2013 IL App (1st) 123114-U

FIFTH DIVISION
November 22, 2013



No. 1-12-3114

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| VILLAGE OF WHEELING, an Illinois Municipal Corporation, and CITY OF PROSPECT HEIGHTS, an Illinois Municipal Corporation, | ) | |
| Plaintiffs-Appellee, | ) | Appeal from the Circuit Court |
| v. | ) | of Cook County |
| VIOLET C. SHIM, Individually; and FOSTER BANK, an Illinois Banking Corporation, | ) | 10 CH 45418 |
| Defendants-Appellants, | ) | Honorable Peter Flynn, Judge Presiding |
| and | ) | |
| MOTEL LAND CORPORATION, an Illinois Corporation, Defendant. | ) | |

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

**O R D E R**

*HELD*: Summary judgment in action to quiet title and for relief is affirmed, where (a) chain of title supported plaintiffs' claim of ownership and right to possession against purported subsequent buyer; and (b) mortgage lender incorrectly argued it was unfairly subjected to *res judicata*, collateral estoppel or law of the case when, in fact, lender had been free to argue any and all facts and law.

¶ 1 In this action to quiet title and for other relief, two municipalities alleged they

acquired land in 1986, but in 2006, the seller purported to convey the land to an intermediary that conveyed it to Violet Shim, who took two mortgages on the property. The circuit court considered the chain of title, which included deeds and a quiet title order entered in 1994, and granted summary judgment to the municipalities. Shim and her mortgage lender, Foster Bank, appeal, contending the documentary evidence was insufficient and that despite the entry of judgment against Shim, Foster Bank's rights to the property are still in dispute.

¶ 2 The real property at issue is .272 acres in Wheeling, Illinois, at the Chicago Executive Airport. Until 2006, the airport was known as Palwaukee Municipal Airport, reflecting its location near the intersection of Palatine Road and Milwaukee Avenue.

¶ 3 In 2010, the Illinois municipalities of Wheeling and Prospect Heights filed suit alleging that on or about December 15, 1986, they acquired airport land which included the .272 parcel via a warranty deed from Motel Land Corporation. Motel Land Corporation consisted of Esther E. Noffke, President and George J. Priester, Secretary. In 1994, the airport hotel at 1090 South Milwaukee Avenue in Wheeling needed to expand its parking lot and so the municipalities leased some of their property for that purpose, including the .272 acre parcel now in dispute, to a bank which assigned the lease to Motel Land Corporation. The 1994 parking lease expired in 2009. However, while the 1994 lease was in effect, Motel Land Corporation conveyed the airport hotel and purportedly conveyed the leased parking area via a quit claim deed to Palwaukee Holdings, LLC, on November 15, 2006. Palwaukee Holdings, LLC consisted of Noffke and Priester. On that same day in 2006, Palwaukee Holdings, LLC conveyed its hotel and parking area and purported to convey the leased parking area via warranty deed to Violet

Shim. On November 17, 2006, Shim took a $2.2 million mortgage loan from Foster Bank, and secured the promissory note with her "right, title and interest in and to the real property." On February 27, 2008, Shim borrowed an additional $300,000 from Foster Bank on the same property. Foster Bank recorded its mortgages on November 27, 2006 and March 25, 2008, respectively. The municipalities subsequently discovered that the airport hotel was using the municipalities' .272 acres despite the expiration of the parking area lease in 2009. On June 18, 2010, the municipalities demanded that Shim pay $36,802, as a fair amount for use of the land and that she quit possession within 10 days. When Shim disregarded this written demand, the municipalities filed a five-count action in the circuit court of Cook County on October 19, 2010.

