2019 IL App (1st) 180800-U

SIXTH DIVISION
February 22, 2019

Nos. 1-18-0800 & 1-18-0801 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES TAYLOR and KATHERINE TAYLOR,	)	
	)	Appeal from the
	)	Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
	)	
v.	)	17 CH 14687
	)	
JPMORGAN CHASE BANK, N.A., UNKNOWN OWNERS and NONRECORD CLAIMANTS,	)	
	)	Honorable Anna Demacopoulos,
	)	Judge Presiding.
	)	
Defendants-Appellees.	)	

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Those claims of error on appeal not clearly defined with pertinent authority cited and cohesive legal arguments presented are forfeited; the remaining claims raised in this cause of action are barred by *res judicata*; affirmed.

¶ 2 This appeal stems from a "wrongful foreclosure" action brought by plaintiffs-appellants James Taylor and Katherine Taylor (collectively, the Taylors), against defendant-appellee Chase Bank, N.A. (Chase). The Taylors alleged that Chase committed wrongdoing in connection with a prior foreclosure action that resulted in judgment against the Taylors and the judicial sale of the

Taylors' property. The Taylors alleged that Chase made fraudulent representations to the court in the prior foreclosure action. Chase filed a motion to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)), arguing that the complaint was barred by both *res judicata* and section 15-1509(c) of the Code (735 ILCS 5/15-1509(c) (West 2016)). The trial court dismissed the Taylors' complaint in its entirety with prejudice, finding that the claims in the complaint were barred by section 15-1509(c) of the Code. The Taylors now appeal, *pro se*, contending that the trial court erred when it dismissed their complaint. For the following reasons, we affirm.

¶ 3 On May 7, 2012, Chase filed a mortgage foreclosure complaint against the Taylors (12 CH 16916) after the Taylors defaulted on their payments under their mortgage and note. The Taylors alleged in their affirmative defenses that Chase did not own the mortgage or note and did not have standing to foreclose. They also contended that Chase made misrepresentations to the court regarding its ownership of the mortgage and note.

¶ 4 On December 10, 2013, Chase assigned the Taylors' mortgage and note to Bayview Loan Servicing, LLC (Bayview), and the assignment was recorded with the Cook County Recorder of Deeds on January 23, 2014. On February 14, 2014, Chase filed a motion to substitute Bayview as the party plaintiff in the foreclosure action, and that motion was granted. The Taylors then filed a motion to dismiss the foreclosure action, arguing that Bayview did not have standing. The motion was denied. On April 15, 2015, the trial court entered a judgment for foreclosure and sale of the Taylors' property. On July 17, 2015, the property was sold at a judicial sale, and the sale was confirmed on September 3, 3015.

¶ 5 On October 1, 2015, the Taylors appealed to this court, but that appeal was dismissed for failure to perfect the appeal. They then filed a petition pursuant to section 2-1401 of the Code

(735 ILCS 5/2-1401 (West 2016)) to vacate the order approving the sale, arguing that Chase never had standing to foreclose because it did not own their note or mortgage, and therefore Bayview also did not have standing. Bayview moved to dismiss the petition and the trial court granted the motion with prejudice.

¶ 6 On March 28, 2017, the Taylors filed a lawsuit against Bayview for wrongful foreclosure (17 CH 4455), arguing in part that Bayview never owned the note or mortgage. Bayview moved to dismiss the complaint, arguing that the Taylors' complaint was barred by section 15-1509(c) of the Code and by *res judicata*. The trial court dismissed the complaint with prejudice, finding that section 15-1509(c) of the Code served as a bar to any such action, and while the court believed that *res judicata* also applied, the court did not need to make that determination due to the applicability of section 15-1509(c).

¶ 7 On November 3, 2017, the Taylors filed the instant complaint for wrongful foreclosure against Chase. The Taylors alleged that Chase never owned their mortgage and accompanying note, and therefore Chase did not have standing to file the original foreclosure action or to assign the mortgage to Bayview. Chase filed a motion to dismiss, arguing that the Taylors' complaint should be dismissed pursuant to section 2-619 of the Code because it was barred by section 15-1509(c) of the Code and by the doctrine of *res judicata*. Chase argued that the Taylors were attempting to relitigate claims and issues that had already been litigated (or could have been litigated) in the original foreclosure action.

¶ 8 The trial court stated that Chase's counsel "laid out exactly why this case is barred by 5/15-1509(c) and *res judicata*." The trial court stated that there had been arguments made in the original foreclosure case (12 CH 16916) that were dismissed, and that the court had considered the same arguments in the Bayview wrongful foreclosure action (17 CH 4455), which were

barred by section 15-1509(c) of the Code. The trial court dismissed the Taylors' wrongful foreclosure complaint against Chase with prejudice, and the Taylors now appeal.

