

Missouri. On August 27, 2008, plaintiff filed a notice of filing foreign judgment and an affidavit in support thereof in the circuit court. The foreign judgment was a default judgment entered in the circuit court of Camden County, Missouri, on June 25, 2007. The Missouri case originated on April 16, 2007, when plaintiff filed a foreclosure petition against defendants herein, along with Tracy L. White, Sr., Sharon L. White, Leland C. Nollau, and Thelma Nollau. All of the defendants in the Missouri case were members of Wildwood Development, L.L.C. (Wildwood). The petition alleged three counts of default on certain promissory notes and guaranty agreements issued by plaintiff to Wildwood.

¶ 5 Count I pertained to a promissory note with an original principal sum of \$5.5 million, with a remaining balance of \$1,610,685. Count II pertained to a promissory note with an original principal sum of \$400,000 with a remaining balance of \$216,435. Count III pertained to a promissory note with an original principal of \$2,903,078 and a remaining balance of \$2,772,101.90. In response to the filing of foreclosure, negotiations ensued.

¶ 6 On May 8, 2007, plaintiff agreed to continue the foreclosure sale set for May 11, 2007, for an additional 10 days so that Wildwood could locate a buyer for the property. One of the attorneys handling the matter for Wildwood, Pete Smith, wrote a letter to plaintiff's attorney, Michael McDorman, in which he stated that if Wildwood could not come up with a buyer within the next 10 days, "Wildwood will consent to a foreclosure by your client, will not contest the same, and will not file Chapter 11 [bankruptcy]." The letter went on to state: "Wildwood would give [plaintiff] a bill of sale for all of the personal property owned by Wildwood on the premises and will not remove any such property in the interim. Providing that is done, [plaintiff] will release all guarantors from any liability on all notes." Smith also noted that if it was not what was agreed upon, McDorman should call him immediately, and Wildwood would proceed with the chapter 11 filing. Smith advised McDorman to "work out all details with Bob Pohl," who was the other attorney handling the matter for defendants.

¶ 7 McDorman did not respond to the letter. The foreclosure sale was thereafter continued twice. Ultimately, Wildwood located a buyer and set a closing date of May 21, 2007; however, the buyer failed to appear at closing. Plaintiff then foreclosed on the property. Defendants were served in the underlying action in Missouri on their guarantees. No responsive pleadings were filed on defendants' behalf.

¶ 8 The circuit court of Camden County, Missouri, entered a default judgment against defendants on June 25, 2007. Defendants learned of the default judgment in September 2007. In a letter dated September 13, 2007, Smith expressed "shock" at the entry of the default judgment and demanded the judgment be released because it "was contrary to our contractual agreement and was fraudulent." McDorman responded to Smith in a letter dated October 1, 2007. In that letter, McDorman notified Smith that he was withholding a formal response to Smith's letter and was attempting to work out a resolution through Bob Pohl. He said that if that failed, "you will have a complete and full response to your inquiry of September 13, 2007." The attorneys engaged in no further communication.

¶ 9 Defendants did not file a motion to set aside the default judgment until May 22, 2008, when all of the defendants in the Missouri action filed a motion to set aside. The instant case lay dormant in the circuit court of Madison County while defendants exhausted their Missouri remedies. On October 31, 2008, the circuit court of Camden, Missouri, denied defendants' motion to set aside the default judgment. On November 30, 2009, the Missouri Court of Appeals affirmed the circuit court's decision, finding that defendants failed to timely file the motion to set aside the default judgment. *First Bank of the Lake v. White*, 302 S.W.3d 161 (Mo. Ct. App. 2009). On December 22, 2009, defendants' motion for rehearing and transfer was denied.

¶ 10 On May 20, 2010, defendants filed a memorandum in opposition to registration of the foreign judgment. On May 26, 2010, plaintiff submitted a memorandum in support of its

petition to register the foreign judgment and a response to defendants' memorandum in opposition. On June 28, 2010, the circuit court issued its original order, and on July 6, 2010, it issued a 14-page amended order, granting registration of the foreign judgment. The circuit court found that defendants were collaterally estopped from requesting relief and that the full faith and credit doctrine and comity required registration of the foreign judgment. On July 28, 2010, defendants filed a motion to reconsider, which the circuit court denied. Defendants now appeal.