¶ 4 Count I was an action to quiet title against Shim and Foster Bank and concluded that the allegations and exhibits indicated the municipalities were the rightful owners of the parking lot; the quit claim document from Motel Land Corporation to the other Noffke-Priester corporation known as Palwaukee Holdings, LLC in 2006 was void as to the parking lot because Motel Land Corporation had already sold the land to the municipalities in 1986; the warranty deed from Palwaukee Holdings, LLC to Shim was void as to the parking lot for the same reason; and Shim should be ordered to quit possession of the parking lot and Foster Bank should be ordered to record a release of all mortgages against the parking lot. Count II was a breach of contract action against Motel Land Corporation, indicating the 1994 parking lot lease prohibited the lessee from selling, conveying, or transferring the parking lot without prior consent, and that Motel Land Corporation's breach of this prohibition entitled the municipalities to a declaration that the purported transfer to Palwaukee Holdings, LLC in 2006 was "null and void." Count II

also sought damages for back rent dating to 2007 and indicated the lessee's misconduct triggered a contract clause shifting all reasonable litigation fees and expenses to the lessee. Count III was an unjust enrichment claim against Shim based on her uncompensated use of the parking lot. Count IV was a claim for possession against Shim. Count V was a trespass claim against Shim.

¶ 5 Shim and Foster Bank were initially represented by different attorneys, however, by the time they answered the complaint on March 16, 2011, they were both represented by attorneys James A. Larson and Nicole H. Daniel of the Chicago law firm Larson & Associates, P.C.

¶ 6 On February 15, 2011, the municipalities filed a motion for summary judgment as to Count IV only, seeking a declaration that their rights to possess the .272 acres were superior to Shim's. In a supporting memorandum filed on September 14, 2011, the municipalities argued in pertinent part: (1) "There is no dispute that the Leased Premises was conveyed to the Plaintiffs back in 1986 [when Motel Land Corporation quit claimed to the municipalities];" (2) Motel Land Corporation ineffectively attempted to reconvey the parking lot to Shim when it sold the hotel to her in 2006; however, (3) a land survey recently commissioned by Shim and Motel Land Corporation "confirmed that the Leased Premises at issue in this matter are in fact owned by the Plaintiffs."

¶ 7 Shim's written response brief took issue with the municipalities' contention that their possessory rights to the .272 acres dated as far back as 1986. She pointed out that the 1986 land sale was expressly subject to various easements and leases, including a lease which she found in the property records that was dated August 10, 1965, for a 50-year term (ending in 2015)

between Waukee Realty Corporation, as lessor, and Tri Cities Enterprises, Inc. Shim contended this lease demonstrated the municipalities had not proven their present right in 2011 to possess the .272 acres. Shim did not, however, contend that the 1965 lease gave *her* any rights to possess the property, and thus, it is unclear to this court why she considered the lease relevant to her dispute with the municipalities. In the property records, Shim had also found a 1994 circuit court order that was entitled "Order Terminating [1965] Leasehold and Vesting Title" which was the culmination of a 1992 condemnation action the municipalities brought against First Midwest Bank/Illinois, N.A., Motel Land Corporation, and other entities regarding airport property. The 1994 order stated, "The Leasehold Estate which is the subject of this action is terminated and plaintiff [municipalities] are hereby vested with fee simple title to the real property legally described on the attached Exhibit 'A'." Shim contended the 1994 court order "may establish that some lease was terminated," but it was not necessarily the 1965 lease she found in the property records. According to Shim, "The legal description attached to the Vesting Order may have been intended to describe a portion of the 1965 Leasehold but the description appears to be incomplete and, while it is not clear what parcel was intended to be described, it is not any identifiable parcel claimed by Plaintiffs."

¶ 8 The municipalities responded in part that the 1965 Lease was irrelevant because it had been nullified, either by the 1994 court order or by a "Memorandum of Lease Termination Agreement" dated April 21, 1995. The Memorandum of Lease Termination Agreement had been recorded. It indicated lessor Waukee Realty Group was succeeded by Priseter, Noffke, and Motel Land Corporation and that this successor-in-interest had agreed with lessee First Midwest

Bank/Illinois N.A. to terminate the leasehold in exchange for cash.

¶ 9 After considering the briefs and oral arguments, the circuit court entered a written order which stated:

> "The August 8, 1994 Vesting Order entered by the Circuit Court of Cook County, Illinois in Case Number 92 L 50218 which is binding on the parties and this Court, covers a parcel which includes the disputed land in this litigation. As a result of that inclusion, Defendant Violet C. Shim could not have obtained a valid fee or leasehold interest in that parcel and accordingly, the Court grants Plaintiffs' Motion for Partial Summary Judgment as to Count IV of the Complaint filed in the pending matter, thereby awarding possession to the Plaintiffs."

