FOURTH DIVISION
June 30, 2016

No. 1-15-1462

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

220 REMINGTON COMPANY, LLC, Plaintiff-Appellant and Cross-Appellee, v. U.S. BANK NATIONAL ASSOCIATION, as Trustee; C-III ASSET MANAGEMENT, LLC; and INDEPENDENCE PLUS, INC., Defendants-Appellees, and ELECMAT HOLDINGS, LLC and ELECMAT REMINGTON, LLC, Defendants-Appellees and Cross-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 08529 Honorable Rita M. Novak Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court judgment affirmed. Dismissal of complaint proper where claims raised in complaint were barred by *res judicata*, as they arose from same operative facts at issue in earlier foreclosure lawsuit. Trial court did not abuse its discretion in refusing to impose sanctions against plaintiff's attorney where, although claim was barred by *res judicata*, it was based on reasonable interpretation of law.

¶ 2 In this appeal, we must address whether *res judicata* bars the claims raised in a complaint filed by plaintiff 220 Remington Company, LLC regarding the sale of a foreclosure judgment by

defendants U.S. Bank National Association and C-III Asset Management, LLC (collectively, U.S. Bank) to defendants Independence Plus, Inc. (Independence Plus), Elecmat Holdings LLC (Elecmat Holdings) and Elecmat Remington LLC (Elecmat Remington) (collectively, Elecmat).

¶ 3 Plaintiff owned an office building in Will County that was the subject of foreclosure proceedings. After the foreclosure judgment was entered—but before the judicial sale of the property had occurred or been confirmed by the Will County circuit court—U.S. Bank sold the foreclosure judgment to Elecmat via an online auction. Plaintiff was not permitted to bid at this online auction. After Elecmat purchased the judgment, it substituted into the foreclosure case and proceeded to purchase the property at a judicial sale.

¶ 4 Following the foreclosure proceedings, plaintiff filed this suit in Cook County, alleging that the online auction was invalid. Specifically, plaintiff alleged that U.S. Bank and Elecmat had improperly agreed to exclude plaintiff from bidding on the foreclosure judgment and ignored the prospective tenants and buyers for the property that could have reduced the amount of money plaintiff owed under the note secured by the mortgage. Plaintiff pursued this argument through both state statutory and common-law tort theories.

¶ 5 U.S. Bank and Elecmat moved to dismiss the complaint, arguing that *res judicata* barred the claims because plaintiff failed to raise them in the foreclosure proceedings pending when the transfer of the foreclosure judgment occurred. The trial court agreed and dismissed the complaint.

¶ 6 We affirm the trial court's judgment. The claims in plaintiff's suit arose out of operative facts that were at issue in the foreclosure suit—whether Elecmat was a proper party to pursue the foreclosure. And plaintiff had an opportunity to contest the validity of Elecmat's purchase when

Elecmat moved to substitute into the case, or prior to the confirmation of the judicial sale by the Will County circuit court. Thus, *res judicata* barred plaintiff's claims.

¶ 7 We also affirm the trial court's denial of Elecmat's motion for sanctions against plaintiff. Although plaintiff's suit was barred by *res judicata*, plaintiff had a good-faith argument that *res judicata* should not apply, and plaintiff's attorney made no misstatements that would justify sanctions.

¶ 8 I. BACKGROUND

¶ 9 In 2005, plaintiff owned an office building located in Bolingbrook, Illinois. On May 25, 2005, plaintiff borrowed money from Wells Fargo Bank, securing the loan with a mortgage on the office building. Mortgage Electronic Registration System (MERS), acting as Wells Fargo's nominee, was listed as the mortgagee.

¶ 10 In April 2007, the only tenant of the office building told plaintiff that it intended to cancel its lease. Plaintiff began to market the building for lease or for sale, but did not find a new tenant or purchaser before the existing tenant canceled the lease in early 2008.

¶ 11 In early 2009, plaintiff defaulted on the loan. In April 2009, Wells Fargo and MERS, respectively, assigned the loan and mortgage to Bank of America. On May 8, 2009, Bank of America filed a foreclosure action in Will County.

¶ 12 Soon after filing the foreclosure suit, Bank of America moved to have a receiver appointed. The Will County court twice continued Bank of America's motion, allowing plaintiff to file reports detailing its efforts to market the property. On December 17, 2009, the court appointed a receiver pursuant to Bank of America's request. The court stated that the receiver should be present for any future attempts by plaintiff to market the property.

