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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2014-CA-000666-MR

COREY LEA — APPELLANT

v.

APPEAL FROM WARREN CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, SPECIAL JUDGE
ACTION NO. 14-CI-00016

FARMERS NATIONAL BANK — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND VANMETER, JUDGES.

J. LAMBERT, JUDGE: Corey Lea, proceeding *pro se*, has appealed from the April 8, 2014, order of the Warren Circuit Court dismissing his complaint on *res judicata* grounds. Finding no error, we affirm.

This lawsuit began with the filing of a *pro se* complaint by Lea against Farmers National Bank, Larry Hinton, Dan Harbison, and Gloria Lyles

(hereinafter "the defendants") on January 7, 2014, alleging violations of his civil rights and various state statutes, including tortious interference and breach of contract, as well as fraud and collusion in relation to his foreclosed farm property. Lea sought temporary injunctive relief, compensatory damages, and punitive damages as a result of his allegations.

The defendants moved to dismiss Lea's complaint for failure to state a claim upon which relief could be granted pursuant to Kentucky Rules of Civil Procedure (CR) 12.02(f) and for failure to join necessary parties pursuant to CR 12.02(g). They argued that Lea's claims were barred by *res judicata* by virtue of his prior state and federal actions. In the attached memorandum, the defendants explained in detail the procedural background of the related actions, which we shall set forth in pertinent part:

> FNB made a direct corporate loan to Corey Lea, Inc. in the original principal sum of $178,717.05 in October 2007. Harbison is the President of FNB. Lyles is the loan officer at FNB, who made the loan to Corey Lea, Inc. Hinton is the private attorney hired by FNB to ultimately foreclose the delinquent loan. The loan was made directly to Corey Lea, Inc. and personally guaranteed by the Plaintiff herein, Corey Lea, individually. . . . Corey Lea, Inc., a Kentucky corporation, is not a party to this action. The direct loan made by FNB to Corey Lea, Inc. is secured by a First Real Estate Mortgage dated October 25, 2007[.] . . .
>
> The loan made by FNB to Corey Lea, Inc. and personally guaranteed by Lea, is partially guaranteed to FNB by the United States Department of Agriculture ("USDA") but is a direct loan by FNB. Additionally, the USDA, Farm Service Agency ("FSA") made Lea a

> separate USDA loan which is secured by a Second Mortgage on the real property owned by Corey Lea, Inc.
>
> On February 10, 2009, FNB filed suit against Corey Lea, Inc., the USDA, and other various parties in Warren Circuit Court to foreclose its First Real Estate Mortgage as FNB had not received a payment on the loan since October 28, 2008. [*Farmers National Bank v. Corey Lea, Inc., et al.*, Civil Action No. 09-CI-00227].

In addition, the defendants described the contacts between Lea and Farmers prior to the foreclosure action. They described how FNB sought and obtained approval from FSA to foreclose on the land, and they also described Lea's personal bankruptcy filing. The circuit court granted Farmers a final and appealable judgment and order of sale on October 5, 2009, in the amount of $181,798.40, as well as interest. The court denied Lea's motion to set aside the final judgment, and neither Corey Lea, Inc. nor Lea filed an appeal to this Court.

The defendants went on to state:

> Unknown to FNB and its attorney, Lea had filed a subordinate request with FSA to refinance the FNB direct loan with Independence Bank. It was also unknown that FSA had denied Lea loan subordination as to its second mortgage in February 2008 so that this refinance could take place. FNB has never permitted Hon. David F. Broderick, Master Commissioner of the Warren Circuit Court, to sell the real property that is the subject matter of this disclosure. Any requests to set a sale date pursuant to the State Court Order have been halted given filings by Lea. FNB became aware Corey Lea, individually, had filed a discrimination complaint against FSA with the Office of Adjudication through the Office of Civil Rights for FSA. Sometime in early February 2010, a conference call was held between D. Leon King, with the Program Intake Division, and with Lea inquiring as to whether the Office of Adjudication was set to make

> a ruling. Lea, with FNB's attorney, Hinton, on the phone, was advised that the matter was submitted, and it was thought there would be a ruling by the end of February, 2010. FNB was trying to be deferential to Lea, but would not commit not to make a referral if the matter drew out in the Office of Adjudication since FNB, not the USDA or FSA, independently instituted the foreclosure action. There was no prohibition against FNB continuing with its direct foreclosure action, regardless of any preclusion that may exist with respect to the USDA or FSA.

