STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2060

Carl Green,
Appellant,

vs.

Tom Carlson, et al.,
Respondents.

Filed July 22, 2019
Affirmed
Halbrooks, Judge

Washington County District Court
File No. 82-CV-18-3512

Carl Green, Minnetonka, Minnesota (pro se appellant)

Thomas P. Carlson, Carlson & Associates, Ltd., Vadnais Heights, Minnesota (for respondents)

Considered and decided by Halbrooks, Presiding Judge; Slieter, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant contends that the district court erred by dismissing his complaint for failure to state a claim under Minn. R. Civ. P. 12.02(e). We affirm.

FACTS

Self-represented appellant Carl Green is the owner of Rainbow House, LLC, which owned a townhouse unit in Woodbury. In 2018, respondent Chamberlain Homeowners Association commenced a judicial-foreclosure action against Rainbow House to foreclose on an assessment lien. The district court granted summary judgment to Chamberlain and directed the sheriff to sell the property pursuant to Chamberlain's governing documents. After the foreclosure sale was held, the district court filed an order confirming the sale. Rainbow House did not appeal from the judgment.

While the judicial-foreclosure action was in process, Green filed a conciliation court action against Chamberlain and respondent Tom Carlson, Chamberlain's attorney, seeking to recover collection charges stemming from the unpaid assessments. The conciliation court judge awarded judgment to Carlson, noting that Carlson, as counsel for Chamberlain, was not a proper party. Green removed the matter to district court pursuant to Minn. R. Gen. Prac. 521 and amended his complaint to assert claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and "collateral attack on [the] judgment." Chamberlain and Carlson moved to dismiss Green's claim for failure to state a claim for which relief could be granted pursuant to Minn. R. Civ. P. 12.02(e).

Following a hearing, the district court dismissed Green's complaint with prejudice, determining that "[w]ith the exception of identifying the parties, [Green] provides no facts in the Complaint and demonstrates no entitlement to relief. [Green]'s complaint consists of nothing more than unsupported allegations and conclusions without any factual support." The district court also stated that Green's allegations "actually help to demonstrate that he is not entitled to relief" because the townhouse was owned by Rainbow House and not by Green, individually. Green "specifically asserts in his complaint that he 'is not a member of [Chamberlain]' . . . . And yet, all of his claims are based upon the assertion of a contract . . . between him and [Chamberlain]." The district court determined that Green not only failed to state a claim for which relief could be granted but also that Green's claim, which amounts to a collateral attack on the judicial-foreclosure action, is barred by res judicata and collateral estoppel. This appeal follows.

D E C I S I O N

When reviewing a claim dismissed pursuant to Minn. R. Civ. P. 12.02(e), "[w]e review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted).

Green's amended district court complaint asserts claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and a "collateral attack on the judicial-foreclosure judgment." Based on our review, Green's complaint does not set forth a legally sufficient claim for relief, even when construing all inferences in his favor.

Green's complaint merely sets forth unsupported allegations and conclusory statements without any factual support. For example, Green alleges breach of contract, but does not detail what contract was breached or how the breach occurred. And, as noted by the district court, Green's complaint actually undermines his claims because the complaint alleges that Green is not a member of Chamberlain. All of the claims asserted are based on an alleged contract between Chamberlain and Green that does not exist. The district court properly concluded that Green's complaint fails to state a claim upon which relief can be granted.

The district court further concluded that Green's claims amount to an impermissible collateral attack on the judgment in the judicial-foreclosure action. In Green's amended complaint, he asserts that count three is a "collateral attack on [the] judgment." Minnesota law does not permit collateral attacks on facially valid judgments. *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 599 (Minn. App. 1996), *review denied* (Minn. Feb. 26, 1997). A judgment is subject to collateral attack only when a lack of jurisdiction affirmatively appears on the face of the record. *Burma v. Stransky*, 357 N.W.2d 82, 86 (Minn. 1984). But Green does not assert a lack of jurisdiction or any other basis to permit a collateral attack on the judgment. Thus, the district court properly concluded that the claims are an impermissible collateral attack.

Finally, Green asserts that the district court erred in concluding that both res judicata and collateral estoppel apply to bar his claims. We review de novo a district court's application of collateral estoppel and res judicata. *See Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011) ("We review the application of res judicata de novo."); *Hauschildt v.*

Beckingham, 686 N.W.2d 829, 837 (Minn. 2004) ("Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo.").

Res judicata "prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Hauschildt*, 686 N.W.2d at 837. Res judicata applies not just to the claims actually litigated, but to "all claims that could have been litigated in the earlier action." *Id.* at 840. Collateral estoppel "applies to specific legal issues that have been adjudicated." *Id.* at 837. Neither is to be applied rigidly. *Id.*

Res judicata bars a subsequent claim when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* at 840.

Here, the claims alleged in the complaint arose from the judicial-foreclosure action, which resulted in a judgment that Chamberlain is seeking to enforce against Green. Green does not dispute that his claims against Chamberlain and Carlson arise from the same set of factual circumstances as the judicial-foreclosure action. And the judicial-foreclosure action was a final judgment on the merits. The question on appeal is whether elements two and four of res judicata are satisfied.

Green argues that, as the "assignee" of Rainbow House, he is not the same party as Rainbow House. Carlson and Chamberlain contend that since Green is the sole owner and member of Rainbow House, he is, for all practical purposes, the same party and is attempting to skirt the rule prohibiting his representation of the limited liability corporation as a non-lawyer by bringing these claims as an individual. *See Nicollet Restoration, Inc.*

v. Turnham, 486 N.W.2d 753, 754 (Minn. 1992) (stating that Minnesota "follows the common law rule that a corporation may appear only by attorney"). We agree. Further, as the "assignee" of Rainbow House, Green is certainly a party in privity with Rainbow House. *See Beutz v. A.O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 533 (Minn. 1988) ("Privity requires a person so identified in interest with another that he represents the same legal right."). Thus, the second element of res judicata is satisfied.

Green contends that he did not have a full and fair opportunity to litigate this matter in the judicial-foreclosure action. Whether a party had a full and fair opportunity to litigate "generally focuses on whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted). The record does not reflect that there were any procedural limitations or that the litigation was limited by the nature or relationship of the parties. Rainbow House had every incentive to fully litigate this matter, including the opportunity to appeal from the judicial-foreclosure action, which it did not do. *See id.* at 329 (holding that if a party believed a district court decision was erroneous, it had both the right and opportunity to appeal and had it done so, it would "not be in the position it finds itself in now"). Accordingly, the fourth element of res judicata is satisfied.

Green also contends that the district court erred in concluding that collateral estoppel bars his claim. For collateral estoppel to apply, the following elements must be met:

> (1) the issue must be identical to one in the prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt, 686 N.W.2d at 837 (quotation omitted). Green challenges the third and fourth elements—those pertaining to the same party or parties in privity and whether he had a full and fair opportunity to litigate. For the reasons outlined above, Green's contentions are without merit. The district court properly concluded that the principles of res judicata and collateral estoppel bar these claims.

Affirmed.