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WESLEY S. SPEARS *v.* JOSEPH S. ELDER  
(AC 35485)

Gruendel, Beach and Bear, Js.

*Argued January 7—officially released April 28, 2015*

(Appeal from Superior Court, judicial district of Hartford, Bright, J. [judgment of strict foreclosure]; Vacchelli, J. [motion to open; judgment of foreclosure by sale; motion to approve committee sale, deed, and report; motion to open].)

*Joseph S. Elder*, self-represented, the appellant (defendant).

*Kevin J. Burns*, for the appellee (plaintiff).

*Opinion*

BEAR, J. The defendant, Joseph S. Elder, appeals from (1) the summary judgment rendered by the trial court in favor of the plaintiff, Wesley S. Spears, on his complaint and the defendant's counterclaim; (2) the court's order resetting the law days after the filing of the defendant's bankruptcy petition; (3) the court's approval of the committee's sale, deed, report, fees and expenses, and appraiser fees; (4) the court's denial of his claim of the existence of a bankruptcy injunction; (5) the court's overruling of his objections to its approval of the foreclosure sale; and (6) all orders of the court denying his post-February 24, 2014 motions to reargue and to open the judgment of foreclosure by sale.<sup>1</sup> The defendant claims on appeal that the court improperly (1) refused to adjudicate, acknowledge, and protect his statutory homestead exemption both at the time of the rendering of the judgment of foreclosure by sale and at the time the sale was approved, (2) rendered summary judgment in favor of the plaintiff on the complaint and on the counterclaim, and (3) denied his request to compel discovery. We affirm the judgment of the trial court.

The record reveals the following relevant facts and procedural history. On or about February 17, 2011, the plaintiff served the defendant with a complaint, asserting that he had obtained a judgment against the defendant that remained unpaid.<sup>2</sup> To secure the judgment, the plaintiff recorded on the West Hartford land records both a judgment lien on the defendant's residence located on Sidney Avenue in West Hartford on February 9, 2011, and a *lis pendens* on February 16, 2011. The plaintiff sought, among other things, to foreclose the judgment lien. On June 30, 2011, the defendant filed his answer, special defenses, and counterclaim. The defendant asserted three special defenses: (1) the plaintiff was guilty of spoliation, fraud, and misrepresentation regarding the judgment, (2) the plaintiff had unclean hands, and (3) the plaintiff should have been equitably estopped from enforcing the fraudulently obtained judgment. In his counterclaim, the defendant asserted that the plaintiff tampered with a witness the defendant intended to present at trial and, therefore, deprived him of his primary witness.

On September 23 and November 9, 2011, respectively, the plaintiff filed motions for summary judgment as to liability on his complaint and as to the defendant's counterclaim. The plaintiff asserted that the defendant made the same argument—that the underlying judgment was tainted because the plaintiff allegedly tampered with a key witness and induced her not to testify—in the previous lawsuit between the parties and, in his posttrial motion to set aside the verdict, and thus either *res judicata* or collateral estoppel barred the defendant from relitigating that claim in this case. In response, the defendant argued that foreclosure was

an equitable remedy and that the court had the power to allow a new trial if the underlying judgment was obtained through fraud.

On May 15, 2012, the court, *Peck, J.*, granted the plaintiff's motions. According to the court, the record showed that the defendant represented to Judge Elgo during the trial on the prior case that he was not going to call the witness who allegedly was the subject of the plaintiff's tampering activities and that the defendant had, in fact, thereafter, raised the witness tampering argument as a basis to set aside the jury verdict in that case. The court found that this evidence demonstrated that the tampering claim was actually litigated in the prior case, and that the defendant was estopped from collaterally attacking the underlying judgment on that ground. The court further found that the counterclaim was "little more than a restatement of the alleged witness tampering."<sup>3</sup> The plaintiff submitted a certified copy of the judgment lien, and an affidavit that stated that the judgment had not been satisfied, and the court found that the validity of those documents had not been contested by the defendant. The court, therefore, granted the plaintiff's motions for summary judgment as to liability on the complaint and on the defendant's counterclaim.