At this juncture, an explanation of Lea's past suits will provide helpful context for the present action. Lea has filed multiple lawsuits in federal and state court related to the aftermath of his foreclosure, as described in the record and Farmers' brief, which we shall set forth below:

- February 19, 2010: Lea filed a *pro se* complaint styled *Corey Lea and Corey Lea, Inc. v. USDA, et al.*, in the United States District Court for the Western District of Kentucky, Case No. 1:10-cv-00029, alleging several causes of action related to Farmers' state court foreclosure action, including the claim that Farmers had violated a federal moratorium on foreclosures due to Lea's pending discrimination claim with the USDA. The federal court dismissed this suit on January 19, 2011, ruling that Lea had failed to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Lea appealed the dismissal and the orders denying his motions to reconsider to the Sixth Circuit Court of Appeals, which affirmed the dismissal on August 7, 2013. The Sixth Circuit held, in pertinent part, that Farmers did not have any obligation to delay its

foreclosure proceedings, despite the fact that Lea had a program discrimination claim pending with the USDA, and that Farmers had complied with the applicable federal regulations by submitting a liquidation plan and receiving approval for this plan from the USDA prior to instituting the foreclosure proceedings.

- April 18, 2012: Lea filed a complaint in the same federal district court styled *Corey Lea v. USDA, Farmers, et al.*, Case No. 1:12-cv-00052, this time naming several new additional defendants, including Warren County officials, the local health department, and federal officials. Lea alleged the same claims against Farmers as he had in his previous lawsuit. The district court dismissed Lea's complaint on July 11, 2013, for being filed outside of the applicable statute of limitations, for failing to plead sufficient facts, and for failing to state a claim. The Sixth Circuit affirmed this dismissal on June 4, 2014. In ruling on his argument that the district court abused its discretion by not permitting him to file a second amended complaint, the Court observed that Lea's "second motion to amend raised no new claims, but merely 'repackaged' his claims under a theory that defendants committed fraud – which is governed by a longer statute of limitations period." The Court described Lea's motion to amend as "a tactic to avoid dismissal[.]"

- July 22, 2013: Lea filed a third suit in the same federal court styled *Corey Lea v. USDA, Farmers, et al.*, Case No. 1:13-cv-00110, alleging the same claims raised in his second federal lawsuit and the amended complaints in that action as well as an additional claim that he had raised in his first federal lawsuit. The district court dismissed the bank defendants on December 10, 2013, on *res judicata* grounds. The court stated, "These claims have all been raised before. To the extent that they have not been, they are precluded now since they should have been raised before. [Lea's] proper recourse is to appeal the prior decisions, not file another action against the same parties raising the same issues." In ruling on a motion for sanctions on February 6, 2014, the district stated that Lea's "repeated filing of civil actions re-hashing the same arguments is improper and harassing and clearly unwarranted. His submission of frivolous and duplicative lawsuits serves no legitimate purpose. . . . The similarity of [Lea's] actions and the timing evince his bad faith and improper purpose in filing the present action." While the district court did not impose any monetary sanctions, the court did require Lea, and Corey Lea, Inc., to seek permission from the district court prior to filing any new actions or pleadings in that court. In order to do so, Lea would be required to "certify under oath or affirmation, subject to the pain and penalty of perjury or false statement, that any new complaint involves new

matters not heretofore raised in this court or any other court of competent jurisdiction." After the remaining defendants were dismissed on *res judicata* grounds on March 7, 2014, Lea filed an appeal to the Sixth Circuit. The district court's decision was affirmed on December 18, 2014, on *res judicata* grounds. In so holding, the Sixth Circuit explained in detail that claim preclusion applied to block his ability to file the suit under review.

