. Plaintiff insists on appeal that the trial court misapplied the doctrine of *res judicata* to bar its instant claims when, in its order, the court stated that plaintiff failed to allege it was unaware of DeBlasio's involvement in FA at the time of the order approving the sheriff's sale of the Will

County properties. Plaintiff claims that its amended complaint cured this, added information about two other usurped business opportunities (the Haddow Project and Sallyport), and made clear it was not trying to undo the foreclosure. Essentially, plaintiff asserts that because there is no single group of operative facts between the foreclosure action and the claims asserted in its amended complaint, *res judicata* cannot apply to the instant cause of action against DeBlasio and Harris Bank. Plaintiff is incorrect.

¶ 21 Pursuant to the doctrine of *res judicata*, when a court of competent jurisdiction renders a final judgment on the merits of a cause of action, that judgment becomes conclusive as to the rights of the parties and their privies to the suit and, thus, acts as an absolute bar to any subsequent action between the same parties or their privies involving the same claim, demand or cause of action. See *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18; accord *Agolf, LLC v. Village of Arlington Heights*, 409 Ill. App. 3d 211, 218 (2011), citing *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). At its core, this equitable doctrine prevents multiple lawsuits between the same parties where the facts and issues presented are the same. See *Agolf*, 409 Ill. App. 3d at 218, citing *Leow v. A&B Freight Line, Inc.*, 175 Ill. 2d 176, 180 (1997), and *Green v. Northwest Community Hospital*, 401 Ill. App. 3d 152, 154 (2010). It applies to bar such subsequent actions when all three of its elements exist, namely: " '(1) there was 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.' " *Agolf*, 409 Ill. App. 3d at 218, quoting *Nowak*, 197 Ill. 2d at 390. Once these elements are met, *res judicata* extends to bar all matters that were offered to sustain or defeat the claim or demand, as well as to any and all other matters which

may have or could have been offered for that purpose. See *Cooney*, 2012 IL 113227, ¶ 18; accord *Agolf*, 409 Ill. App. 3d at 218, citing *Nowak*, 197 Ill. 2d at 389. "Accordingly, while it is true that every plaintiff is entitled to his day in court and *res judicata* should not be applied to create fundamental unfairness, the critical nature of this doctrine operates to prevent repetitive lawsuits and protects parties from being forced to bear the burden of relitigating essentially the same claim over and over." *Agolf*, 409 Ill. App. 3d at 219 (internal citations omitted).

¶ 22 *Res judicata*'s three elements are undeniably met here with respect to the underlying foreclosure cause and the instant matter alleging breach of fiduciary duty and inducement of breach of fiduciary duty, so as to bar plaintiff's amended complaint. As to the first and third elements, a final judgment on the merits and an identity of the parties, these are not reasonably in dispute and, in fact, plaintiff does not even contest them on appeal. As the record demonstrates, the Will County litigation ended in a final judgment on the merits. Harris Bank had instituted foreclosure proceedings against plaintiff, summary judgment was granted in its favor, a sheriff's sale was had, and the trial court confirmed that sale, without objection. Title to the Will County properties was awarded to FA Development as the highest bidder and a deficiency judgment was entered against plaintiff. The trial court's order confirming the sale, in which it certified that the sale was "conducted in accordance with the terms of the judgment and the law," was a final judgment on the merits. See *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 260 (2008) (order confirming sale of property is the final (and appealable) judgment in a foreclosure action). Additionally, the same parties are clearly involved in these two lawsuits. Harris Bank brought the foreclosure action against plaintiff, of which DeBlasio was a shareholder; it is now

plaintiff who asserts the instant claims of breach and inducement against DeBlasio and Harris Bank.