On May 23, 2012, the plaintiff filed a motion for strict foreclosure, which was granted by the court, *Bright, J.*, on September 4, 2012. Before the law days passed, on November 21, 2012, the defendant filed a voluntary chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Connecticut, and on February 22, 2013, he received a discharge of his debts. On March 22, 2013, the defendant appealed to this court from the judgment of strict foreclosure. On July 11, 2013, the plaintiff filed a motion to set new law days. On August 2, 2013, the defendant filed a motion in opposition to orders allegedly impairing his \$75,000 homestead exemption, and on August 5, 2013, the court, *Vacchelli, J.*, ruled that the defendant could assert his exemption in connection with the supplemental judgment to be rendered by the court. On that day, the court also opened the judgment of strict foreclosure, converted it to a judgment of foreclosure by sale, appointed a committee, and set a sale date of November 2, 2013. On August 26, 2013, the defendant amended his appeal to challenge the court's order resetting the law days after his discharge in bankruptcy.

On February 24, 2014, the court granted the plaintiff's motion for approval of the committee sale, stating in relevant part: "After hearing, the court grants the motion. It is not uncommon or illegal for a foreclosure sale to yield less than fair market value. . . . There is no stay in effect or other reason to stop the sale, and no stay will be granted. All of the defendant's issues were or could have been raised earlier and there is no

reason, in law and equity, to revisit the points.” The court approved the committee sale and deed, and accepted the committee report. On March 4, 2014, the defendant filed a motion to reconsider his objections to the entry of judgment approving the sale, asserting again that the plaintiff was unjustly enriched, had unclean hands, and that he committed fraud, witness tampering, and extortion in obtaining the judgment that formed the basis for the lien that was foreclosed. On April 10, 2014, the court denied the motion, finding that the defendant’s motion to reconsider was untimely, but even if that were not so, all of the arguments that the defendant had advanced were previously made or could have been made at an earlier time, or related to arguments that were made previously.

On March 14, 2014, the defendant filed an amended appeal from the court’s approval of the committee sale, deed, report, fees, and expenses, and from the court’s granting appraiser fees, denying his claim of applicability of a bankruptcy injunction, and overruling his objections to approval of the sale. Additionally, on March 14, 2014, the defendant filed a motion to open and set aside the court’s approval of the sale, asserting that the court had failed to adjudicate and protect the defendant’s statutory homestead exemption to which he was entitled pursuant to General Statutes § 52-352b (t), and that there were violations of bankruptcy orders requiring that all actions taken with respect to the foreclosure and any subsequent orders “should cease forthwith.”

On April 10, 2014, the court denied the motion. With respect to the defendant’s assertions that the court failed to adjudicate and protect his statutory homestead exemption, the court found that “[t]he argument is too late. That issue was resolved more than four months ago. . . . Moreover, the court in fact, acknowledged and provided for his homestead exemption.” (Citation omitted.) The court further found that with respect to the defendant’s assertion that his discharge in bankruptcy operated as a permanent injunction, that argument previously was raised by and decided adversely to the defendant. Additionally, his equitable claims also had been previously decided adversely to him. The court concluded that the defendant “had a fair trial and appeal” and that he had the “opportunity to raise and litigate and appeal all of his issues, and those matters have been concluded.” On April 30, 2014, the defendant filed another amended appeal from all of the court’s orders entered after February 24, 2014. Additional facts will be set forth as necessary.

## I

On appeal, the defendant first claims that the court improperly neglected and refused to adjudicate, acknowledge, and protect his statutory homestead exemption<sup>4</sup> both at the time of the rendering of the judgment of foreclosure by sale and at the time of the

entry of the orders approving the public auction, proposed sale, and the fees and report of the committee. We disagree.

We begin by stating that to the extent that the defendant's claim presents a question of statutory interpretation, our review is plenary. See *State v. Menditto*, 147 Conn. App. 232, 239, 80 A.3d 923 (2013) ("statutory interpretation is a question of law over which this court exercises plenary review" [internal quotation marks omitted]), rev'd in part on other grounds, 315 Conn. 861, A.3d (2015).

