

No. 14-3827

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 DISTRICT

CHEAPEST LLC 195 RAND)	Appeal from the Circuit Court
MOUNT PROSPECT,)	of Cook County.
)	
Plaintiff-Appellee,)	
v.)	
)	No. 13 M1 708626
XPRESSO INTERNATIONAL, INC.,)	
GOLDEN TOUCH PROPERTY)	
MANAGEMENT INC.; ANNANDALE II)	
LIMITED PARTNERSHIP; JOSEPH)	
IACOVO & UNKNOWN OCCUPANTS,)	
Defendants-Appellants.)	Honorable George F. Scully Jr.,
)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting plaintiff's motion for summary judgment in a forcible entry and detainer action when defendant's claim asserting its leasehold interest as a defense to plaintiff's action was barred by *res judicata* and collateral estoppel.

¶ 2 This is an appeal from an order granting plaintiff's Cheapest LLC 195 Rand Mount Prospect motion for summary judgment in a post-foreclosure commercial forcible entry and detainer action. On appeal, defendant Xpresso International, Inc. argues that the trial court erred

when it held that: (1) its leasehold interest in the property was terminated by the foreclosure action and the order confirming the judicial sale, and (2) its claim raising its leasehold interest as a defense to plaintiff's action for possession was barred by *res judicata* and collateral estoppel.

¶ 3

BACKGROUND

¶ 4 Plaintiff purchased the property known as 195 Rand Mount Prospect, Illinois at a foreclosure auction sale following a foreclosure action in *FirstMerit Bank, N.A. v. Annandale II Limited Partnership*, No. 10 CH 20707. Defendant used to operate a coffee shop on the premises and was a named defendant in the foreclosure action.

¶ 5 On May 19, 2011, the foreclosure court entered a judgment of foreclosure against defendant and Annandale II Limited Partnership, Joseph F. Iacovo, Golden Touch Property Management, and all Unknown Owners and Non-Record Claimants (collectively "defendants in the foreclosure case"). The judgment of foreclosure provided that all rights, titles, interests, claims, and liens of all the defendants regarding the foreclosed property "shall be terminated upon the confirmation of the judicial sale."

¶ 6 On October 5, 2011, defendants in the foreclosure case filed a Motion to Clarify the Record, alleging numerous defenses to the judgment of foreclosure including defendant's leasehold interest in the foreclosed property. On October 26, 2011, the foreclosure court denied defendants' Motion to Clarify the Record in the foreclosure case and entered the Order Confirming Judicial Sale.

¶ 7 On November 22, 2011, defendants in the foreclosure case appealed the judgment of foreclosure and the order confirming the judicial sale. On June 29, 2012, defendants' appeal in the foreclosure case was dismissed. *FirstMerit Bank, N.A. v. Annandale II Limited Partnership*, No. 11-3656 (June 29, 2012).

¶ 8 During the pendency of the appeal, defendant Iacovo filed an Emergency Motion to Stay Eviction. On May 30, 2012, the foreclosure court entered an order denying defendant Iacovo's motion. In the same order, the foreclosure court amended its Order Confirming Judicial Sale stating "[defendant] 'Xpresso International' and 'any other occupants' shall be stricken from Paragraph 10."

¶ 9 On April 16, 2013, plaintiff filed the instant forcible entry and detainer action against defendant. Defendant answered plaintiff's complaint asserting that its leasehold interest in the property was not terminated by the judgment of foreclosure or by the order confirming the judicial sale.

¶ 10 On September 15, 2014, plaintiff filed a motion for summary judgment against defendant in the instant case which the trial court granted. On November 25, 2014, the court denied defendant's motion for reconsideration and held that defendant's leasehold interest was terminated by the judgment of foreclosure and the order confirming the judicial sale. The court also determined that defendant's claim raising its leasehold interest as a defense to plaintiff's action for possession of the foreclosed property was barred by the doctrines of *res judicata* and collateral estoppel. This appeal followed.

¶ 11 On June 8, 2015, plaintiff filed a motion to dismiss this appeal stating that defendant had previously filed an appeal on the same issue which was dismissed by this court. This court denied plaintiff's motion without prejudice and with the right to renew the motion after the filing of defendant's appellant brief.

¶ 12

ANALYSIS

¶ 13 On appeal, defendant claims that the trial court erred in granting plaintiff's motion for summary judgment when defendant's lease was not specifically terminated by the judgment of foreclosure as required pursuant to 735 ILCS 5/15-1501(d) (West 2012). Defendant contends that the modification of the order confirming the judicial sale created a genuine issue of material fact regarding whether defendant's leasehold interest was terminated in the foreclosure action precluding the application of *res judicata* and collateral estoppel.

¶ 14 In response, plaintiff renews its previous motion to dismiss the appeal, arguing that defendant had previously filed an appeal raising the same issue which was dismissed by this court. Plaintiff also contends that its motion for summary judgment was properly granted by the trial court when defendant's claim was barred by *res judicata* and collateral estoppel.

¶ 15 Summary judgment is appropriate when the record, including any documents attached to the summary judgment motion, “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2010). Our review of a trial court's decision on a motion for summary judgment is *de novo*. *Fifth Third Mortgage Co. v. Foster*, 2013 IL App (1st) 121361, ¶ 8.