¶ 23 This leaves the second element of *res judicata*: identity of cause of action. Plaintiff repeatedly argues that, since it has no intention to undo the foreclosure and since the foreclosure concerned solely the nonpayment of a mortgage while the instant cause deals solely with breach of fiduciary duty and inducement of that breach, this element is not met. However, separate claims are considered the same cause of action under *res judicata* if they arise from a single group of operative facts. See *Agolf*, 409 Ill. App. 3d at 219 (citing *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 314 (1998), and *Lane v. Kalcheim*, 394 Ill. App. 3d 324, 332 (2009), and stating that this is known as the transactional test). This applies regardless of whether different legal theories, evidence or remedies are asserted. See *Agolf*, 409 Ill. App. 3d at 219; accord *Cooney*, 2012 IL 113227, ¶¶ 21-22 (separate claims, even if there is not a substantial overlap of evidence among them and even if they assert different theories of relief, are still considered part of the same cause of action for the purposes of *res judicata* if they arise from a single group of operative facts). Again, *res judicata* bars all matters that were actually decided, as well as those that could have been decided or could have been raised through the exercise of due diligence. See *Cooney*, 2012 IL 113227, ¶ 18; see also *Hughey v. Industrial Commission*, 76 Ill. 2d 577, 582 (1979), and *Kasny v. Coonen and Roth, Ltd.*, 395 Ill. App. 3d 870, 874 (2009). And, more specifically, *res judicata* bars a subsequent cause of action if successful prosecution of that action would nullify the judgment entered in the original action. See *Kasny*, 395 Ill. App. 3d at 873.

¶ 24 In the instant cause, there is clearly an identity of cause of action between the original Will County foreclosure lawsuit and the breach and inducement lawsuit that was before the trial court below here. Upon even a cursory reading of plaintiff's amended complaint, the claims contained therein arise directly out of the foreclosure. In its Count I for breach of fiduciary duty, plaintiff alleged that DeBlasio's breach arose precisely because he caused plaintiff to default on the loans securing the Will County properties, allowed an order of foreclosure to be entered and then purchased the properties through FA, all of which resulted in plaintiff losing title to the properties via the foreclosure. Similarly, in its Count II for inducement of breach of fiduciary duty, plaintiff alleged that Harris Bank induced DeBlasio's breach because it knew that DeBlasio had allowed plaintiff to default on the loans, the properties were being foreclosed upon, and DeBlasio was buying them through FA, and nonetheless approved the sale. Plaintiff asserted that this collusion caused it to not only lose profits, but more specifically, title to the properties. Even though the initial suit was a foreclosure and the instant suit concerns breach of fiduciary duty and inducement, it is clear that they arise from a single group of operative facts: the foreclosure.

¶ 25 Plaintiff's assertions to the contrary are red herrings. First, the foreclosure action did not solely concern the failure to pay a mortgage, as plaintiff tries to narrowly characterize it. Indeed, even at the time of that cause of action, plaintiff itself insisted something more was involved. During the foreclosure litigation, plaintiff's president Henderson filed an "Emergency Motion for Leave to File Counterclaim and Cross-Claim," asserting three counts. The first two alleged fraudulent concealment against Harris and DeBlasio, asserting that they conspired to secure additional loans on the Will County properties without Henderson's consent, that Harris knew

DeBlasio had no authority to execute these loans on plaintiff's behalf, that DeBlasio owed a duty to plaintiff to disclose any such loans, that Henderson discovered their actions, and that their actions led to the foreclosure. The third count alleged breach of fiduciary duty against DeBlasio, again asserting that he owed plaintiff a fiduciary duty to disclose any additional loans and not take action to devalue the properties for his own benefit, that he breached that duty by securing such loans without Henderson's consent, that plaintiff consequently lost its equity in the properties and that this led to the foreclosure. From its very own actions, then, it is obvious that plaintiff, at the time of the initial foreclosure proceedings (and certainly before the sheriff's sale), knew, and in fact did legally assert, that DeBlasio had breached his fiduciary duty and that Harris Bank induced him to do so the exact same claims involved in the instant cause of action. See *Cooney*, 2012 IL 113227, ¶ 18 (*res judicata* bars all matters that were actually decided, as well as those that could have been decided in the initial litigation).