In support of their positions, both the defendant and the plaintiff rely on *In re Loubier*, 6 B.R. 298 (Bankr. D. Conn. 1980) and *In re Kane*, 236 B.R. 131 (Bankr. D. Conn. 1999). In *In re Loubier*, supra, 6 B.R. 299, the plaintiff sought relief from the automatic stay imposed by 11 U.S.C. § 362. The plaintiff had instituted foreclosure proceedings after the defendant defaulted on the mortgage, and on January 28, 1980, judgment of foreclosure by sale was entered, a committee of sale appointed, and a public auction set for June 7, 1980. *Id.*, 300. On that date, the committee accepted the highest bid, and on July 7, 1980, the Superior Court ratified and confirmed the sale. *Id.* In finding that it had no jurisdiction over the property, the bankruptcy court stated: "[I]n Connecticut, the law is that the rights of a mortgagor in mortgaged property are terminated by confirmation of a foreclosure sale, and that subsequent to such a sale, any interest the mortgagor may claim is in proceeds of the sale solely and not in the property. The delivery of a deed is a ministerial act only and does not constitute the event which terminates an equity of redemption." *Id.*, 303. The court concluded: "When the foreclosure sale of June 7, 1980 was confirmed by superior court order on July 7, 1980, at that moment, [the defendant's] equity of redemption in the property was terminated, and his interest, if any, thereafter was in the proceeds of the sale. [The defendant] filed his petition commencing his case on July 11, 1980, at which time, he had no legal or equitable interest in the property. Thus, the property was not property of the estate as of the commencement of the case, and this court would have no jurisdiction to order its further disposition." *Id.*

In *In re Kane*, supra, 236 B.R. 131, the bankruptcy court similarly found that the debtor's equity of redemption terminated upon the court's confirmation of the foreclosure sale, and this court has cited *In re Kane* for the principle that the owner's or mortgagor's homestead rights attach to the proceeds of sale. See *National City Mortgage Co. v. Stoecker*, 92 Conn. App. 787, 794, 888 A.2d 95 ("[u]nder Connecticut law, the rights of the mortgagor in the mortgaged property are terminated by confirmation of the foreclosure sale, and subsequent to such sale, any interest the mortgagor may claim is in the proceeds of the sale solely and not in the property.

*In re Kane*, [supra, 236 B.R. 133]”), cert. denied, 277 Conn. 925, 895 A.2d 799 (2006).

The defendant argues that his homestead rights should have been acknowledged, recognized, and adjudicated on August 6, 2013, upon the rendering of the judgment of foreclosure, or on February 24, 2014, at the time the court approved the committee’s sale, deed, report, and fees and expenses. The plaintiff argues that the defendant has accepted that his exemption is protected in accordance with *In re Loubier* and *In re Kane*, both of which recognize that once a foreclosure sale is confirmed and reduced to proceeds, the homeowner’s exemption rights attach to the proceeds of the sale. The plaintiff asserts that the transfer of the exemption from the property to the proceeds as occurred in this case is in accordance with Connecticut law as set forth in *In re Loubier* and *In re Kane*.

We agree with the plaintiff. The record reflects that the net proceeds of the sale were sufficient to cover the full \$75,000 amount of the defendant’s homestead exemption and that the plaintiff’s counsel forwarded that sum to the committee to be forwarded to the court.<sup>5</sup> Accordingly, the defendant’s claim is without merit.

## II

The defendant next claims that the court improperly rendered summary judgment in favor of the plaintiff on his complaint and on the defendant’s counterclaim. The defendant argues that there existed genuine issues of material fact, particularly with respect to his claims regarding the plaintiff’s conduct in the underlying civil action, which if proven would provide a basis for denying enforcement of the judgment lien in a foreclosure proceeding that sounds in equity, or which would provide a basis for the defendant’s successful prosecution of his counterclaim. We disagree.

The following additional facts and procedural history are relevant to this claim. The plaintiff moved for summary judgment on his complaint and on the defendant’s counterclaim on September 23 and November 9, 2011, respectively. The plaintiff argued that the defendant made the same argument—that the underlying judgment was tainted because the plaintiff tampered with a key witness and induced her not to testify—in the previous lawsuit in his special defenses and in his post-trial motion to set aside the verdict, and thus either *res judicata* or collateral estoppel barred the defendant from relitigating that claim in this case. In support of his motion for summary judgment, the plaintiff submitted the October 17, 2008 trial transcript, in which Judge Elgo requested, on more than one occasion, that the defendant make an offer of proof about how the witness’ testimony was relevant to the issue before the jury—the plaintiff’s reputation in the community. The transcript reveals that the defendant eventually decided

not to call the witness. Additionally, the plaintiff submitted a copy of the defendant's motion to set aside the verdict, which included an argument titled "witness tampering" that maintained that the defendant was deprived of the testimony of a material witness because of the plaintiff's actions. The plaintiff also submitted the December 8, 2008 transcript, in which the defendant argued his motion to set aside the verdict, including his argument that the verdict should be set aside because of witness tampering. Finally, the plaintiff submitted a certified copy of the judgment lien, and an affidavit that stated that the judgment had not been satisfied.