- 2013: Lea moved to remove the state court foreclosure action (Case No. 09-CI-00227) to federal district court (Case No. 1:13-cv-00159). This removal action was undoubtedly a result of the Warren Circuit Court's September 24, 2013, order of referral to the Master Commissioner to sell the real property that had been foreclosed on in 2009. The district court granted the defendants' motion to remand the matter to state court on October 23, 2013, stating that Lea had "improperly removed this case with no legal justification. His motive is obviously to delay and hinder the sale of property as ordered by the state court." Lea's appeal to the Sixth Circuit was affirmed on January 3, 2014.
- January 7, 2014: Lea filed the *pro se* complaint in Warren Circuit Court that is underlying this appeal.
- January 17, 2014: Lea filed a suit in the United States Court of Federal Claims, styled *Corey Lea v. USA*, Case No. 1:14-cv-00444, in

which he alleged Tucker Act violations regarding the loan guarantee with Farmers. The case was dismissed on May 22, 2014, and on appeal (Case No. 14-5100), the Court of Appeals for the Federal Circuit remanded the matter for an analysis of third-party beneficiary law.

- May 5, 2014: Lea filed an action in Warren Circuit court styled *Lea v. Farmers*, Action No. 14-CI-00552. Lea did not appeal the court's dismissal on *res judicata* grounds.

We further note that Lea has filed at least two appeals to this Court from orders of referral to the Master Commissioner for sale of the property that had been foreclosed on in 2009. This Court dismissed both appeals, the first due to Lea's failure to timely file a notice of appeal from a final order and for failure to join indispensable parties to the appeal (No. 2013-CA-001831-MR) and the second one because it was taken from a non-final order (No. 2014-CA-000665-MR). In its brief in the present appeal, Farmers went to on state that the Master Commissioner sale was held on May 29, 2014, but two days prior to the sale, Lea filed for Chapter 13 bankruptcy. Farmers stated that there was no stay in effect related to the sale of the property because it was owned by a corporation, Corey Lea, Inc., not by Lea individually.

Turning back to the circuit court proceedings, while their motion to dismiss was pending, the defendants also sought to stay discovery and to quash Lea's discovery requests. In addition, Lea moved for a temporary injunction and a

restraining order in March 2014 to prevent any foreclosure action during the pendency of the suit. The same month, Lea moved to file a first amended complaint or to join necessary parties to his original complaint. It also appears that Lea sought to consolidate this action with the foreclosure action. The defendants objected to all of Lea's motions.

Following a hearing in March 2014, the circuit court granted the motion to dismiss and deemed the remaining motions moot. The circuit court entered three separate orders on April 8, 2014, to effectuate this ruling. The first order dismissed Lea's complaint and amended complaint against the defendants for failure to state a claim upon which relief could be granted and because all of his claims were barred by the doctrine of *res judicata*. In the second order, the court denied all of the remaining pending motions as moot. The third order was styled as the final judgment dismissing all of Lea's claims against the defendants. This appeal now follows.[1]

As Farmers states in its brief, the sole issue on appeal is whether the circuit court properly dismissed Lea's action below on *res judicata* grounds. This is a question of law, and therefore our standard of review is *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998). Lea spends a considerable part of his brief

[1] We note that in his notice of appeal, Lea did not name any appellees, and the only defendant specifically listed in the caption was Farmers. The individual defendants were not otherwise named in the notice of appeal, and they are not considered to be appellees in the present appeal. Therefore, it appears that Lea may have failed to name all of the indispensible parties to this appeal. *See* CR 73.03(1) ("The notice of appeal shall specify by name all appellants and all appellees ('et al.' and 'etc.' are not proper designations of parties)[.]" However, Farmers has not argued that the missing appellees are indispensible parties or that the appeal is therefore subject to dismissal. Therefore, we shall consider the merits of the appeal.

citing to the opinion of Court of Appeals for the Federal Circuit, which has no bearing on, or application to, the present case.

The doctrine of *res judicata* is an affirmative defense that bars repetitious suits involving the same cause of action. *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 464 (Ky. 1998). The Supreme Court of Kentucky has defined this doctrine as follows: "Under the doctrine of *res judicata* or 'claim preclusion,' a judgment on the merits in a prior suit involving the same parties or their privies bars a subsequent suit based upon the same cause of action." *City of Louisville v. Louisville Prof'l Firefighters Ass'n, Local Union No. 345*, 813 S.W.2d 804, 806 (Ky. 1991) (citations omitted). The *City of Louisville* Court cited to *Newman v. Newman*, 451 S.W.2d 417, 419 (Ky. 1970), in which the former Court of Appeals addressed the elements of *res judicata*:

> The general rule for determining the question of *res judicata* as between parties in actions embraces several conditions. First, there must be identity of the parties. Second, there must be identity of the two causes of action. Third, the action must be decided on its merits. In short, the rule of *res judicata* does not act as a bar if there are different issues or the questions of law presented are different.

