

FIRST DIVISION
February 14, 2012

No. 1-11-0333

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

AGUDAS ACHIM NORTH SHORE)	Appeal from the
CONGREGATION,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
)	
v.)	No. 10 L 3966
)	
)	
RABBI PHILIP LEFKOWITZ, LEVI)	Honorable
LEFKOWITZ and MOSHE LEFKOWITZ,)	Joan E. Powell,
)	Judge Presiding.
Defendants-Appellees.)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

ORDER

HELD: Plaintiff's claims are not barred by the doctrines of *res judicata* or collateral estoppel. Pursuant to the doctrine of ecclesiastical abstention this matter will be referred back to the Rabbinical Court for further proceedings regarding plaintiff's claims.

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The Synagogue known as the Agudas Achim North Shore Congregation (plaintiff), appeals from a circuit court order granting the motion to dismiss of defendants, Rabbi Philip Lefkowitz and his sons Levi Lefkowitz and Moshe Lefkowitz, brought pursuant to section 2-619 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)).

In April 2010, plaintiff filed a four-count verified complaint against defendants for their alleged misappropriation of synagogue funds. Count I asserted a claim for breach of fiduciary duty; count II asserted a violation of the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et seq.* (West 1998)); count III asserted a claim for fraud; and count IV asserted a claim for conversion. The circuit court dismissed the verified complaint in its entirety pursuant to section 2-619 of the Code based on its finding that the issues in controversy had already been decided in an arbitration proceeding conducted by the Beth Din of Zedek Ecclesiastical Judicature of the Chicago Rabbinical Council (Rabbinical Court), and therefore relitigation of the matter was barred by the doctrine of collateral estoppel.

Defendants now contend on appeal, as they did in the circuit court, that the issue of their alleged misappropriation of synagogue funds was previously litigated in the arbitration proceeding and therefore relitigation of the matter is barred by the doctrine of collateral estoppel. Defendants further contend that the issue is barred by the doctrine of *res judicata*. Finally, defendants maintain that the dismissal should be affirmed on the alternative ground that plaintiff's cause of action is foreclosed by application of the doctrine of ecclesiastical abstention which bars civil courts from interfering in the internal affairs of religious bodies. For the reasons that follow, we reverse and remand with directions.

ANALYSIS

A motion to dismiss brought under section 2-619 of the Code admits the legal sufficiency of the complaint but asserts that a claim is defeated based on certain defects, defenses or other affirmative matter. *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 558 (2009). Collateral estoppel and *res judicata* are affirmative defenses properly raised in a motion to dismiss brought under section 2-619(a)(4) of the Code. *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 558 (2005); *Toys "R" us, Inc. v. Adelman*, 215 Ill. App. 3d 561, 564 (1991). The applicability of these doctrines are questions of law subject to *de novo* review. *In re J' America B.*, 346 Ill. App. 3d 1034, 1041 (2004).

Collateral estoppel is an equitable doctrine that precludes a party from relitigating an issue already decided in a prior proceeding. *Oskroba v. Village of Hoffman Estates*, 404 Ill. App. 3d 692, 696 (2010). A party seeking to invoke collateral estoppel in a subsequent action must establish three elements: (1) that the issue sought to be precluded is identical with the one presented in the prior proceeding; (2) there was a final judgment on the merits in the prior proceeding; and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior proceeding. *Oskroba*, 404 Ill. App. 3d at 696.

Here, the arbitration proceeding conducted by the Rabbinical Court cannot be given preclusive effect against plaintiff's claim against defendants for their alleged misappropriation of synagogue funds because the claim was never actually litigated in the arbitration proceeding where the Rabbinical Court determined that it did not have sufficient documentation and evidence to evaluate the claim. "[C]ollateral estoppel does not apply to issues that were not

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actually decided." *Lael v. Warga*, 155 Ill. App. 3d 1005, 1011 (1987).

In addition, the arbitration proceeding cannot be given preclusive effect against plaintiff's claim for alleged misappropriation of synagogue funds under the doctrine of *res judicata* for the same reason discussed above, the claim was not actually litigated and could not have been litigated in the prior arbitration proceeding. Although *res judicata* bars not only what was decided in the first action but also whatever could have been decided, it does not apply where an issue in the present action could not have been litigated in the earlier action. *Benton v. Smith*, 157 Ill. App. 3d 847, 853 (1987); *Hayes v. State Teacher Certificate Bd.*, 359 Ill. App. 3d 1153, 1162-63 (2005).

In order for *res judicata* to apply there must be: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of the causes of action; and (3) an identity of the parties or their privies. *State Farm Fire & Casualty Co.*, 394 Ill. App. 3d at 558. The issue of whether defendants were guilty of misappropriating synagogue funds was never adjudicated on the merits in the arbitration proceeding.

At the time the circuit court dismissed the verified complaint pursuant to section 2-619 of the Code there was no existing final judgment on the merits regarding whether defendants had misappropriated synagogue funds. Moreover, the parties in this action and in the arbitration proceeding are not identical nor are they in privity with one another. Defendants Levi Lefkowitz and his brother Moshe Lefkowitz were not parties to the arbitration proceeding and they were not in privity with their father, defendant Rabbi Lefkowitz.

Res judicata is an equitable doctrine. *Severino v. Freedom Woods, Inc.*, 407 Ill. App. 3d

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238, 244 (2010). We believe it would be inequitable to preclude plaintiff from asserting its claim regarding the alleged misappropriation of synagogue funds under the doctrine of *res judicata* where the Rabbinical Court in the arbitration proceeding stated that it did not have sufficient information from which it could render a decision concerning the claim. In sum, we find that plaintiff's claims are not barred by the doctrines of *res judicata* or collateral estoppel.

We believe that under the doctrine of ecclesiastical abstention, this matter should be referred back to the Rabbinical Court for further proceedings regarding plaintiff's claims in light of the fact that the parties agreed to appear before an arbitration panel of three rabbis to hear and determine their dispute. The allegations against defendants are tied to Rabbi Lefkowitz's status as the former rabbi of the Agudas Achim North Shore Congregation, his control over congregation funds, and his relationship with the particular board of trustees that instituted this suit. See, e.g., *Elmora Hebrew Center, Inc. v. Fishman*, 215 N. J. Super. 589, 597, 522 A. 2d 497, 501 (1987).

Illinois courts favor arbitration because it is an effective, expeditious, and cost-efficient method of alternative dispute resolution. *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 47 (2009). An arbitration before a Beth Din or Rabbinical Court is a valid and recognized form of alternative dispute resolution. *Herzog v. Oberlander*, 19 Misc. 3d 1113(A), 2008 WL 880184 at 7 (N.Y. Sup. 2008).

Reversed and remanded with directions to refer the matter back to the Rabbinical Court for further arbitration proceedings.

Reversed and remanded with directions.