FIRST DIVISION
March 4, 2019

No. 1-17-0864

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEXANDER GROEPER and GREGORY GROEPER, Plaintiffs-Appellants, v. FITTS MANAGEMENT GROUP, INC. an Indiana Corporation, and ALTISOURCE SOLUTIONS, INC., a Delaware Corporation, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 CH 13192 Honorable Anna Helen Demacopoulos, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Griffin and Walker concurred in the judgment.

O R D E R

¶ 1 *Held*: Mortgagor's collateral attacks on the judgments entered in prior foreclosure and eviction actions are barred by the doctrine of *res judicata*.

¶ 2 Plaintiffs, father and son, brought this case against two entities that served as agents of the mortgagee on the father's mortgage, and who were present when plaintiffs were forcibly evicted by the sheriff's office. Plaintiffs challenged the validity of the underlying loan documents

and asserted that the judgment of the foreclosure court was void for lack of personal jurisdiction. For the reasons that follow, we agree with defendants that these claims are barred by *res judicata* and affirm the dismissal of the complaint with prejudice.

¶ 3 I. BACKGROUND

¶ 4 U.S. Bank N.A. initiated foreclosure proceedings against plaintiff Gregory Groeper in 2009 (case No. 09 CH 49823). These proceedings culminated in a 2013 order foreclosing Gregory's mortgage on a single-family home located at 5815 W. Dakin Street in Chicago (Dakin Property) and a 2014 order confirming the sale of the property and directing the Cook County Sheriff to evict Gregory. Gregory appealed those orders but in November 2014 his appeal was dismissed for want of prosecution.

¶ 5 In a separate forcible entry and detainer action (case No. 15 M1 724453), a supplemental order of possession evicting Gregory's sister, Therese Kroeker, and all unknown occupants of the Dakin Property was entered in March 2016. No appeal was taken from that order, and the sheriff's office carried out the eviction in July 2016.

¶ 6 On October 6, 2016, Gregory and his son Alexander (collectively, the Groepers) filed their *pro se* complaint in this action against Altisource Solutions, Inc. (Altisource), a company that provides property preservation services, and its subcontractor, Fitts Management Group, Inc. (Fitts) (collectively, defendants). The Groepers alleged that defendants unlawfully entered the Dakin Property with individuals from the sheriff's office, ordered all occupants to vacate the premises, and seized personal items remaining at the property. Raising a number of purported irregularities with respect to the mortgage documents, the Groepers alleged that assignment of the mortgage from the original lender to U.S. Bank was fraudulent. They also alleged that a lack of proper service deprived the foreclosure court of personal jurisdiction. The Groepers asserted

claims for injunctive relief, statutory theft, unfair and deceptive trade practices, deceptive business practices, constructive eviction, replevin, and negligent and intentional infliction of emotional distress. They sought, in addition to monetary damages and attorney fees, the restoration and return of their personal property, restored access to the Dakin Property, and an injunction preventing defendants from disposing of the confiscated goods or interfering with their use or enjoyment of the home.

¶ 7 A motion for a temporary restraining order filed by the Groepers the same day was denied on October 12, 2016.

¶ 8 Defendants moved to dismiss the complaint, arguing that (1) under section 2-619(a)(4) of the Code of Civil Procedure (Code) (735 ILCS 2-619(a)(4) (West 2016)), the claims asserted were barred by other judgments and (2) under section 2-615 of the Code (735 ILCS 2-615 (West 2016)), the Groepers had failed to state a claim on which relief could be granted.

¶ 9 At the hearing on those motions, the circuit court inquired regarding Gregory's involvement in the foreclosure action. When the court asked if he had appeared in the foreclosure case, Gregory responded, "I only showed up to say I haven't been served, and these people don't have jurisdiction." And when the court asked whether he returned to court, Gregory replied, "I didn't go back there again." Gregory also explained to the court that, when he couldn't find a lawyer to represent him on his appeal from the judgment in the foreclosure action, he did not pursue the appeal, as he "figured it would be better to not screw it up by just leaving it alone."

¶ 10 The circuit court dismissed the Groepers' claims with prejudice. Calling the complaint "a blatant collateral attack on the court ordered foreclosure, sale of distribution [*sic*], and eviction," the court determined that the Groepers' claims were barred by *res judicata*. The court further determined that, even in the absence of *res judicata*, the Groepers' allegations were "conclusory

and insufficient at law," and given that defendants "were merely enforcing the court orders from the foreclosure action," there was "no set of facts that c[ould] be proven that would entitle [the Groepers] to relief in this matter."

¶ 11 The court denied the Groepers' motion for reconsideration, including their request for leave to file an amended complaint. The Groepers then appealed.

¶ 12 II. JURISDICTION

¶ 13 The circuit court dismissed the complaint in this case with prejudice on March 3, 2017. On April 3, 2017, the Groepers' filed both a motion to reconsider that ruling and a notice of appeal. Pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. Jan. 1, 2015), the notice of appeal took effect on June 14, 2017, when the circuit court denied the motion to reconsider. We thus have jurisdiction to review the dismissal of the Groepers' complaint pursuant to Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

¶ 14 We agree with defendants, however, that we lack jurisdiction to consider the Groepers' challenge to the circuit court's October 12, 2016, order denying their motion for a temporary restraining order. "[W]hen an appeal is taken from a specified judgment, the appellate court acquires no jurisdiction to review other judgments or parts of judgments that are not specified in or inferred from the notice of appeal." *Fitch v. McDermott, Will and Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010). The October 12 order was not specified in the Groepers' notice of appeal. And, even if it had been, an appeal from that order would be untimely (see Ill. S. Ct. R. 307(d)(1) (eff. Jan. 1, 2016) (providing that petitions for leave to appeal from the grant or denial of a temporary restraining order "shall be filed *** within two days of the entry or denial of the order from which review is being sought").