¶ 26 Plaintiff next insists that *res judicata* should not have barred its breach and inducement claims because it clarified in its amended complaint that it did not know DeBlasio was involved with FA Development at the time of the order approving the sale of the properties. However, in the very documents plaintiff attached to its amended complaint to show that DeBlasio was part of FA, plaintiff included information from the Illinois Secretary of State specifying that FA had been incorporated since 2004 and that DeBlasio, himself, had disclosed he was FA's manager, all of which was public knowledge. The foreclosure lawsuit began in 2010, with the trial court's order approving sale of the properties to FA taking place in 2012. This was more than enough time for plaintiff, which clearly suspected during the foreclosure proceeding that something was

amiss with DeBlasio and Harris Bank, to exercise even the most minimal due diligence and discover this information that dated back several years. See *Kasny*, 395 Ill. App. 3d at 874 (*res judicata* bars all matters that could have ben raised through the exercise of due diligence).

¶ 27 Lastly, plaintiff insists that *res judicata* could not bar its instant suit because it made sure to remove all references to the word "foreclosure" and because it added allegations concerning two new business opportunities it alleged DeBlasio and Harris Bank colluded to usurp from it. These claims are equally unavailing. Deleting the word "foreclosure" from the amended complaint does not somehow make that initial cause of action disappear or render it irrelevant so as to save it from *res judicata* considerations. Upon our reading of that complaint, it is clear that plaintiff is referencing the foreclosure action; it describes the Will County properties, it recounts what occurred during the litigation, and it alleges that it lost title of these properties to FA directly because of DeBlasio's breach of fiduciary duty owed to plaintiff and Harris Bank's inducement of that breach against plaintiff. Regardless of the technical terms used for the transactions at issue, the connection between the alleged breach and inducement for which plaintiff is now suing and the foreclosure lawsuit can hardly be considered tenuous, as plaintiff maintains.

¶ 28 Moreover, with respect the inclusion of references to the other two business opportunities, we fail to see how these would also somehow absolve plaintiff's amended complaint from *res judicata* considerations, as it insists. Plaintiff introduced allegations concerning the Haddow Project, a business deal in Arlington Heights which it claimed DeBlasio, with Harris Bank’s assistance, usurped from plaintiff by using FA assets originally belonging to

plaintiff, as well as Sallyport, a government contract which it similarly insisted Harris Bank and DeBlasio colluded to usurp by again using FA assets previously owned by plaintiff. But again, the amended complaint clearly demonstrates that even these allegations arise from the foreclosure. Plaintiff never specifies what "assets" DeBlasio or Harris Bank, via FA Development, used in these alleged usurpations from plaintiff. Rather, the only assets plaintiff mentioned at all in the amended complaint are the Will County properties those involved in the foreclosure. See *Cooney*, 2012 IL 113227, ¶ 18.

¶ 29 From all this, it is evident that *res judicata* applies here to bar plaintiff's instant litigation claiming breach of fiduciary duty by DeBlasio and inducement of that breach by Harris Bank. The allegations in plaintiff's amended complaint clearly and directly arise from a single group of operative facts: the foreclosure. Because these allegations could have been raised (and were in fact raised by plaintiff's president Henderson) during that prior litigation, they cannot now be relitigated, and, thus, plaintiff's amended complaint was properly dismissed based on *res judicata*.

¶ 30 II. Denial of Motion to Reconsider and/or for Leave to File Second Amended Complaint

¶ 31 Plaintiff further argues that the trial court abused its discretion in both denying its motion to reconsider the dismissal of its amended complaint and in denying it leave to file a second amended complaint. Upon our examination of plaintiff's contentions in light of the record before us, we find no such abuse of discretion.

¶ 32 We turn first to plaintiff's motion to reconsider. Plaintiff indicated in its Notice of Appeal that it was appealing from the denial of its motion to reconsider the trial court's order dismissing

its amended complaint. However, plaintiff has not presented any argument regarding its motion to reconsider in its brief on appeal. Accordingly, it has forfeited any argument challenging the denial of that motion. See Ill. S.Ct. R. 341(h)(7) (eff. July 1, 2008) (appellant forfeits points not raised in brief).