¶ 13 In May 2011, Bank of America assigned the note and mortgage to U.S. Bank. On August 16, 2011, the circuit court of Will County entered a judgment of foreclosure and sale. Plaintiff appealed that judgment to the Third District of this court.

¶ 14 While the appeal was pending, U.S. Bank began to accept bids for the judgment of foreclosure and sale, along with the loan documents, via an online auction service. The terms of U.S. Bank's auction prohibited plaintiff or any of its affiliates from bidding on the judgment or mortgage. According to plaintiff, this refusal to accept bids from plaintiff was "done as a retaliation against Plaintiff" for appealing the judgment of foreclosure.

¶ 15 Elecmat submitted the winning bid. According to plaintiff, Elecmat's $1.35 million bid was "far below" the offers plaintiff had submitted to U.S. Bank. Elecmat and U.S. Bank entered into a loan purchase agreement, in which Elecmat warranted that it was not affiliated with plaintiff in any way and agreed not to assign the foreclosure judgment or loan documents to plaintiff or its affiliates.

¶ 16 On December 21, 2011, Elecmat moved to take U.S. Bank's place in the foreclosure suit in Will County. In its written response to that motion, plaintiff only asserted that the loan purchase agreement should have been attached to Elecmat's motion. Plaintiff did not challenge the terms of the online auction where Elecmat purchased the judgment. On January 5, 2012, the court allowed Elecmat to be substituted into the foreclosure action.

¶ 17 Elecmat also moved to be substituted into the appeal pending before the Third District. On January 11, 2012, the Third District granted Elecmat's motion. On November 26, 2012, the Third District affirmed the judgment of foreclosure and sale. *Elecmat Remington, LLC v. 220 Remington Company, LLC*, 2012 IL App (3d) 110663-U.

¶ 18 At a sheriff's sale held on March 14, 2012, Elecmat submitted the winning bid for the property. In the Will County circuit court, Elecmat moved for an order approving the sale. On February 5, 2013, the court entered an order approving of and confirming the sale, and awarding possession of the property to Elecmat. Plaintiff did not appeal that judgment.

¶ 19 On May 20, 2014, plaintiff filed the complaint at issue in this case in the circuit court of Cook County. Plaintiff asserted four counts surrounding the transfer of the foreclosure judgment from U.S. Bank to Elecmat.

¶ 20 Count I alleged that U.S. Bank and Elecmat had violated the Illinois Antitrust Act (740 ILCS 10/1 *et seq.* (West 2010)) by unreasonably restraining the bidding process for the judgment of foreclosure (*i.e.*, by preventing plaintiff from bidding on the judgment) during the online auction. As a remedy, plaintiff sought a declaratory judgment declaring the assignment to Elecmat "null and void" and establishing "a constructive trust upon the Note and all related Loan Documents and upon the Office building" to prohibit any other transfers of the property. Plaintiff also requested an order requiring that a new auction for the judgment should be conducted, as well as treble damages.

¶ 21 In Count II, plaintiff alleged that, by excluding it from bidding on the judgment and mortgage, U.S. Bank and Elecmat had violated the Illinois Blacklist Trade Law (775 ILCS 15/1 *et seq.* (West 2010)) by entering into contracts that "discriminat[ed] against" plaintiff. Plaintiff again sought both a declaratory judgment stating that the online auction was void and a new auction. Plaintiff did not seek damages in Count II.

¶ 22 Counts III alleged a claim of tortious interference with business relationships and business expectancy by U.S. Bank. Plaintiff claimed that it had received four "bona fide purchase offers [for the office building] from outside parties, ranging from $4,000,000 to $6,775,000."

Plaintiff conceded that, if these offers were accepted, they would not have provided enough money "to pay the full loan amount plus the required prepayment penalty." Plaintiff also asserted that it had received offers from "at least" six prospective tenants, but acknowledged that those offers were for "a 'below-market' rental rate." Finally, plaintiff alleged that the Illinois Department of Central Management Services (CMS) had been involved in negotiating a possible lease for the Illinois Department of Public Health (IDPH) at the office building. Plaintiff said that it had made an offer to CMS that, if accepted, "would have *** satisf[ied] the [foreclosure] judgment in full." And, plaintiff asserted, once the judgment was sold to Elecmat with restrictions on Elecmat's ability to deal with plaintiff, CMS ceased its negotiations with plaintiff. In Count III, plaintiff sought "actual damages and punitive damages."

