


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDDIE TUCKER; AND IDA
HANSON,
Appellants,
vs.
SOUTH SHORE VILLAS
HOMEOWNERS ASSOCIATION;
ANGIUS & TERRY COLLECTIONS,
INC.; IYAD HADDAD; RESOURCES
GROUP, LLC; LIDO ISLE COURT
TRUST; AND JACQUELINE TAYLOR,
Respondents.

No. 68096

FILED

DEC 16 2015

TRACIE K. LINDEMAN
CLERK OF APPEALS COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a complaint and expunging a lis pendens in a wrongful foreclosure action. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Appellants filed a complaint against respondents alleging wrongful foreclosure, fraud, and breach of fiduciary duty regarding a property appellants previously owned. All respondents, including the HOA, the HOA's collection agency, and the parties that purchased the property at the foreclosure auction, sought to dismiss the complaint on various grounds and also to expunge the lis pendens they allege appellants improperly filed on the property. Ultimately, the district court dismissed appellants' complaint with prejudice on claim preclusion grounds based on prior litigation with respondents and their privies. The district court also expunged the lis pendens. This appeal followed.

"Whether claim preclusion is available is a question of law reviewed de novo." *G.C. Wallace, Inc. v. Eighth Judicial Dist. Court*, 127 Nev. 701, 705, 262 P.3d 1135, 1137 (2011). Claim preclusion is a defense

that prevents the relitigation of a previously resolved claim. *Elizondo v. Hood Mach., Inc.*, 129 Nev. ___, ___, 312 P.3d 479, 483 (2013). It “protect[s] the finality of decisions and prevent[s] the proliferation of litigation” and applies to compulsory counterclaims that could have been brought in the prior action. *Holt v. Reg’l Tr. Servs. Corp.*, 127 Nev. 886, 891, 266 P.3d 602, 605 (2011) (quoting *Redrock Valley Ranch v. Washoe Cty.*, 127 Nev. 451, 458, 254 P.3d 641, 646 (2011)).

For claim preclusion to apply, the following elements must be met: the final judgment in the previous action must be valid, the second action must be based on claims that were or could have been part of the first action, and the parties or their privies must be the same in the two actions. *Weddell v. Sharp*, 131 Nev. ___, ___, 350 P.3d 80, 85 (2015). On appeal, appellants assert that the issues raised in the prior cases were not identical to the issues raised in the case below and that appellant Ida Hanson was not a party to the previous cases, such that the application of claim preclusion to the underlying claims was in error.¹ We address these arguments in turn.

In their complaint below, appellants alleged that respondents committed a fraudulent and wrongful foreclosure against a person over the age of 65, that respondents were vicariously liable for that wrongful

¹Appellants also assert that appellant Freddie Tucker’s counterclaim in one prior case was not adjudicated, and thus, there was no final judgment and claim preclusion cannot apply. Appellants fail, however, to identify the nature of this unresolved claim, and thus, we are unable to determine whether it is related to the claims raised in the case below. Because appellants failed to cogently argue this issue, we decline to consider it. See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

foreclosure, and that respondents breached their fiduciary duties to appellants regarding the foreclosure. The district court found that these causes of action, which all relate to the foreclosure of appellants' property, were claims that were raised, or could have been raised, in the prior cases with respondents. We agree. The record on appeal includes an order from a case filed by respondent Lido Isle Court Trust² in the Eighth Judicial District Court of Nevada against Tucker wherein the district court stated that the Trust was "entitled to judgment granting quiet title *as to any claims regarding the subject property which may be asserted by . . . Tucker.*" (Emphasis added). Tucker did not appeal this decision. Because all of the claims in the complaint below are related to the subject property, and because those claims were decided by a prior valid final judgment, the district court properly concluded that claim preclusion prevented those claims from being reasserted against the Trust and its privies. *See Weddell*, 131 Nev. at ___, 350 P.3d at 85.

Similarly, an order granting summary judgment against Tucker in a case he filed in the Eighth Judicial District Court against respondent South Shore Villas Homeowners Association³ noted that

²The district court found that both respondents Iyad Haddad and Resources Group, LLC were in privity with Lido Isle Court Trust, and appellants do not challenge this determination on appeal. Thus, any claim preclusion resulting from the case with the Trust would also prevent appellants from bringing those same or similar claims against Haddad and Resources Group.

³The district court in this case found that respondents Jacqueline Taylor and Angius & Terry Collections, Inc. were in privity with respondent South Shore, a determination appellants do not challenge on appeal.

Tucker's claim of breach of fiduciary duty had already been dismissed with prejudice and found the foreclosure of Tucker's home to be proper. Tucker did not appeal this order, and thus, it is a valid final judgment. Because Tucker's claims of wrongful foreclosure and breach of fiduciary duty against South Shore have already been resolved, and because Tucker's claim of vicarious liability regarding the foreclosure could have been brought in that prior action, the district court also properly determined that claim preclusion barred the relitigation of these claims against South Shore and its privies. *See Weddell*, 131 Nev. at ___, 350 P.3d at 85.


Appellants' final argument is that claim preclusion does not apply in this case because appellant Ida Hanson was not a party to the prior cases. *See id.* (providing that, for claim preclusion to apply, the parties in the prior litigation must be identical or in privity with one another). The district court, however, concluded that Hanson was in privity with Tucker, and we agree with this determination. "To be in privity, the person must have acquired an interest in the subject matter affected by the judgment through . . . one of the parties . . ." *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 481, 215 P.3d 709, 718 (2009) (first alteration in original) (internal quotation marks omitted). In the district court below and in their appeal statement, appellants assert that they are co-owners of the subject property.⁴ And through these arguments, appellants admit that Hanson "acquired an interest" in the subject property through her relationship with Tucker. *See id.* As such, the district court did not err in concluding that claim preclusion applied


⁴Although the mortgage on the house was in Tucker's name only, appellants still assert that they purchased the home together.

because Hanson and Tucker were in privity such that the prior district court decisions against Tucker also act as a bar to Hanson's ability to bring similar claims in the case below.

Accordingly, because the district court did not err in relying on claim preclusion to dismiss appellants' complaint, we

ORDER the judgment of the district court AFFIRMED.⁵


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kerry Louise Earley, District Judge
Freddie Tucker
Ida Hanson
Bourassa Law Group, LLC
Law Offices of Michael F. Bohn, Ltd.
Angius & Terry LLP/Las Vegas
Eighth District Court Clerk

⁵Because we conclude that the district court correctly applied claim preclusion, we necessarily conclude that the district court did not err in expunging the lis pendens appellants filed on the subject property.