¶ 10 Having prevailed on Count IV by showing their superior rights of possession against Shim, the municipalities moved for summary judgment on the remaining counts and argued in part that the ruling about Count IV "resolves any questions that were remaining regarding Plaintiffs' superiority of title." The circuit court granted summary judgment to the municipalities as to Count I (quiet title), and the remaining counts were either voluntarily dismissed or resolved by court order. Notably, the municipalities prevailed on Count II of their complaint, in which they alleged the purported transfer from Motel Land Corporation to Palwaukee Holdings, LLC without prior consent was "null and void" and that the municipalities were entitled to damages totaling $33,213 for back rent and litigation costs. The current appeal concerns Counts I and IV only.

¶ 11 We review the circuit court's summary judgment order *de novo*. *Aames Capital*

*Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 703, 734 N.E.2d 493, 496 (2000). Summary judgment is properly granted where the pleadings and any deposition transcripts, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Village of Crestwood v. Ironshore Speciality Insurance Co.*, 2013 IL App (1st) 120112, ¶12, 986 N.E.2d 678. For the sake of clarity, we emphasize that two different parking lot leases have been discussed in these proceedings. The 1994 parking lot lease described in the plaintiffs' complaint expired in 2009 and is not at issue. The 1965 parking lot lease that Shim found in the property record was written to expire in 2015, however, a 1994 court order (known as the Vesting Order) and a 1995 agreement (known as the Memorandum of Lease Termination Agreement) indicate that the 1965 lease was terminated prior to its anticipated expiration in 2015. The defendants' appeal concerns the 1965 Lease.

¶ 12 In our *de novo* review, we first look to the chain of title established by the plaintiffs' complaint and exhibits. The exhibits include a certified copy of the warranty deed the municipalities received from Motel Land Corporation in 1986, which was duly recorded in Cook County, which is the county in which the real estate is situated. The Illinois Conveyances Act requires that all deeds, mortgages, and other instruments "relating to or affecting the title to real estate" be recorded in their county. 765 ILCS 5/28 (West 2010). The purpose of this provision is to give third parties the information they need to ascertain the status of a title to property. *King v. De Kalb County Planning Dept*, 394 Ill. App. 3d 699, 704, 917 N.E.2d 36, 42 (2009). A potential purchaser or lender can protect his or her interests by examining the public record.

*King*, 394 Ill. App. 3d at 704, 917 N.E.2d at 42. A potential purchaser or lender may rely on the completeness of the public record of conveyances and other instruments affecting a title, unless he or she has otherwise received notice or is chargeable with notice of a claim or interest that is inconsistent with the recorded documents. *Federal National Mortgage Ass'n v. Kuipers*, 314 Ill. App. 3d 631, 634, 732 N.E.2d 723 (2000); *First National Bank of Chicago v. Paris*, 358 Ill. 378, 385, 193 N.E. 207, 210 (1934) (recording gives notice to the public of incumbrance against real estate, and the amount, priority and ownership of the incumbrance; thus, in the absence of notice of facts not disclosed by the record, the public has a right to rely upon the title as shown by the record).

¶ 13 The fact that the municipalities' purchase from Motel Land Corporation in 1986 was made "subject to" certain easements and leases ("SUBJECT TO THOSE EXCEPTIONS ATTACHED HERETO AS EXHIBIT B") plainly did not diminish the municipalities' status as owners of the property, it simply meant that as the new owners, the municipalities had to honor the existing easements and leases affecting the land. See *e.g.*, *Schwarm v. Mexia Holdings, L.P.*, 308 Ill. App. 3d 587, 589, 720 N.E.2d 330, 331 (1999) (deeds are construed to ascertain and give effect to intention of the parties, and where 1938 deed was executed " 'subject to any rights now existing in any lessee or assigns under any valid and subsisting oil and gas lease of record,' " parties acknowledged that the lease persisted after sale and that the new owners were bound by the lease); *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 288 Ill. App. 3d 880, 884, 681 N.E.2d 564, 567 (1997) (where real estate was sold subject to existing lease, the buyer effectively "became a party to the lease" and could not be held liable for tortious interference as only third