¶ 23 Count IV alleged tortious interference with business relationships and business expectancy by Elecmat. Plaintiff alleged that, once Elecmat purchased the judgment and mortgage, it failed to respond to any of plaintiff's communications regarding "the then current prospects for leasing part or all of the Premises and purchase of the Premises, including the State of Illinois, the Will County government offices and several private companies." As a remedy, plaintiff asked the court to place a constructive trust over the property to prevent its being sold or transferred, as well as "actual damages and punitive damages."

¶ 24 Both U.S. Bank and Elecmat moved to dismiss the complaint on the basis that plaintiff's claims were barred by *res judicata* and section 15-1509(c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2014)). They asserted that plaintiff's claims should have been raised in the Will County foreclosure proceedings. U.S. Bank further alleged that the complaint failed to state a claim on which relief could be granted.

¶ 25 After hearing argument, the trial court granted the motions to dismiss on the basis that plaintiff's complaint was barred by *res judicata* and section 15-1509(c). With respect to *res judicata*, the court found that "plaintiff's claims here arise from the same group of operative facts" as the Will County case, noting that "plaintiff challenges the conduct of U.S. Bank and Elecmat during the interval [between] judgment of foreclosure and final confirmation of the sale" and that "[a]ll of the challenged conduct related to the foreclosure and sale of the property."

¶ 26 Plaintiff filed a motion to reconsider the dismissal of the complaint, which the trial court denied. Plaintiff filed a timely notice of appeal from the denial of the motion to reconsider.

¶ 27 After plaintiff filed the notice of appeal, Elecmat petitioned the trial court to impose sanctions on Elecmat's counsel pursuant to Illinois Supreme Court 137 (eff. July 1, 2013). Elecmat argued that plaintiff's counsel had filed a frivolous complaint because "[e]ach of the claims asserted in [the] Complaint could have been asserted in the Will County Foreclosure case, and should have been asserted in the action prior to the entry of final judgment."

¶ 28 The trial court denied Elecmat's motion for sanctions. While the court found that filing the complaint was "ill advised," the court found that "there [were] at least strands in the complaint *** which purport to assert rights that might have arisen *** apart from" the foreclosure action. And, the court stressed, that the doctrine of *res judicata* is not easily defined and may not apply in circumstances where claims arise after foreclosure proceedings have taken place.

¶ 29 After the court denied the motion for sanctions, plaintiff filed a new notice of appeal relating to the dismissal of the complaint. Elecmat filed a timely cross-appeal from the denial of the motion for sanctions.

¶ 30 II. ANALYSIS

¶ 31 We begin by addressing plaintiff's appeal from the dismissal of the complaint, then turn to Elecmat's cross-appeal from the denial of sanctions.

¶ 32 A. Plaintiff's Appeal (Dismissal of Complaint)

¶ 33 Both U.S. Bank and Elecmat moved to dismiss the complaint pursuant to section 2-619(a)(4) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2014)), which permits dismissal of a complaint where "the cause of action is barred by a prior judgment." See *Marvel of Illinois, Inc. v. Marvel Contaminant Control Industries, Inc.*, 318 Ill. App. 3d 856, 863 (2001) (section 2-619(a)(4) incorporates doctrine of *res judicata*). We apply *de novo* review to a trial court's application of *res judicata* under section 2-619(a)(4). *Id.* We review the pleadings and all supporting documents in the light most favorable to the nonmoving party—in this case, plaintiff. *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶ 73.

¶ 34 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 privies." *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.*

¶ 35 In this case, the second element—the "identity of cause of action" element—is the central issue. Plaintiff alleges that its claims in the complaint were unrelated to the foreclosure proceeding, that they relate to defendants' alleged "wrongful refusal to deal with" plaintiff during the online auction of the foreclosure judgment and "their tortious interference with [plaintiff's] attempts to find a buyer or lessor for its commercial property." U.S. Bank and Elecmat contend that plaintiff's claims are nothing more than an attempt to unwind the foreclosure and sale of the

property, which plaintiff failed to contest when it had the chance to do so in the Will County foreclosure action.

¶ 36 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." *Id.* 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); *Corcoran-Hakala v. Dowd*, 362 Ill. App. 3d 523, 531 (2005).