In *City of Covington v. Board of Trs. of Policemen's & Firefighters' Ret. Fund*, 903 S.W.2d 517, 521 (Ky. 1995), the Supreme Court addressed the doctrine of collateral estoppel:

> Collateral estoppel is closely related to the doctrine of *res judicata*. The latter may be used to preclude entire claims that were brought or should have been brought in a prior action, while the doctrine of collateral estoppel

> only applies to issues actually litigated. Offensive collateral estoppel refers to the successful assertion by a party seeking affirmative relief that a party to a prior adjudication who was unsuccessful on a particular issue in that adjudication is barred from relitigating the issue in a subsequent proceeding. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.4, 99 S.Ct. 645, 649 n. 4, 58 L.Ed.2d 552 (1979). Defensive use occurs when a defendant seeks to prevent a plaintiff from asserting a claim the other plaintiff had previously litigated and lost against another defendant. *Id*.

The *Yeoman* Court went on to define claim preclusion as follows:

> Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. *Allen v. McCurry*, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980); *Worton v. Worton*, 234 Cal.App.3d 1638, 286 Cal.Rptr. 410 (2 Dist .1991), *rev. denied* (Cal) 1992 LEXIS 472; *County of Rutherford by Child Support Enforcement Agency v. Whitener*, 100 N.C.App. 70, 394 S.E.2d 263 (1990); Vestal, *The Constitution and Preclusion-Res Judicata*, 62 Mich.L.Rev. 33. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action. The issues in the former and latter actions must be identical. The key inquiry in deciding whether the lawsuits concern the same controversy is whether they both arise from the same transactional nucleus of facts. If the two suits concern the same controversy, then the previous suit is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action. *Worton*, 234 Cal.App.3d at 1638, 286 Cal.Rptr. 410; *Commonwealth, Dept. of Transp. v. Crawford*, 121 Pa.Cmwlth. 613, 550 A.2d 1053 (1988).
>
> For claim preclusion to bar further litigation, certain elements must be present. First, there must be identity of the parties. *Newman v. Newman*, Ky., 451 S.W.2d 417, 419 (1970). Second, there must be identity of the causes of action. *Id*. Third, the action must have been resolved on the merits. *Id*. The rule that issues

> which have been once litigated cannot be the subject matter of a later action is not only salutary, but necessary to the speedy and efficient administration of justice.
>
> . . . .
>
> For issue preclusion to operate as a bar to further litigation, certain elements must be found to be present. First, the issue in the second case must be the same as the issue in the first case. *Restatement (Second) of Judgments* § 27 (1982). Second, the issue must have been actually litigated. *Id*. Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. *Id*. Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment.

*Yeoman*, 983 S.W.2d at 465.

We agree with Farmers that all of Lea's claims in this case are barred by the doctrine of *res judicata*. As Farmers thoroughly argues in its brief, the claims Lea alleged had already been litigated in his previous suits, and if there were any other claims, those should have been raised in the prior actions because they arose from the same set of facts. Lea's fraud allegations were related to whether the federal moratorium on foreclosure prohibited Farmers from foreclosing on his farm property; this allegation was resolved in Lea's first federal lawsuit in Farmers' favor. Finally, we agree with Farmers that the resolutions in Lea's previous suits were decisions on the merits. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 399, 101 S. Ct. 2424, 2428, 69 L. Ed. 2d 103 n.3 (1981) ("The dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a 'judgment on the merits.'"); *Polk v. Wimsatt*, 689 S.W.2d 363, 364

(Ky. App. 1985) ("A dismissal with prejudice, of course, acts as a bar to again asserting the cause of action so dismissed. It thus has the effect of a judgment on the merits constituting the cause *res judicata*.").

For the foregoing reasons, the judgment of the Warren Circuit Court dismissing Lea's claims is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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