parties are capable of interfering in a contractual relationship); *Patrick Media Group, Inc. v. Du Page Water Comm'n*, 258 Ill. App. 3d 1068, 1077, 630 N.E.2d 958, 964-65 (1994) (where quitclaim deed expressly stated acquisition was " 'subject to all existing occupancies, leases, licenses and limitations, ' " the buyer became the "successor landlord," but was then free to exercise its rights under the lease to terminate the tenancy with 30 or 60 days notice). The municipalities were not merely the new owners of land which included the .272 acres, they were also the new landlords of this property. A basic principle of property law is that a landlord-tenant relationship is one in which the tenant occupies the property of the landlord with his or her permission, and in subordination of the landlord's rights. 24 Ill. Law & Prac., Landlord & Tenant, ¶1 (August, 2013). Put another way, "a tenant is anyone who has the occupation and temporary possession of land whose title is in another." *Urban Investment & Development Co. v. Maurice L. Rothschild & Co.*, 25 Ill. App. 3d 546, 552, 323 N.E.2d 588, 593 (1975). "He is one who has the temporary use and occupancy of real property owned by another person, called the landlord, with the relation, duration and terms of the lease usually fixed by an instrument called a lease." *Urban Investment*, 25 Ill. App. 3d at 552, 323 N.E.2d at 593 (citing 51C C.J.S. Landlord and Tenant §1; Black's Law Dictionary 1935 (rev. 4th ed.)). Thus, the presence of tenants on the land in 1986 pursuant to the 1965 Lease did not impair Motel Land Corporation's ability to transfer ownership to the municipalities. The warranty deed in 1986 effectively transferred ownership from Motel Land Corporation to the municipalities. Landlord-tenant law also indicates that when the municipalities subsequently leased the small parking area back to Motel Land Corporation in 1994, the only property rights that were conveyed to Motel Land

Corporation were a tenant's rights of use and occupancy of the small additional parking area, not the ownership of or title to that land. See 24 Ill. Law & Prac. Landlord & Tenant, §1 (August 2013); *Urban Investment*, 25 Ill. App. 3d at 552, 323 N.E.2d at 593 (citing 51C C.J.S. Landlord and Tenant §1; Black's Law Dictionary 1935 (rev. 4th ed.)). These are the rights that Motel Land Corporation held in 2006 when Shim expressed interest in buying the airport hotel. These are the rights that Motel Land Corporation had in 2006 when it quit claimed the airport hotel and adjacent land to Palwaukee Holdings, LLC, and then Palwaukee Holdings, LLC conveyed the same property by warranty deed to Shim.

¶ 14 Another basic principle of property law is that a seller can convey no greater right or title than he or she has. *Syroishka v. Pieniozek*, 327 Ill. App. 3d 218, 63 N.E.2d 675 (1945); *Kretschmar v. Goven, Eddins & Co.*, 301 Ill. App. 8, 21 N.E.2d 932 (1939) (as a general rule, a vendor or pledgor can convey no greater right or title than he has); *Cree Development Corp. v. Mid-America Advertising Co.*, 294 Ill. App. 3d 324, 332, 689 N.E.2d 1148, 1153 (1997) ("it is elementary Property law that a quitclaim deed will convey whatever title or interest the grantor may have in the land at the time it is given, and only such title and interest;" "Cree Development purchased only what Harriet Goodall owned at the time that she transferred the property by quitclaim deed to Cree Development"); *Bryant v. Lakeside Galleries, Inc.*, 402 Ill. 466, 478, 84 N.E.2d 412, 418 (1949) ("The quitclaim deed of Lakeside Galleries to appellant passed no greater or better title than belonged to the grantor"); *In re Marriage of Didier*, 318 Ill App. 3d 253, 742 N.E.2d 808 (2000) ("One cannot quitclaim a title one does not possess"). Accordingly, as the owner of the airport hotel and *some* of the adjacent land, Palwaukee Holdings, LLC, could

transfer ownership of its property to Shim, but as the mere tenant of the small parking area that had been leased from the municipalities in 1994, Palwaukee Holdings, LLC, could transfer to Shim only a tenant's rights to use and possess that small parking area. However, the 1994 Lease expired in 2009 and is not a basis for Shim to claim possession of the municipalities' land in the current proceedings.