In response, the defendant argued that foreclosure was an equitable remedy and that the court therefore had the power to allow a new trial if the underlying judgment was obtained through fraud. In support of his argument, the defendant submitted two affidavits, one with the signature redacted and the other signed, explaining how the plaintiff allegedly tampered with the witness, a list of messages that were allegedly left by the plaintiff on the witness' telephone, and a copy of the underlying judgment.

The court, *Peck, J.*, found that the evidence "even when viewed in the most favorable light to the defendant, demonstrates that this issue was actually litigated, and thus the defendant is estopped from collaterally attacking the underlying judgment on this ground." The court concluded: "Any inequity could have been dealt with in the prior proceeding. In any event, the defendant represented to the trial judge that he did not intend to call the witness in question. Furthermore, the factual differences in the affidavits are insignificant to the legal issues in the case at bar. Therefore, equity does not warrant upsetting the enforcement of the lien.

"Similarly, the defendant's counterclaim is little more than a restatement of the alleged witness tampering. The reasons why issues reached in the previous judgment preclude litigation of the same issues regarding the defendant's purported equitable defense also preclude assertion of his counterclaim." The court found that the validity of the plaintiff's evidence had not been contested by the defendant and, therefore, granted the plaintiff's motions for summary judgment.

We begin with the relevant legal principles and standard of review that govern our analysis. We recently explained the application of the doctrines of res judicata and collateral estoppel. "Summary judgment is the appropriate method for resolving a claim of res judicata. . . . Practice Book [§ 17-49] provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . In deciding a motion for summary judgment, the trial court must view the evidence in the light most



favorable to the nonmoving party. . . . The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . [T]he scope of our review of the trial court's decision [with respect to a] motion for summary judgment is plenary. . . . Additionally, the applicability of *res judicata* . . . presents a question of law over which we employ plenary review. . . .

“Under the doctrine of *res judicata*, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim. *A judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose.* . . . The doctrine of *res judicata* [applies] . . . as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction . . . . The rule of claim preclusion prevents reassertion of the same claim regardless of what additional or different evidence or legal theories might be advanced in support of it. . . . Furthermore, [t]he judicial doctrines of *res judicata* and collateral estoppel are based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate. . . . Stability in judgments grants to parties and others the certainty in the management of their affairs which results when a controversy is finally laid to rest. . . . The conservation of judicial resources is of paramount importance as our trial dockets are deluged with new cases daily. *We further emphasize that where a party has fully and fairly litigated his claims, he may be barred from future actions on matters not raised in the prior proceeding.* But the scope of matters precluded necessarily depends on what has occurred in the former adjudication. . . .

“[T]he essential concept of the modern rule of claim preclusion is that a judgment against [the party] is preclusive not simply when it is on the merits but when the procedure in the first action afforded [the party] a fair opportunity to get to the merits. . . . [T]he appropriate inquiry with respect to [claim] preclusion is whether the party had an *adequate opportunity to litigate the matter in the earlier proceeding* . . . . In other words, the doctrine of *res judicata* does not preclude a plaintiff from pursuing claims that it previously had not been afforded the opportunity to litigate.” (Citations omitted; emphasis in original; internal quotation marks omitted.) *In re Probate Appeal of the Cadle Co.*, 152 Conn. App. 427, 434–37, 100 A.3d 30 (2014).

As found by the court, to the extent that the defendant

did not waive his claim of witness tampering in the underlying litigation by voluntarily not calling as a witness the alleged subject of the tampering and declining to have her testify, he raised or had sufficient opportunity to raise the claim in that litigation both during the trial, in postjudgment proceedings, and on appeal.