¶ 15 III. ANALYSIS

¶ 16 The Groepers make three arguments on appeal: (1) dismissal under section 2-619(a)(4) of the Code was improper because the foreclosure court lacked personal jurisdiction and its void judgment could be attacked at any time, (2) defendants should not have been allowed to present a defense because they were foreign corporations not registered to do business in Illinois, and (3) the circuit court should have allowed the Groepers to amend their complaint.

¶ 17 A motion to dismiss under section 2-619 of the Code "admits the legal sufficiency of the complaint but asserts that some affirmative matter defeats the plaintiff's claim." *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 4. When considering the circuit court's grant or denial of such a motion, our review is *de novo*. *Id.* We accept as true all well-pleaded facts and reasonable inferences that may arise from those facts. *Kanerva v. Weems*, 2014 IL 115811, ¶ 33.

¶ 18 A. *Res Judicata*

¶ 19 The Groepers assert that the circuit court in the foreclosure action lacked personal jurisdiction because there was no valid service on Gregory, Alexander, or a trustee purportedly holding legal title to the Dakin Property. They cite *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989), for the proposition that "[a] judgment entered by a court which fails to acquire jurisdiction over the parties is void and may be challenged at any time, either directly or collaterally." That the Groepers can challenge the court's jurisdiction at any time, however, does not mean that they can do so more than once. See *Chamblin v. Chamblin*, 362 Ill. 588, 592 (1936) ("A court's jurisdiction having been once attacked, the former adjudication precludes the raising of the question again."); *Moore v. Illinois Pollution Control Board*, 203 Ill. App. 3d 855, 861 (1990) ("the principles of *res judicata* apply to questions of jurisdiction as well as to other

matters—whether it be jurisdiction of the subject matter or of the parties").

¶ 20 The doctrine of *res judicata* bars a party from relitigating matters that were asserted or could have been asserted in a prior suit. *La Salle National Bank v. County Board of School Trustees of DuPage County*, 61 Ill. 2d 524, 529 (1975). Three requirements must be met for the doctrine to apply: (1) a final judgment on the merits; (2) an identity of cause of action; and (3) the parties or their privies must be the same in both actions. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). When the doctrine applies, it "extends not only to every matter that was actually determined in the prior suit, but to every other matter that might have been raised and determined in it." *Id.* at 339.

¶ 21 Here, the Groepers do not dispute that Gregory was a party to the foreclosure action, that Alexander is in privity with Gregory for purposes of litigation relating to the Dakin Property, that a final judgment was entered in the foreclosure action, or that Altisource and Fitts acted as agents of U.S. Bank, the prevailing party in the foreclosure action. And at the hearing on defendants' motion to dismiss in this case, Gregory plainly acknowledged that he had already unsuccessfully challenged the circuit court's jurisdiction over him in the foreclosure action and abandoned his appeal from the judgment entered in that case. Under these circumstances, *res judicata* applies and dismissal with prejudice pursuant to section 2-619(a)(4) of the Code was proper.

¶ 22 B. Defendants' Registration Status In Illinois

¶ 23 The Groepers also argue that dismissal was improper because defendants were, under the Business Corporation Act of 1983 (Act) (805 ILCS 5/1.01 *et seq.* (West 2016)), unregistered foreign corporations not authorized to do business in Illinois. They cite a portion of the Act providing that "[n]o foreign corporation transacting business in this State without authority to do so is permitted to maintain a civil action in any court of this State, until the corporation obtains

that authority." 805 ILCS 5/13.70(a) (West 2016). The circuit court correctly construed this provision to prevent unregistered foreign corporations from availing themselves of the courts to pursue their own claims or counterclaims, and not as a restriction on a defendant's ability to assert defenses when sued by another party. Indeed, as defendants point out, the very next paragraph of that section states that "[t]he failure of a foreign corporation to obtain authority to transact business in this State *** *does not prevent the corporation from defending any action* in any court of this State." (Emphasis added.) *Id.* § 13.70(b).

¶ 24 C. Leave to Amend

¶ 25 Finally, the Groepers argue that the circuit court "should have given Plaintiff Gregory additional time to investigate the matter [and] file additional pleadings." Nothing in the record indicates that the proposed amended complaint the Groepers have now attached to their appellate brief was ever filed in the circuit court, and we cannot consider it for the first time on appeal. A challenge to the denial of leave to file an amended pleading is generally forfeited when the moving party fails to proffer a proposed amendment in the circuit court. *Beahringer v. Roberts*, 334 Ill. App. 3d 622, 630 (2002).

¶ 26 Forfeiture aside, we agree with the circuit court that amendments further articulating the Groepers' impermissible collateral attacks on the final judgment in the foreclosure action—which we have concluded are barred by *res judicata*—would be futile. "[I]t is not an abuse of discretion to deny a motion for leave to amend when the proposed amendment would not cure the defect in the pleading." *Jessen v. Sverdrup & Parcel and Associates*, 218 Ill. App. 3d 901, 904 (1991). From our review of the record it appears that the Groepers sought leave to file an amended complaint twice: once before defendants had even moved to dismiss and again in connection with their motion for reconsideration. The circuit court questioned Mr. Groeper

regarding what new allegations he would make in an amended pleading and determined that those allegations all related to the Groepers' collateral attacks on the foreclosure action, *i.e.*, their theories that the underlying mortgage documentation was fraudulent and that the court in the foreclosure action lacked personal jurisdiction. Dismissal with prejudice was proper.

¶ 27 CONCLUSION

¶ 28 For the above reasons, we affirm the circuit court's dismissal with prejudice of the complaint in this matter.

¶ 29 Affirmed.