¶ 15 With these facts and principles in mind, we now turn to the appellants' arguments that the trial court erred in granting summary judgment as to Count IV regarding Shim's right to possess the .272 acres. Because summary judgment is a drastic means of disposing of litigation, it should be granted only when the right of the moving party is clear and free from doubt. *Swann & Weiskopf, Ltd. v. Meed Associates, Inc.,* 304 Ill. App. 3d 970, 974, 711 N.E.2d 395, 398 (1999). The purpose of a summary judgment proceeding is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *Land v. Board of Education of the City of Chicago*, 202 Ill.2d 414, 421, 432, 781 N.E.2d 249, 254, 260 (2002). Thus, although the nonmoving party is not expected to prove his case in response to a motion for summary judgment, the nonmoving party must present a factual basis that would arguably entitle him to judgment. *Land*, 202 Ill. 2d at 432, 781 N.E.2d at 260. Shim and Foster Bank first argue that the municipalities did not clearly establish their right to possess the disputed .272 acres, because the legal description that appears in the 1994 Vesting Order and the 1995 Memorandum of Lease Termination Agreement either did not encompass the .272 acres or because the legal description is so flawed it is ineffective. Shim and Foster Bank devote several full pages of their appellate brief to parsing the description before offering their opinion that the

originating and terminating points in the description are over 100' apart, and thus, it "fails to describe any parcel at all." They contend that recording these flawed documents did not put Shim on notice in 2006 of the municipalities' rights when she purchased the hotel and adjacent lands.

¶ 16 The municipalities respond that various exhibits in the record on appeal established their chain of title, their 1965 lease to provide adequate parking space at the motel did not impair the municipalities' ownership, and since Shim and Foster Bank are not contending they are successors-in-interest to the 1965 lease, they are arguing an academic issue rather than one which entitles them to ownership or possession. We agree with the municipalities.

¶ 17 Shim and Foster Bank's argument is unpersuasive to this court for several reasons. First, it is a new argument brought for the first time on appeal, which is a violation of the appellate rules. In the trial court proceedings, Shim and Foster Bank contended only that the legal description "*appears* to be incomplete" (emphasis added) and did not describe "any identifiable parcel claimed by Plaintiffs." In contrast to the vague statements they made to the trial court, Shim and Foster Bank now painstakingly walk through the property description:

> "The Vesting Order describes a parcel that commences at the intersection of the centerline of Milwaukee Avenue and the south line of Lot 1 and proceeds due west along the south Lot for 427.21 feet. *See* R. C496. At that point, the description turns southeast and describes a rectangular hangar area of approximately 47 by 50 feet. *See id; see also* R. C492 (Plaintiffs' survey)."

Shim and Foster Bank continue at this level of detail for several pages before drawing their

conclusion:

> "The failure of the legal description to return to the point of commencement and close the parcel renders the Vesting Order ineffective as a conveyance. See *Brunotte v. De Witt*, 360 Il. 518[, 528, 196 N.E. 489, 493-94] (1935) ("The purpose of a description of land contained in a deed of conveyance being to identify the subject-matter of the grant," a deed is effective if the description is sufficient to identify the subject matter.)"

¶ 18 A reviewing court cannot be expected to consider issues and arguments that were not considered by or presented to the trial court. *Jeanblanc v. Sweet*, 20 Ill. App. 3d 249, 254, 632 N.E.2d 623, 626 (1994). Accordingly, we find that the argument raised for the first time on appeal is waived. *Jeanblanc*, 20 Ill. App. 3d at 254, 632 N.E.2d at 626.