¶ 37 We conclude that U.S. Bank and Elecmat have established the identity-of-cause-of-action element here. The central claim in the Will County foreclosure suit was that plaintiff had defaulted on the note and, consequently, Elecmat had the right to foreclose on the mortgage. And that claim hinged on the even more fundamental notion that Elecmat was the proper party to foreclose, *i.e.*, that U.S. Bank had properly assigned the foreclosure judgment and loan documents to Elecmat. See 735 ILCS 5/15-1208 (West 2012) (defining " 'mortgagee' " as "the holder of an indebtedness" and "any person claiming through a mortgagee as successor"); *Bayview Loan Servicing, LLC v. Nelson*, 382 Ill. App. 3d 1184, 1188 (2008) (plaintiff could not pursue foreclosure where it had not been assigned mortgage and note). Elecmat recognized the need to establish itself as the proper party to foreclose on the mortgage when it filed motions to substitute into the lawsuit in both the appellate court and the trial court.

¶ 38 In the present lawsuit, plaintiff challenges the validity of the assignment between U.S. Bank and Elecmat. Plaintiff alleges that the assignment was "null and void" because U.S. Bank and Elecmat precluded plaintiff from bidding on the foreclosure judgment or loan documents. In

other words, plaintiff claims that Elecmat never validly bought the lease and was thus not entitled to foreclose on the mortgage. Elecmat's right to pursue the foreclosure was of central importance to the foreclosure proceedings in Will County—particularly at the time that Elecmat moved to substitute into the case.

¶ 39 Similarly, plaintiff alleged that the bidding process ultimately led to prospective tenants or purchasers abandoning their interest in the property. According to plaintiff, if these deals had gone through, plaintiff could have "satisf[ied] the foreclosure judgment in full." This claim thus centered on plaintiff's indebtedness, and the amount of that indebtedness for which plaintiff should have been liable. Moreover, the availability of new tenants or purchasers was clearly at issue during the foreclosure proceedings, as the Will County circuit court had plaintiff report to it regarding its efforts to lease the property and directed plaintiff to discuss possible tenants or purchasers with the receiver. Thus, plaintiff's claims in this case arose from operative facts in the prior foreclosure action.

¶ 40 We also note that the relief sought by plaintiff in this case suggests that plaintiff's complaint was designed as an improper collateral attack on the Will County foreclosure judgment. The bulk of plaintiff's requests for relief asked the trial court to declare the transfer of the foreclosure judgment void, to establish a constructive trust over the property, and to order a new auction on the foreclosure judgment. The ultimate goal of this relief would appear to be that plaintiff wanted to submit a winning bid for the foreclosure judgment and regain the property. But the right to possess the property had already been litigated in the Will County proceedings. While we recognize that plaintiff did request damages, that fact does not alter our conclusion that plaintiff's claims arose from the same operative facts that were at issue in the Will County foreclosure proceedings.

¶ 41 Plaintiff cites *Turczak v. First American Bank*, 2013 IL App (1st) 121964, *Carey v. Neal, Cortina and Associates*, 216 Ill. App. 3d 51 (1991), and *In re Walker*, 232 B.R. 725 (Bankr. N.D. Ill. 1999), but each of these cases is distinguishable. In *Turczak*, the mortgagor argued that a second mortgagee who had elected to sue under the promissory note secured by its mortgage was barred by *res judicata* from also seeking to enforce the mortgage. *Turczak*, 2013 IL App (1st) 121964, ¶ 21. This court disagreed, because enforcement of the note and enforcement of the mortgage were separate claims that the second mortgagee was entitled to pursue separately. *Id.* ¶¶ 27, 29. Here, unlike *Turczak*, the foreclosure case and the instant suit did not involve the enforceability of the note and mortgage, respectively; both cases involved Elecmat's right to pursue the foreclosure.

¶ 42 In *Carey*, the plaintiff sued the defendant for fraud in selling real estate to the plaintiff. *Carey*, 216 Ill. App. 3d at 53. While the plaintiff's fraud suit was pending, a Florida court entered a judgment of foreclosure in favor of the defendant. *Id.* While this court held that the plaintiff's fraud claims were not barred by *res judicata* (*id.* at 64), it did so via an outdated test. Specifically, this court stated that, "when analyzing the identity of causes of action for *res judicata* purposes, the second suit is not barred if the proof of its elements differ from the proof required to prove the prior action." *Id.* at 55. But the Illinois Supreme Court abandoned that test when it adopted the transactional test in *River Park*, 184 Ill. 2d at 307-13. And, according to the dissent in *Carey*, *res judicata* should have barred the plaintiff's fraud claims under the transactional test. *Carey*, 216 Ill. App. 3d at 64-65 (Jiganti, P.J., dissenting). Thus, *Carey*'s analysis of the identity-of-causes-of-action element is no longer persuasive.

