



COPY

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

Frances Endencia
216 Sophia St.
West Chicago, IL 60185

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

November 22, 2017

In re: Frances Endencia, petitioner, v. Wells Fargo Bank, etc.,
respondent. Leave to appeal, Appellate Court, Second District.
122739

The Supreme Court today DENIED the Petition for Leave to Appeal in the above
entitled cause.

The mandate of this Court will issue to the Appellate Court on 12/27/2017.

Very truly yours,

Carolyn Taft Gusbell

Clerk of the Supreme Court

A

2017 IL App (2d) 160926-U
No. 2-16-0926
Summary Order filed June 27, 2017

NOTICE: This order was filed under Supreme Court Rule 23(c)(6) and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

FRANCES ENDENCIA,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-MR-584
	)	
WELLS FARGO BANK, as Trustee for	)	
BANK OF AMERICA CERTIFICATE	)	
HOLDERS SERIES 2007-5,	)	Honorable
	)	Robert W. Rohm,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court,
Presiding Justice Hudson and Justice Zenoff concurred in the judgment.

SUMMARY ORDER

¶ 1 The plaintiff, Frances Endencia, appeals, *pro se*, from the October 19, 2016, order of the circuit court of Du Page County dismissing with prejudice her complaint against the defendant, Wells Fargo Bank, as Trustee for Bank of America Certificate Holders series 2007-5. We affirm.

¶ 2 On May 16, 2007, Bank of America loaned \$312,000 to the plaintiff. The loan was secured by a mortgage on a house at 235 South Hale Street in Addison. The mortgage was

B

subsequently assigned to the defendant. On February 6, 2010, the defendant filed a complaint to foreclose the mortgage. On August 13, 2012, the trial court entered a judgment of foreclosure. On June 10, 2013, following a judicial sale of the property, the trial court entered an order approving the report of sale and distribution, confirming the sale, and granting possession to the defendant. Following the trial court's ruling, the plaintiff appealed directly to the Illinois Supreme Court. On November 17, 2014, the supreme court denied her appeal.

¶ 3 On June 20, 2016, the plaintiff filed a complaint. She alleged that the defendant should have been barred from foreclosing on her mortgage because the defendant had participated in fraud. She also asserted that she was evicted without proper notice. She therefore requested the return of her personal belongings. On August 17, 2016, the plaintiff filed an amended complaint, requesting the same relief.

¶ 4 On August 31, 2016, the defendant filed a motion to dismiss the plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)). The defendant argued that the plaintiff's complaint was barred on the basis of *res judicata*, collateral estoppel and for failing to state a cause of action. On October 19, 2016, the trial court found that the plaintiff's claims were barred by *res judicata* and collateral estoppel, and it dismissed her amended complaint with prejudice. Following the denial of her motion to reconsider, the plaintiff filed this timely notice of appeal.

¶ 5 On appeal, the plaintiff argues that her action should not have been dismissed on the basis of *res judicata* and collateral estoppel because she recently discovered new evidence of the defendant's fraud that barred the application of those equitable doctrines. She also maintains that she was evicted without proper notice.

¶ 6 The doctrine of *res judicata* provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). For the doctrine of *res judicata* to apply, the following three requirements must be satisfied: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998).

¶ 7 The purpose of collateral estoppel, also known as issue preclusion, is to prevent repeated litigation of the same factual issue. Collateral estoppel applies when a party participates in two separate and consecutive cases arising out of different causes of action and some controlling factor or question material to the determination of both cases has been adjudicated against the party in the former suit by a court of competent jurisdiction. *Stathis v. First Arlington National Bank*, 226 Ill. App. 3d 47, 53 (1992). The three requirements of collateral estoppel are: (1) the issues in the cases are identical, (2) there is a final judgment on the merits, and (3) the party against whom an estoppel is asserted is a party or in privity with a party to the prior adjudication. *Cree Development Corp. v. Mid-America Advertising Co.*, 324 Ill. App. 3d 534, 536 (2001).

¶ 8 Here, the plaintiff does not contest that all of the requirements of *res judicata* and collateral estoppel have been met. Rather, she argues that those are equitable doctrines and should not apply in this case because she did not discover the fraud that the defendant engaged in until recently. In response, the defendant argues that the plaintiff did not raise this argument in the trial court. Thus, the defendant insists that she is precluded from raising it for the first time on appeal. We agree.

¶ 9 Supreme Court Rule 362 does not allow new issues to be raised on appeal. Ill. S. Ct. R 362 (eff. Feb. 1, 1994); *Sylvester v. Chicago Park District*, 179 Ill. 2d 500, 511 (1997); see also *Woman's Athletic Club of Chicago v. Hulman*, 31 Ill. 2d 449, 454 (1964) (the "theory upon which a case is tried in the lower court cannot be changed on review and *** an issue not presented to or considered by the trial court cannot be raised for the first time on review"). Moreover, a complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies. *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14.

¶ 10 Here, the plaintiff did not allege in her amended complaint that she had recently learned of the defendant's purported fraud. Thus, she cannot raise that argument for the first time on appeal. See *Hamer*, 2014 IL App (1st) 131005, ¶ 14.

¶ 11 The plaintiff's argument that she was evicted from her house without proper notice is also without merit. The order approving sale entered in the foreclosure action provided the plaintiff with notice that she was required to vacate the property no more than 30 days from June 10, 2013. Her failure to leave the property by that date does not allow her to seek any relief against the defendant. See 735 ILCS 5/15-1701(d) (West 2016) (as of the date 30 days after the order confirming the sale is entered, holder of the certificate of sale shall be entitled to possession of mortgaged real estate "against those parties to the foreclosure whose interest the court has ordered terminated, without further notice to any party [or] further order of the court").

¶ 12 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 13 Affirmed.

**Additional material
from this filing is
available in the
Clerk's Office.**