¶ 33 Apart from this, we would note for the record that plaintiff argued in its motion below that reconsideration was warranted because the trial court based its decision to dismiss its amended complaint on the "misapprehension of facts," namely, that plaintiff desired to undo the foreclosure. However, such an argument actually misapprehends the purpose and procedure behind such a motion. That is, the purpose of a motion to reconsider is to bring to the trial court's attention newly discovered evidence, changes in the law, or errors in the application of existing law to the facts at hand. See *In re Estate of Agin*, 2016 IL App (1st) 152362, ¶ 18, citing *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009). Yet, plaintiff presented none of these avenues in its motion before the trial court. It did not claim that the law surrounding *res judicata* had changed, nor did it argue that the trial court misapplied existing *res judicata* law. Thus, the trial court likened its motion to one asserting newly discovered evidence, but then noted that plaintiff did not bring to light any facts that were unavailable previously and denied its motion. As the record confirms that determination, we find no abuse of discretion in the trial court's denial of plaintiff's wholly unsupported motion to reconsider.

¶ 34 This leaves the trial court's denial of plaintiff's motion for leave to file its second amended complaint. Plaintiff argues first that the trial court erred in its denial in violation of the law of the case doctrine, and second, that it satisfied all the required factors necessary for

amending a complaint pursuant to *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992). Plaintiff is incorrect on both fronts.

¶ 35 First, plaintiff critically misunderstands the legal concept behind the law of the case doctrine. Briefly, this doctrine states that, "where an issue has been litigated and decided, a court's unreversed decision on that question of law or fact settles that question 'for all subsequent stages of the suit.' " *Alwin v. Village of Wheeling*, 371 Ill. App. 3d 898, 909 (2007) (quoting *Pekin Ins. Co. v. Pulte Home Corp.*, 344 Ill. App. 3d 64, 69 (2003), and *Norton v. City of Chicago*, 293 Ill. App. 3d 620, 624 (1997)); accord *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8 (questions of law decided in previous appeal are binding on trial court upon remand as well as upon appellate court in subsequent appeals). Plaintiff turns this on its head by insisting that the law of the case doctrine operates here to mandate that it be allowed to file a second amended complaint after the dismissal of its first amended complaint because the trial court, during the litigation of the instant suit, allowed it to file that first amended complaint following the dismissal of its original complaint. Yet, this is not at all what the law of the case doctrine means. Clearly, law of the case deals with actual judgments reached during litigation, that is, the resolution of issues of law or fact applicable to a cause of action and their re-emergence in following related suits. See, *e.g.*, *Perik v. JPMorgan Chase Bank, N.A.*, 2015 IL App (1st) 132245, ¶ 30. Whether a party may file an amended complaint (first, second or whatever the number) is not an actual judgment or an issue of law or fact, it is a procedural one. Moreover, amending is solely a discretionary decision which lies directly within the purview of the trial court; parties do not have a "right" to amend once, twice or unlimitedly. See *Kopnick v.*

JL Woode Management Co., LLC, 2017 IL App (1st) 152054, ¶ 32.

¶ 36 In the instant cause, the trial court dismissed plaintiff's original complaint, which was directed against DeBlasio and Harris Bank, upon a motion to dismiss filed by Harris Bank. It subsequently realized that DeBlasio had yet to be served with the complaint. Therefore, it chose to continue Harris Bank's request to enter Rule 304(a) language and, upon its motion to reconsider, allowed plaintiff to file an amended complaint, to be properly served on all parties. That the trial court did this, under these circumstances, has no bearing on its later decision to deny plaintiff's motion to file a second amended complaint. Contrary to plaintiff's insistence, the court's initial decision to allow an amendment did not somehow bind it to allow further amendments. The law of the case doctrine simply does not apply in this context.