¶ 43 Finally, in *Walker*, the plaintiff filed a challenge to the defendant's claim in her bankruptcy proceedings, alleging that the defendant's predecessor in interest had failed to deliver

proper disclosures under federal law. *Walker*, 232 B.R. at 728. The defendant alleged that *res judicata* barred the plaintiff's claims because they should have been raised in earlier Illinois state court foreclosure proceedings. *Id.* at 731. The bankruptcy court disagreed, noting that the judgment of foreclosure "was simply based on [the plaintiff's] defaulting on a loan contract," whereas the disclosure claims did "not arise from the obligations created by the contractual transaction." (Internal quotation marks omitted.) *Id.* at 734. Here, unlike *Walker*, plaintiff's claims arise directly out of the obligations under the mortgage and note. Plaintiff alleged that, with respect to the prospective tenants and buyers of the property, both U.S. Bank and Elecmat "had the duty to respond to [plaintiff] as provided in the Note and Mortgage." And, unlike *Walker*, this case did not involve U.S. Bank's or Elecmat's compliance with federal disclosure statutes; it involved Elecmat's right to pursue the mortgage foreclosure as the purchaser of the foreclosure judgment. As we explained above, these facts were central to the Will County foreclosure case. We hold that U.S. Bank and Elecmat have established the identity-of-cause-of-action element.

¶ 44 Plaintiff also claims that Elecmat has failed to establish the identity-of-the-parties element with respect to two of the three affiliated entities we refer to collectively as Elecmat in this appeal—Independence Plus and Elecmat Holdings. (Elecmat Remington, the third entity, was the party substituted into the foreclosure proceedings.) According to plaintiff, Independence Plus and Elecmat Holdings were not parties to the foreclosure action, and Elecmat failed to show that Elecmat Holdings or Independence Plus were privies to Elecmat Remington.

¶ 45 *Res judicata* applies not only to the same parties to a prior action, but also to their privies. *Agolf, LLC v. Village of Arlington Heights*, 409 Ill. App. 3d 211, 220 (2011). "[P]rivity 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." (Internal quotation marks omitted.) *Id.*

¶ 46 Here, the allegations of the complaint show that Elecmat Remington acted in Independence Plus's and Elecmat Holdings' interests in pursuing the foreclosure suit. All three entities were affiliated with one another and acted in pursuit of the same legal interest in foreclosing on the mortgage. Elecmat Holdings was the entity that purchased the foreclosure judgment and loan documents from U.S. Bank. According to plaintiff's allegations, Elecmat Holdings purchased the judgment on Independence Plus's behalf: "[I]n signing the Loan Purchase Agreement, Defendant Elecmat Holdings was at all times acting as agent for and on behalf of an affiliated company, Defendant Independence Plus." Elecmat Holdings then assigned the judgment to Elecmat Remington, which was substituted into the Will County foreclosure case as the plaintiff and pursued the enforcement of that judgment. At all times, each of these entities represented the same legal interest—that of the purchaser of the foreclosure judgment. Thus, they were in privity with one another.

¶ 47 We find *Marvel of Illinois*, 318 Ill. App. 3d 856, persuasive with respect to our privity analysis. There, the court held that several related corporate entities were in privity for purposes of *res judicata* because each were parties to a chain of assignments of the rights under a stock purchase agreement, which was the subject of earlier litigation. *Id.* at 865. In reaching that conclusion, the court stated, "Privity for *res judicata* or collateral estoppel purposes contemplates a mutual or successive relationship to some property rights which were the subject matter of the prior litigation." (Internal quotation marks omitted.) *Id.* Here, like the entities in *Marvel of Illinois*, each of the corporate entities in this case shared a successive relationship to the rights

under the foreclosure judgment. Thus, Elecmat has established the identity-of-the-parties element of *res judicata*.

¶ 48 Having established that *res judicata* applies to the claims in this case, we must now consider whether the doctrine should apply because plaintiff could have raised its claims in the prior case. See *River Park*, 184 Ill. 2d at 302 (*res judicata* bars all claims "actually decided in the first action, as well as those matters that could have been decided in that suit"). Plaintiff contends that it could not have raised its claims during the foreclosure case because they did not arise until after the judgment of foreclosure had been entered.