¶ 19 Waiver aside, we also find that the argument lacks merit. Although Shim and Foster Bank tried to create doubt about the adequacy of the legal description, the cases they cite indicate that a description need only be comprehensible by a surveyor and that a description which lacks detail or precision is, nonetheless, effective. See *Brennman v. Dillon*, 296 Ill. 140, 147-48, 129 N.E. 564, 567 (1920) (an uncertain description of property can be supplemented by extrinsic evidence and a description is "sufficiently definite" so long as it will "enable a surveyor to locate the property, either with or without the aid of extrinsic evidence"); *Brunotte*, 360 Ill. at 528, 196 N.E. at 494 ("Any description by which a parcel of property may be identified by a competent surveyor with reasonable certainty is sufficient."). In fact, a description which omits the state, county, town, or other "usual mode of description" such as references to a

governmental survey, lots and blocks, or metes and bounds, or which contains "a mere general description as a 'tract' adjoining other lands" will suffice where the land can be identified. *Brennman*, 296 Ill. at 147-48, 129 N.E. at 567; *Brunotte*, 360 Ill. at 528, 196 N.E. at 494. Shim and Foster Bank offered their personal critique of the legal description, instead of providing an expert's opinion that this particular deed is defective or citing authority which states that a legal description of real property is valid only when it begins and ends at the same place. Shim and Foster Bank's opinion of the legal description is not persuasive to this court. It does not lead us to conclude that the 1965 Lease remains in effect until at least 2015 and currently impairs the municipalities' rights to possess the .272 acres.

¶ 20 There is, however, a more fundamental problem with the defendants' reliance on the 1965 Lease that Shim recently found in the property records. Even if we assume that this 50-year lease is still in effect – despite the 1994 Vesting Order and the 1995 Memorandum of Lease Termination which both indicate that the 1965 Lease was terminated – the 1965 Lease has not been assigned to Shim and thus, does not give her any rights to possess the municipalities' .272 acres. Accordingly, there is no apparent reason for Shim and Foster Bank to have made the 1965 Lease the focus of their appeal. The 1965 Lease does not impair the municipalities' superior rights of possession over the .272 acres of land that the municipalities have owned since 1986.

¶ 21 For these reasons, we conclude that the trial court was correct in awarding possession of the .272 acres to the municipalities and we reject Shim and Foster Bank's arguments for reversing the entry of summary judgment as to Count IV of the municipalities'

action.

¶ 22 The appellants' second main argument on appeal concerns Count I. Shim and Foster Bank argue there is "no explanation" as to why awarding possession of the .272 acres to the municipalities as against Shim should also deprive Foster Bank of its rights in the property. Foster Bank contends the bank was "never given notice that its rights might be affected" by the court's consideration of Count IV and that it is unfair to now deprive the bank of its rights to the land on the basis of "an adverse judgment on a wholly different claim and wholly different legal theory." Foster Bank contends the ruling violates the principles of *res judicata, collateral estoppel*, and law of the case and is fundamentally unfair.

¶ 23 Foster Bank is incorrect in all respects. The explanation for why Shim's rights affect Foster Bank's rights is as follows: A mortgage is a consensual lien on real property owned by another party. *Kuipers*, 314 Ill. App. 3d at 634, 732 N.E.2d at 726. The lien secures the payment of a debt. *Kuipers*, 314 Ill. App. 3d at 634, 732 N.E.2d at 726. A mortgage gives the mortgagee (lender Foster Bank) no greater rights or interests than the mortgagor (borrower Shim) possesses at the time the mortgage is taken. 27A Ill. Law & Prac. Mortgages §115 (August 2013); *Rohrer v. Deatherage*, 336 Ill. 450, 455, 168 N.E. 266, 268 (1929) (the mortgagor cannot give greater rights than he himself possesses); *Miles Homes Inc. of Illinois v. Lyons*, 8 Ill. App. 3d 179, 181, 289 N.E.2d 469, 471 (1972) (where "purported mortgagors had no legal title or equitable interest that would sustain a mortgage," the purported mortgagee had no rights or interest in the property and could not foreclose upon that property). In other words, a mortgagor (borrower Shim) can pledge her rights to property, but she cannot pledge another party's rights to

property. This basic principle of property law was reiterated in the mortgage documents that Shim executed with Foster Bank indicating she was securing the $2.2 million and $300,000 promissory notes with *her* "right, title and interest in and to the real property." The chain of title, as discussed above, indicates that when Shim executed the mortgage documents with Foster Bank, she did not own the .272 acres of parking area that had been leased from the municipalities. Shim could not convey greater property rights than the rights she possessed at the time. Shim effectively mortgaged the hotel and the adjacent land she owned, but she did not mortgage the municipalities' small parking area that she did not own. Because Shim could not encumber another's property, her mortgage with Foster Bank could not and did not burden the municipalities' rights to the municipalities' land. Foster Bank's contention that its rights could be greater than Shim's rights to the municipalities' .272 acres is a misstatement of black letter property law and the express terms of Foster Bank's mortgage agreement with Shim.