¶ 16 Defendant argues that, pursuant to section 15-1501(d) of the Mortgage Foreclosure Law, because the judgment of foreclosure did not specifically terminate its lease agreement, the circuit court erred in granting plaintiff's motion for summary judgment in its forcible entry and detainer action. Section 15-1501(d) provides that neither the voluntary appearance by a lessee whose interest in the real estate is subordinate to the interest being foreclosed, nor the act of making such lessee a party, shall result in the termination of the lessee's lease unless the termination of the lease or lessee's interest in the mortgaged real estate is specifically ordered by the court in the judgment of foreclosure. 735 ILCS 5/15-1501(d) (West 2012). However, section 15-1501(d),

titled "Right to Become Party," does not apply to defendant when defendant *was* a named defendant, appeared, answered, and litigated in the foreclosure action. Contrary to defendant's contention, section 15-1509 bars any challenge to a foreclosure judgment by any of the parties to the case once the circuit court confirms the sale of the property. 735 ILCS 5/15-1509(c) (West 2010). A final order in a foreclosure matter terminates a lease when the lawful occupants of foreclosed properties were made a party to foreclosure proceedings. *Fifth Third Mortgage Co. v. Foster*, 2013 IL App (1st) 121361, ¶ 11.

¶ 17 In the instant case, on May 19, 2011, the foreclosure court entered a judgment of foreclosure against defendant, stating that "[t]he lien rights of the [p]laintiff and the right, title, interest, claim or lien any and all parties in this foreclosure and all non-record claimants shall be terminated upon the confirmation of the judicial sale." Subsequently, on October 26, 2011, the foreclosure court entered an order confirming the judicial sale. Therefore, defendant's leasehold interest in the foreclosed property was effectively terminated at the conclusion of the foreclosure action.

¶ 18 Defendant maintains that the May 30, 2012, modification of the order confirming the judicial sale created a genuine issue of material fact regarding whether defendant's leasehold interest was terminated in the foreclose action. We disagree. The order confirming the judicial sale contained in paragraph 6 an order for possession of the foreclosed property. Paragraph 10 of the same order provided that in the event that the possession was withheld by the defendants in the foreclosure action, "the Sheriff of Cook County is directed to evict and dispose defendants Annandale II Limited Partnership, Joseph F. Iacovo, Golden Touch Property Management, [defendant], or any other occupants . . . without further order of the court ." While the circuit court modified the order confirming the sale to exclude defendant from the eviction order

contained in paragraph 10, the judgment of foreclosure terminating defendant's rights in the property was never modified. Therefore, defendant's argument that there was a genuine issue of material fact as to defendant's leasehold interest in the foreclosed property fails. Defendant's leasehold interest in the foreclosed property was terminated when the judgment of foreclosure became final upon the entry of the order confirming the judicial sale.

¶ 19 Furthermore, the trial court did not err when it determined that defendant's claim asserting his leasehold interest as a defense to plaintiff's action for possession was barred by the doctrines of *res judicata* and collateral estoppel. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). For the doctrine of *res judicata* to apply, three requirements must be met: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies. *Id.* at 335. Where all three requirements are met, *res judicata* 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.

¶ 20 The requirements for application of collateral estoppel are: (1) identity of issues; (2) assertion of estoppel against a party who was a party or in privity with a party to the prior litigation; (3) final judgment on the merits in the prior adjudication; and (4) actual litigation and determination of the factual issue against which the doctrine is interposed. *Peregrine Financial Group, Inc. v. Ambuehl*, 309 Ill. App. 3d 101, 110 (1999).

¶ 21 Both doctrines bar defendant's claim that his leasehold interest was a defense to plaintiff's action for possession of the foreclosed property. The order confirming the judicial sale was a

final order concluding the foreclosure action and effectively terminating defendant's lease. See *JP Morgan Chase Bank v. Fankhauser*, 383 Ill. App. 3d 254, 260 (2008). Furthermore, in *FirstMerit Bank, N.A. v. Annandale II Limited Partnership*, No. 11-3656, we dismissed defendant's appeal challenging the foreclosure action and the order confirming the sale. The same parties¹ were involved in the foreclosure action as are involved in the instant case. In addition, the record indicates defendant did raise the same defense, its leasehold interest, in the proceedings before the foreclosure court after the foreclosure court granted plaintiff's judgment for foreclosure. The foreclosure court considered the defense but ultimately rejected it because defendant failed to do so in a timely manner. Therefore, the trial court did not err here when it held that defendant's claim asserting the leasehold interest as a defense was barred by *res judicata* and collateral estoppel.

¶ 22 Finally, we note that in its brief plaintiff renewed its motion to dismiss defendant's appeal claiming that defendant had raised the same issues in its previous appeal. However, since we chose to address and reject defendants' arguments on the merits, we do not need to address plaintiff's motion to dismiss. Plaintiff also seeks sanctions against defendant pursuant to Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994) arguing that defendant's frivolous appeal and delay tactics severely prejudiced it and prevented the sale of the foreclosed property for nearly four years. Upon review, we find that the circumstances of this case do not warrant the imposition of sanctions against defendant.

¶ 23 CONCLUSION

¶ 24 Based on the foregoing, we affirm.

¹ FirstMerit Bank, N.A. substituted and represented plaintiff in the foreclosure case.

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¶ 25 Affirmed.