### III

The defendant's final claim is that the court improperly denied his motion to compel discovery. The defendant argues that the court's denial of his motion to compel discovery impeded his ability to prepare a full response to the plaintiff's motions for summary judgment and, therefore, constituted an abuse of discretion.

In his appellate brief, the defendant did not cite, analyze, or discuss the relevant rules of practice concerning discovery, discovery objections, the standards to determine whether an abuse of discretion has occurred in the discovery context, or any applicable precedent.<sup>6</sup> He also did not discuss substantively or analyze the impact of the court's ruling applying *res judicata* and collateral estoppel in the summary judgment context to bar his claims and defenses arising from his continued assertions of witness intimidation and tampering to his discovery requests, and he did not address the court's ruling that most if not all of his requests were irrelevant to the issues before the court. Additionally, by not filing a reply brief, the defendant did not respond to the plaintiff's argument that he did not follow the relevant rules of practice to place the discovery disputes properly before the court. "Our appellate courts repeatedly have recognized that [w]e are not required to review claims that are inadequately briefed. . . . We consistently have held that [a]nalysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) *State v. Mendez*, 154 Conn. App. 271, 275 n.2, 105 A.3d 917 (2014); see *Carabetta v. Carabetta*, 133 Conn. App. 732, 737, 38 A.3d 163 (2012) ("[i]nasmuch as the plaintiffs' briefing of the . . . issue constitutes an abstract assertion completely devoid of citation to legal authority or the appropriate standard of review, we exercise our discretion to decline to review this claim as inadequately briefed" [internal quotation marks omitted]). We decline to review the defendant's discovery claim as it was inadequately briefed.

The judgment is affirmed.

In this opinion the other judges concurred.

<sup>1</sup> The defendant also appealed from the court's original judgment of strict foreclosure. On November 1, 2013, this court dismissed that appeal because it became moot after the trial court rendered its judgment of foreclosure by sale.

<sup>2</sup> The trial court succinctly summarized the facts of the underlying action as set forth in *Spears v. Elder*, 124 Conn. App. 280, 5 A.3d 500, cert. denied, 299 Conn. 913, 10 A.3d 528 (2010): "The plaintiff and the defendant are both Hartford area attorneys. On June 26, 2004, town of Plainville police officers approached the home of one of the defendant's clients with the intent to

execute a search warrant. The warrant was pending, but the police officers prevented the client from entering his home. The client phoned the defendant, who advised him that the officers could not enter the house without a warrant. A struggle ensued, wherein an officer injured his arm. The client then entered the house, and began destroying evidence inside. A [police] supervisor, upset that an officer was hurt, seized the client's cell phone and called the number which the client dialed to reach the defendant. When the defendant answered the phone, he identified himself as the plaintiff.

"The supervising officer, under the belief he was speaking to the plaintiff, filed a grievance against him. As a result, the Statewide Grievance Committee conducted an investigation of the plaintiff and discovered the impersonation [of him by the defendant]. The plaintiff thereupon filed suit against the defendant, alleging defamation and fraud. At trial, the jury awarded the plaintiff general damages of \$32,000 and punitive damages of \$41,000. Including statutory interest, the total judgment in favor of the plaintiff amounted to \$74,404.99, which was affirmed by the Appellate Court."

<sup>3</sup> We note that although the defendant had raised his witness tampering claim during the prior trial and, thereafter, in postjudgment proceedings, he admits in his brief in this appeal that he did not raise any witness tampering claims in the first appeal.

<sup>4</sup> Connecticut's homestead exemption is codified at § 52-352b (t), which identifies assets that are exempt from postjudgment procedures. Subsection (t) of § 52-352b exempts "[t]he homestead of the exemptioner to the value of seventy-five thousand dollars, or, in the case of a money judgment arising out of services provided at a hospital, to the value of one hundred twenty-five thousand dollars, provided value shall be determined as the fair market value of the real property less the amount of any statutory or consensual lien which encumbers it . . . ."

<sup>5</sup> The plaintiff, however, in the United States Bankruptcy Court for the District of Connecticut, has challenged the defendant's right to the exemption.

<sup>6</sup> We note that the defendant did not file a reply brief, and did not include his discovery requests in his appendix. These discovery requests do not otherwise appear in the record.

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