¶ 24 Another incorrect contention is that Foster Bank was "never given notice that its rights might be affected" by the court's resolution of Shim's possession rights (Count IV). The record indicates that the municipalities sent a notice of motion, motion, and supporting memorandum of law to attorney James A. Larson, of Larson & Associates, P.C., who was the lawyer representing both Shim and Foster Bank. Furthermore, Larson & Associates filed a responsive memorandum of law, and subsequently received the municipalities' reply memorandum. In fact, after arguments and the trial court's entry of summary judgment as to Count IV against Shim, attorney Larson wrote a letter to the municipalities' attorney expressing his opinion that it was inappropriate to enforce the possession order against Shim while the other

counts of the complaint were pending and there was no final, appealable judgment order. Thus, the record indisputably indicates Foster Bank was given notice that Shim's possession rights were to be adjudicated and was aware that the court had ruled against her.

¶ 25 Later in its brief, Foster Bank contends that the resolution of Count IV as to Shim "did not affect Foster [Bank] and provided Foster [Bank] with no opportunity or incentive for litigation." Thus, perhaps when Foster Bank contends it was "never given notice that its rights might be affected," Foster Bank is arguing that the municipalities should have informed and cautioned the bank that its rights regarding the property were dependent upon its borrower's rights to the property and that the disposition of Count IV could go a long way in resolving the municipalities' entire five-count action. There is no principle of law or precedent that indicates the municipalities were obligated to explain mortgage law and property law concepts to a mortgage lender and spell out the fact that the lender's rights were derivative of its borrower's rights. If it is true that Foster Bank extended a $2.5 million mortgage loan to Shim without understanding that a mortgage gives the lender no greater rights or interests than the borrower possesses, this is unfortunate, but it is not grounds for reversing the entry of summary judgment against the lender.

¶ 26 Also, Foster Bank's reliance on the equitable doctrines of *res judicata*, collateral estoppel, and law of the case is misplaced reliance. These are equitable doctrines which are applied to prevent a party from relitigating a claim or issue. See *Nowak v. St. Rita High School*, 197 Ill 2d 381, 757 N.E.2d 471 (2001) (*res judicata*); *Village of Crestwood*, 2013 IL App (1st) 120112, ¶3, 986 N.E.2d 678 (collateral estoppel); *In re Christopher K.*, 217 Ill. 2d 348, 841

N.E.2d 945 (2005) (law of the case). There is no indication in the record, however, that the trial court determined that its ruling as to Count IV precluded Foster Bank from litigating its rights to the .272 acres. As best we can tell from the record tendered for our review, Foster Bank was free to brief and fully argue any theory, any fact, and any issue that it wanted to present to the trial court. The court did not curtail the litigation in any way. Put another way, because the court did not bar Foster Bank from litigating a claim or issue, the court did not apply the concepts of *res judicata*, collateral estoppel, or law of the case. Therefore, Foster Bank is invoking irrelevant concepts and then arguing they are irrelevant. We conclude the record does not support the contention that Foster Bank was treated unfairly by the trial court, and we reject this argument for reversal of the summary judgment ruling as to Count I.

¶ 27 Our *de novo* review leads us to find that Shim and Foster Bank did not raise any material issues as to Counts I and IV of the municipalities' pleading and that the municipalities were entitled to judgment as a matter of law on those counts. *Village of Crestwood*, 2013 IL App (1st) 120112, ¶12, 986 N.E.2d 678. We, therefore, affirm the entry of summary judgment as to Counts I and IV.

¶ 28 Affirmed.