STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1638

Ronald Hagle, et al.,
Appellants,

vs.

Safeguard Properties Management, LLC,
Respondent,

Perpetual Reg LLC, et al.,
Respondents.

Filed July 6, 2020
Affirmed
Florey, Judge

Chisago County District Court
File No. 13-CV-18-842

Bradley Kirscher, Kirscher Law Firm, P.A., Roseville, Minnesota (for appellants)

Shaun D. Redford, Olson, Redford & Wahlberg, P.A., Edina, Minnesota (for respondent Safeguard Properties Management)

David J. McGee, Natalie R. Walz, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondents Perpetual Reg LLC, et al.)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

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

FLOREY, Judge

Appellants Ronald and Tara Hagle challenge the summary-judgment dismissal of their claims against respondents Safeguard Properties Management, LLC (Safeguard) and Perpetual REG LLC (Keller Williams) alleging damage to and loss of personal property following a mortgage foreclosure. Appellants assert that the district court erred by determining that their claims are barred under the doctrine of res judicata by a settlement in a previous action. We affirm.

FACTS

Appellants purchased a residence (the property) under a contract for deed in 2002. The property was also subject to a mortgage held by Mortgage Electronic Registration Systems, Inc. (MERS). In 2008, MERS foreclosed on the property, which was sold to MERS at a sheriff's sale in June 2008, subject to a six-month redemption period. On June 18, 2008, MERS's interest in the property was transferred to the Bank of New York Mellon (BNYM).

In 2009, BNYM commenced an eviction action against appellants. In April 2009, the parties reached an agreement to stay the eviction. BNYM brought a second eviction action in July 2012. Judgment was entered on behalf of BNYM. A writ of recovery and an order to vacate the property were issued. The Chisago County Sheriff executed the writ. Appellants were removed from the residence. After the eviction, Bank of America (BOA), acting as an agent for BNYM, handled the property. BOA contracted with respondent

Safeguard to provide property-preservation services. Safeguard assigned some of its duties to other entities, including respondent Keller Williams.

In July 2012, notices were posted at the property that indicated that Keller Williams could be contacted regarding personal property remaining at the property. Stickers were also posted that contained Safeguard's name and contact information. The stickers were present as late as June 2015. Through counsel, BNYM communicated directly with Keller Williams to direct the handling of personal property and who could access the property.

In December 2012, appellants commenced a civil action against BNYM and MERS, claiming, among other things, violation of Minn. Stat. § 504B.271 (2018) and Minn. Stat. § 504B.365 (2018).[1] Appellants claimed that they were denied the opportunity to collect their personal belongings and that the property was not adequately secured, resulting in the damage, loss, or unauthorized sale of $4.5 million worth of personal property.

Eventually, the parties reached a settlement. BNYM agreed to pay a confidential amount of money, and appellants agreed to a release of claims, which stated:

> **Release**: For consideration of the [P]ayment, the receipt and sufficiency of which are hereby expressly acknowledged, Ronald and Tara Hagle unconditionally and irrevocably release any and all of their claims against BNYM, MERS, and BNYM and MERS's subsidiaries, affiliates, servicers, agents, attorneys and other persons or entities similarly connected to BNYM or MERS, including but not limited to Bank of America, N.A. This release does not extend beyond BNYM, MERS, or BNYM and MERS' subsidiaries, affiliates,

[1] The district court noted that while appellants did not specifically bring a claim for negligence, they did "raise the issue of negligence in their [T]rial [B]rief/amended [S]ummary [J]udgment [M]emorandum . . . stating that '[t]here were over 185 Police Calls in the first 2.5 years when BNYM negligently cared for Plaintiff's property.'"

> servicers, agents, attorneys and other persons or entities similarly connected to BNYM or MERS.

On November 9, 2018, appellants' claims against BNYM and MERS were dismissed on the merits, and with prejudice.[2] On July 23, 2018, appellants commenced the instant action against Safeguard and Keller Williams, alleging violation of Minn. Stat. § 504B.271, violation of Minn. Stat. § 504B.365, and negligence or negligence per se.

Safeguard and Keller Williams moved for summary judgment. Following a motion hearing, the district court granted summary judgment to both Safeguard and Keller Williams, concluding that appellants' claims were barred by res judicata. This appeal follows.

D E C I S I O N

On appeal from summary judgment:

> [W]e review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted. We review de novo whether a genuine issue of material fact exists. We also review de novo whether the district court erred in its application of the law.

STAR Ctrs., Inc. v. Faegre & Benson, L.L.P., 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted). "[W]e may affirm a grant of summary judgment if it can be sustained on any grounds." *Doe 76C v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

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[2] Appellants attempted to repudiate the settlement, which led to additional litigation to enforce it. The district court concluded that the settlement was enforceable and ultimately determined the meaning and scope of the release-of-claims provision. The district court also ordered that appellants' claims against BNYM and MERS were dismissed with prejudice.

The doctrine of res judicata "concerns circumstances giving rise to a claim and precludes subsequent litigation—regardless of whether a particular issue or legal theory was actually litigated. Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) (citation omitted). To determine whether an issue is barred by the doctrine of res judicata, the court must consider whether: (1) the prior claim involved the same factual circumstances; (2) the prior claim involved the same parties, or their privies; (3) the prior claim was resolved by a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the claim. *Rucker v. Schmidt*, 794 N.W.2d 114, 120 (Minn. 2011). "[A] judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). "The application of res judicata is a question of law that [appellate courts] review de novo." *Id.* at 221.

Appellants assert that the district court erred by applying res judicata, claiming on appeal that their prior claim did not involve the same set of factual circumstances, it did not involve the same parties or their privies, there was not a final judgment on the merits, and they did not have a full and fair opportunity to litigate. However, appellants conceded in district court that this claim arose from the same set of factual circumstances as the previous lawsuit and that there was a final judgment on the merits. We limit our review to arguments raised in district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Appellants argue that Safeguard and Keller Williams are not privies of BNYM. But the record reflects that BOA was an agent of BNYM. "There is no prevailing definition of

privity which can be automatically applied" to all cases. *Margo-Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 200 N.W.2d 45, 47 (Minn. 1972). Privity "expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties." *Id.*

Here, BOA contracted with Safeguard to manage the property preservation during the eviction process, and Safeguard contracted with Keller Williams. The interests of both Safeguard and Keller Williams were aligned with BNYM in the eviction process and were thus represented by BNYM in the underlying action. The district court did not err by determining that Safeguard and Keller Williams are in privity with BNYM.

Finally, appellants argue that they did not have a full and fair opportunity to litigate their claims. Appellants claim both that they did not know about Safeguard or Keller Williams's involvement until 2017 and that they did not understand BOA's role. The record belies these assertions. There has been nearly a decade of litigation surrounding the underlying facts in this case, and the record establishes that appellants had or should have had knowledge of Safeguard's and Keller Williams's involvement with the property and eviction due to the posted stickers, which were visible on the property from 2012 to 2015. Further, it is uncontroverted in the record that as far back as November 9, 2012, appellants' counsel was sending emails to Keller Williams regarding appellants' personal property. The district court did not err by concluding that appellants had a full and fair opportunity to litigate.

Affirmed.