¶ 9 As an initial matter, Chase contends that the Taylors' opening brief does not conform to the Illinois Supreme Court Rules, and should be dismissed. The content of an appellant's brief is governed by Illinois Supreme Court Rule 341(h) (eff. May 25, 2018). Every appellant, including a *pro se* appellant, must comply with the requirements of Rule 341(h). *Ammar v. Schiller, DuCanto & Fleck, LLP*, 2017 IL App (1st) 162931, ¶ 16 ("Where a party has chosen to represent himself, he is held to the same standard as a licensed attorney and must comply with the same rules").

¶ 10 Pursuant to Rule 341(h)(6) (eff. May 25, 2018), a statement of facts "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Here, the Taylors' statement of facts is fraught with argument, and there are many statements that are unsupported by record citations.

¶ 11 Additionally, Rule 341(h)(7) (eff. May 25, 2018), requires a clear statement of contentions with supporting citations of authorities and pages of the record relied on. "Citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7)." *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. Here, the Taylors' argument section contains multiple factual contentions without any citations to the record, and multiple arguments without any citations to supporting authority. Additionally, the Taylors have cited several unpublished Illinois Supreme Court Rule 23 (eff. Apr. 1, 2018) orders that are "not precedential

and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case."

¶ 12 These rules are not merely suggestions, but rather are necessary for the proper and efficient administration of the courts. *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 691-92 (1992). "Issues that are ill-defined and insufficiently presented do not satisfy" Rule 341(h)(7) and are considered forfeited. *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6. This court is not a depository into which an appellant may dump the burden of argument and research. *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995).

¶ 13 We conclude that the Taylors' facts that do not contain record cites and the facts that are argumentative are disregarded, and that the unsupported arguments are considered forfeited. Forfeiture aside, we find that the trial court properly dismissed the Taylors' complaint pursuant to section 2-619 of the Code with prejudice, as the complaint was barred by *res judicata*. Section 2-619 motions present a question of law, which we review *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

¶ 14 Under section 2-619(a)(4), a complaint must be dismissed if "the cause of action is barred by a prior judgment," and under section 2-619(a)(9), a complaint must be dismissed if it is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(4), (9) (West 2016). In order for the doctrine of *res judicata* to apply, three requirements must be satisfied: "(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 privities." *River Park, Inc v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). If these three elements are met, *res judicata* will bar all claims "actually decided in the first action, as well as those matters that could have been decided in that suit." *Id*.

¶ 15 In this case, there is no question there was a final judgment on the merits rendered by a court of competent jurisdiction in the original foreclosure action (12 CH 16916) where the trial court entered a judgment and an order approving the sale and directing the distribution on September 3, 2015. *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11.

¶ 16 In assessing the identity-of-cause-of-action element, we apply the "transactional test," under which "separate claims will be considered the same cause of action *** if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *River Park*, 184 Ill. 2d at 311. This rule applies to counterclaims that the defendant in the initial suit could have raised because they involve the same operative facts as the claim in the initial suit. *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 617 (2007).

¶ 17 We conclude that Chase has established the identity-of-cause-of-action element here. The central claim in the original foreclosure action was that the Taylors had defaulted on the note, and consequently, Bayview had the right to foreclose on the mortgage. And that claim hinged on the even more fundamental notion that Bayview was the proper party to foreclose, *i.e.*, that Chase properly assigned the mortgage and note to Bayview.

¶ 18 In the present lawsuit, the Taylors argue that Chase did not have standing to bring the foreclosure action, and therefore did not have the authority to assign the note and mortgage to Bayview. Chase's right to foreclose and subsequently assign the note was of central importance to the original foreclosure proceedings, and thus the Taylors' claims in this lawsuit arose from the same operative facts that were at issue in the original foreclosure action.

¶ 19 Finally, there is an identity of parties or their privities where the Taylors and Chase were both parties in the original foreclosure action. While Bayview was substituted for Chase as the plaintiff in the foreclosure action, the "identity of parties" element is still met because Chase and

Bayview are in privity. See *Agolf, LLC v. Village of Arlington Heights*, 409 Ill. App. 3d 211, 220 (2011) (holding that privity exists between a party to the prior suit and a nonparty when the party to the prior suit adequately represented the same legal interests of the nonparty).

¶ 20 Accordingly, the elements of *res judicata* are satisfied here. Because we find that *res judicata* barred plaintiff's suit, we need not address whether section 15-1509(c), which states that any vesting title by deed pursuant to section 15-1509(b) shall be an entire bar of all claims of parties to the foreclosure, also barred the complaint. 735 ILCS 5/15-1509(c) (West 2016); see *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (reviewing court may affirm on any basis in record).

¶ 21 For the foregoing reasons, we affirm the trial court's judgment. The trial court did not err in concluding that the complaint was barred.

¶ 22 Affirmed.