¶ 49 We disagree. Plaintiff could have opposed Elecmat's motions to substitute into the foreclosure case, either in the appellate court or in the Will County circuit court. At that point, the trial court could have decided whether Elecmat had lawfully obtained the rights pursuant to the foreclosure judgment. Or plaintiff could have raised the unfairness of the auction process in opposition to the Elecmat's motion to confirm the judicial sale of the property. See 735 ILCS 5/15-1508(b) (West 2012) (court may decline to confirm sale of foreclosed property where "justice was not otherwise done"). But plaintiff did not. Thus, the trial court did not err in concluding that *res judicata* barred plaintiff's suit.

¶ 50 Because we have found that *res judicata* barred plaintiff's suit, we need not address whether section 15-1509(c) also barred the complaint, or U.S. Bank's assertion that the complaint failed to state claims on which relief could be granted. See *Beacham v. Walker*, 231 Ill. 2d 51, 61 (2008) (reviewing court may affirm on any basis in record). We affirm the dismissal of the complaint.

¶ 51 B. Elecmat's Cross-Appeal (Rule 137 Sanctions)

¶ 52 We now turn to the trial court's decision to deny Elecmat's request for sanctions. Illinois Supreme Court Rule 137(a) (eff. July 1, 2013) provides that a signature by an attorney on a pleading:

> "constitutes a certificate by him that he has read the pleading ***; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

If an attorney signs a pleading in violation of this rule, the court may impose "an appropriate sanction" on the attorney or the party he or she represents. *Id.*

¶ 53 Rule 137 "is designed to discourage frivolous filings, not to punish parties for making losing arguments." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15. And as a penal rule, it must be strictly construed. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The party requesting sanctions bears the burden of showing "that the opposing party made statements [it] knew or should have known to be false and that the statements were made without reasonable cause." *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 17-18 (2009). The trial court must apply an objective standard, asking what was reasonable at the time the party filed its pleading. *Id.* at 18.

¶ 54 The decision to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be reversed absent an abuse of discretion. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 578 (2000). A trial court abuses its

discretion when its decision is so fanciful or arbitrary that no reasonable person would agree with it. *People v. Kladis*, 2011 IL 110920, ¶ 23.

¶ 55 In this case, we find no abuse of discretion in the trial court's denial of sanctions. We see nothing in the record suggesting that counsel for plaintiff made any false statements. Nor did he file the complaint without a good-faith reason. Counsel based the allegations of the complaint on events that occurred after the foreclosure judgment had been entered and that, at least arguably, were not directly related to the foreclosure itself. As shown by our above *res judicata* analysis, no precedent clearly foreclosed plaintiff from pursuing its claims. Thus, counsel had a good-faith basis to argue that *res judicata* should not bar plaintiff's claims. Although we disagreed with counsel's argument that *res judicata* should not apply, that fact alone does not warrant the application of sanctions. Certainly, it does not show that the trial court's decision not to impose sanctions was arbitrary or unreasonable.

¶ 56 Elecmat cites *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53 (2011), for the proposition that, "[b]ecause the case at hand was dismissed based on *res judicata*, Rule 137 sanctions are proper." In other words, according to Elecmat, whenever a complaint is barred by *res judicata*, sanctions are appropriate. But nothing in *Nelson* stands for the broad proposition that, in any case where *res judicata* bars a complaint, sanctions are appropriate, and the trial court's decision not to impose them constitutes an abuse of discretion.

¶ 57 Moreover, the procedural posture and facts of *Nelson* are distinct from this case. In *Nelson*, the trial court *granted* the defendant's motion for sanctions. *Id.* at 58. Thus, the appellate court in *Nelson* was called on to determine whether the trial court had acted unreasonably or arbitrarily in imposing sanctions. Here, we must undertake the opposite inquiry: whether the trial

court acted unreasonably or arbitrarily in *not* imposing sanctions. Thus, the court's analysis in *Nelson* is less persuasive in resolving that inquiry.

¶ 58 More importantly, the record showed that the attorney in *Nelson* had made a " 'deliberate mischaracterization' " of the facts of the earlier lawsuit in an attempt to avoid *res judicata*. *Id.* at 69. Here, we see nothing in the record suggesting that plaintiff's counsel made any false or misleading statements about the Will County foreclosure case in order to avoid *res judicata*. Instead, he simply made a reasonable argument that the Will County foreclosure proceedings were distinct enough from the facts at issue in the foreclosure action. In these circumstances, the trial court did not err in refusing to impose sanctions.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment. The trial court did not err in concluding that the complaint was barred by *res judicata*, or denying Elecmat's motion for sanctions.

¶ 61 Affirmed.