¶ 11

ANALYSIS

¶ 12 Defendants contend the trial court erred as a matter of law and violated their due process rights by determining that collateral estoppel barred defendants from attacking the foreign judgment on the issue of extrinsic fraud and denying an evidentiary hearing on the issue. Defendants insist that the Missouri court did not address the issue of extrinsic fraud, and, thus, the issue was not fully adjudicated, making *res judicata* principles inapplicable. Plaintiff responds that the Missouri Court of Appeals decision resolved all issues, and defendants are not allowed to relitigate them here. According to plaintiff, to allow defendants to relitigate the issues here would render the very purpose of the full faith and credit clause moot. We agree with plaintiff.

¶ 13 The full faith and credit clause of the United States Constitution (U.S. Const., art. IV, § 1) generally requires a state to give a foreign judgment at least the *res judicata* effect which would be accorded in the state which rendered it. *Durfee v. Duke*, 375 U.S. 106, 109 (1963). Full faith and credit requires that once an action is pursued to a final judgment, that judgment is conclusive in every other court as it is in the court which rendered the judgment. *First Wisconsin National Bank of Milwaukee v. Kramer*, 202 Ill. App. 3d 1043, 1047, 560 N.E.2d 938, 941 (1990). While a judgment debtor may collaterally attack a foreign judgment to prevent enforcement once the judgment has been properly filed with the circuit court, such

an attack can only be predicated on grounds that could not have been raised before the foreign court when the judgment was rendered. *Massie v. Minor*, 307 Ill. App. 3d 115, 120, 716 N.E.2d 857, 862 (1999). Collateral attacks by a judgment debtor are limited to the grounds that the rendering court lacked either subject matter jurisdiction or personal jurisdiction or that the foreign judgment was procured by extrinsic fraud. *Massie*, 307 Ill. App. 3d at 119, 716 N.E.2d at 861.

¶ 14 The preclusive effect of a prior adjudication on a subsequent claim or cause of action falls under the law of *res judicata*, which is separated into two distinct doctrines: (1) true *res judicata*, known as "claim preclusion," and (2) collateral estoppel, known as "issue preclusion." *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 404 Ill. App. 3d 543, 555, 936 N.E.2d 181, 192 (2010), *appeal allowed*, 239 Ill. 2d 551, 943 N.E.2d 1099 (2011). Both serve the same purpose of promoting judicial economy and preventing repetitive litigation. *Citizens Opposing Pollution*, 404 Ill. App. 3d at 555, 936 N.E.2d at 192. Utilization of collateral estoppel requires the following: (1) the issues be identical, (2) there is a final judgment on the merits, and (3) the party against whom an estoppel is asserted is a party or in privity with a party to the prior adjudication. *Illinois State Chamber of Commerce v. Pollution Control Board*, 78 Ill. 2d 1, 7, 398 N.E.2d 9, 12 (1979). Missouri adds an additional element that the party against whom the estoppel is asserted must have had a full and fair opportunity to litigate the alleged issue in the prior action. *Major v. Frontenac Industries*, 968 S.W.2d 758, 761 (Mo. Ct. App. 1998).

¶ 15 In the instant case, the trial court's July 6, 2010, amended order explains in detail that the issue of extrinsic fraud raised here was addressed by the Missouri circuit court. The trial court specifically stated:

"[Defendants] ask this court to allow them to present evidence on the issue of extrinsic fraud and to conclude that the presence of extrinsic fraud leading to the

Missouri judgment compels the conclusion that that judgment should not be given full faith and credit in Illinois. Considering, though, that the judgment debtors also assert that the Missouri court already decided the issue of whether extrinsic fraud was present, [defendants] effectively ask the Illinois court to sit in review of whether the trial court in Missouri was right or wrong in its conclusions about the existence of extrinsic fraud. Since this is so, [defendants] urge this court to take on the role of superintending the Missouri courts, and to rehear the case. This is impermissible, because under the doctrine of full faith and credit, the forum court will not rehear a case. *All Seasons Industries, Inc. v. Gregory*, 174 Ill.App.3d 700, 703, 124 Ill.Dec. 308, 529 N.E.2d 25 (1988)[.] If this court were to find that extrinsic fraud were shown, then there would be 'two state courts reaching mutually inconsistent judgments on the same issue. This is precisely the situation the Full Faith and Credit Clause was designed to prevent.' *Underwriters Nat'l Assurance Co. v. North Carolina Life and Accident and Health Ins. Guar. Ass'n*, 455 U.S. 691, 704, 102 S.Ct. 1357, 1365, 71 L.Ed.2d 558 (1982)."

Regarding the issue of extrinsic fraud, the trial court went on to point out that the Missouri trial court specifically found defendants did not have any deal with plaintiff in which plaintiff agreed that it would not file a foreclosure action.