¶ 37 Nor do the *Loyola Academy* factors, which reviewing courts are to consider when deciding whether a trial court has abused its discretion in denying a party's motion to amend its pleadings. Just as with the law of the case doctrine, plaintiff completely misunderstands their proper application. Briefly, the *Loyola Academy* factors whether the proposed amendment would cure the defective pleading, whether the other party would sustain prejudice or surprise by the amendment, whether the amendment is timely, and whether there were previous opportunities to amend apply only to amendments proposed before a final judgment is entered. See *Hachem v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶ 18; accord *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14. Where a complaint is dismissed with prejudice and does not include a statement allowing the plaintiff leave to amend, that dismissal is a final judgment. See *Hachem*, 2015 IL App (1st) 143188, ¶ 18, citing *Compton v. Country Mutual*

Insurance Co., 382 Ill. App. 3d 323, 332 (2008). And, after that dismissal is entered, a plaintiff no longer has a statutory right to amend. See *Tomm's Redemption*, 2014 IL App (1st) 131005, ¶ 14, citing *Compton*, 382 Ill. App. 3d at 332. Instead, the trial court is to deny a motion for leave to amend. See *Tomm's Redemption,* 2014 IL App (1st) 131005, ¶ 14, citing *Compton,* 382 Ill. App. 3d at 332.

¶ 38 In the instant cause, the trial court dismissed plaintiff's (first) amended complaint, including all of its counts, specifically and explicitly "with prejudice." It also included language in its order stating that the matter thus was "disposed of in its entirety." It is obvious from this clear order that the trial court entered a final judgment and that it would not be allowing plaintiff to amend its complaint further. Plaintiff, however, moved for leave to file a proposed second amended complaint after entry of this final judgment. This was too late; plaintiff had no right, statutory or otherwise, to amend its amended complaint by this point. The trial court properly denied its motion, and we are under no obligation to now weigh the *Loyola Academy* factors, which do not apply within this context. See *Tomm's Redemption*, 2014 IL App (1st) 131005, ¶ 14 (no error on part of trial court in denying leave to amend where the plaintiff requested to do so after complaint was dismissed with prejudice and, thus, final judgment had already been entered); accord *Hachem*, 2015 IL App (1st) 143188, ¶ 18.

¶ 39 III. Failure to Comply with Brief Requirements

¶ 40 We address one final matter raised by Harris Bank and DeBlasio. In their separate briefs on appeal, both parties present arguments urging us to dismiss the instant appeal and/or to strike portions of plaintiff's opening brief due to plaintiff's failure to comply with Illinois Supreme

Court Rules regarding the contents of appellate briefs and the proper presentation of facts and argument. Harris Bank also filed a motion in our court seeking to strike portions of plaintiff's reply brief, which we have taken with this case.

¶ 41 Harris Bank and DeBlasio are correct that our "rules of procedure are rules and not merely suggestions," that our mandates detailing the format and content of appellate briefs are compulsory, and that the result of failing to abide by them may be the dismissal of the appeal. *Ryan v. Katz*, 234 Ill. App. 3d 536, 537 (1992); accord *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; see *Oruta v. B.E.W. and Continental*, 2016 IL App (1st) 152735, ¶ 30. They also aptly point out the many ways in which plaintiff's opening and reply briefs fail to comply with our rules, including the provision of argument and conclusory statements throughout its introductory paragraphs, an improperly lengthy "Nature of the Case" section, the complete lack of an appendix,[1] and various misstatements regarding the procedural history of this cause. Certainly, plaintiff's opening and reply briefs are technically not in complete compliance with our formatting rules. However, the shortcomings are mainly minimal, at least in the sense that plaintiff's arguments are sufficiently cogent for us to address, as we have, its claims on appeal. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004) (reviewing court has choice to review merits, even in light of formulaic mistakes on litigant's part in brief on appeal). Accordingly, while we fully recognize Harris Bank and DeBlasio's arguments and in no way condone plaintiff's failure to abide by our rules, we deny Harris Bank's motion to strike and,

[1]Plaintiff later attempted to remedy this by seeking leave to file an appendix with our Court; we allowed it to do so.

instead, stand on our decision herein resolving the instant appeal.

¶ 42 CONCLUSION

¶ 43 For all the foregoing reasons, we affirm the trial court's dismissal of plaintiff's amended complaint based on *res judicata* and the trial court's denial of plaintiff's motion to reconsider and for leave to file a second amended complaint.

¶ 44 Affirmed.