¶ 16 The trial court's well-reasoned order goes on to state:

"The Missouri trial court found [defendants] were never advised they were not required to file a response to [plaintiff's] Missouri complaint. (Paragraph 24)[.] The trial court found that [plaintiff] and [defendants] did not have any agreement whatsoever that [defendants] did not have to answer the Missouri lawsuit. (Paragraph 26)[.] The court stated that it made findings based on the evidence, and stated what the evidence in the hearing relative to the point had been. *Id.* The attorneys involved

testified at the hearing on these issues. (Paragraph 28). The Missouri court understood extrinsic fraud to be such that induced a default, (page 39 of Exhibit G,) and ruled that instead of being caused by [plaintiff's] conduct, the failure of [defendants] to answer was owing to [defendants'] reckless neglect. *Id.* In short, it appears the Missouri trial court took evidence, made a good record, and made a judgment on the merits within the meaning of the Missouri cases."

Our own review of the record supports the trial court's findings in this regard.

¶ 17 Wildwood's attorney wrote a letter allegedly memorializing a deal, which included the release of defendants on their guarantees. Plaintiff's attorney did not respond, and, thereafter, the foreclosure sale was continued twice. In the meantime all defendants were served with summons in the underlying Missouri action. They contacted their attorneys, but no responsive pleadings were ever filed, and a default judgment was ultimately entered. The Missouri circuit court specifically found that "[t]here was no fraud on the part of plaintiff that induced the defendants to not answer or otherwise plead to the plaintiff's petition."

¶ 18 The Missouri circuit court made findings of fact that were reviewed by the court of appeals. Even though the Missouri Court of Appeals' basis for affirming the circuit court was timeliness, it is clear that the allegation of extrinsic fraud was addressed. In footnote 7, the Missouri Court of Appeals defined extrinsic fraud as "' 'fraud that induced a party to default or to consent to judgment against him.' ' " *First Bank of the Lake*, 302 S.W.3d at 169 n.7 (quoting *Mathers v. Allstate Insurance Co.*, 265 S.W.3d 387, 390 (Mo. Ct. App. 2008) (quoting *State ex rel. Lowry v. Carter*, 178 S.W.3d 634, 637 (Mo. Ct. App. 2005))). The court also noted as follows:

"To set aside a judgment 'on the ground of extrinsic fraud, a party must demonstrate its absence of fault, neglect, or inattention to the case.' [Citation.] Where the defaulting party is chargeable with neglect, that party is not entitled to equitable relief.

[Citation.] Failure to allege the absence of 'fault, neglect, or inattention is fatal to the action.' [Citation.] Defendants' motion to set aside in the instant case contains no such allegation." *First Bank of the Lake*, 302 S.W.3d at 169 n.7.

Moreover, we find defendants' decision to continue the instant matter compelling.

¶ 19 In the instant case, defendants asked the trial court to continue the litigation "until matters are resolved in Missouri" because "[t]his [o]pposition and [m]otion, as well as the underlying judgment in Missouri, depend on the handling of matters pending on review and currently being held under advisement by the circuit court in Missouri." Defendants participated in the Missouri case and were well aware that testimony was heard and evidence was taken. Only after the Missouri trial court decided against them and their appeal was rejected by the Missouri Court of Appeals and refused by the Missouri Supreme Court did defendants reject the notion that the instant action no longer depended on the outcome of the Missouri case.

¶ 20 Nevertheless, defendants assert that regardless of the opinions of the Missouri circuit court and court of appeals, they are entitled to a separate evidentiary hearing in Illinois on the question of whether extrinsic fraud existed and the denial of such violates their due process rights. In *Doctor's Associates, Inc. v. Duree*, 319 Ill. App. 3d 1032, 745 N.E.2d 1270 (2001), our colleagues in the First District rejected the same argument. That court held a court is barred from engaging in a due process review to render a foreign judgment void because of the full faith and credit clause. "A primary aim of the full faith and credit clause is to avoid the relitigation in other states of issues adjudicated to final resolution." *Doctor's Associates, Inc.*, 319 Ill. App. 3d at 1046, 745 N.E.2d at 1282-83. Relying on *Doctor's Associates, Inc.*, we reject defendants' due process claim.

¶ 21 The trial court's amended order granting registration of the foreign judgment is well-reasoned and thorough. We see no need to belabor the point. We are unconvinced by

defendants' contention that they are entitled to an evidentiary hearing in Illinois on the question of whether extrinsic fraud existed, and we find no error in the trial court's decision to grant registration of the Missouri judgment.

¶ 22 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed.

¶ 23 Affirmed.