2275 NE 120 St., LLC v. Sanchez Struve Bus. Advisors, LLC

Court of Appeal of Florida, Third District

November 10, 2021, Opinion Filed

No. 3D20-1277

Reporter

2021 Fla. App. LEXIS 14651 *; 2021 WL 5226270

2275 NE 120 Street, LLC, Appellant, vs. Sanchez Struve Business Advisors, LLC, Appellee.

Notice: NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING

Prior History: [*1] Lower Tribunal No. 17-8408. An appeal from the Circuit Court for Miami-Dade County, Barbara Areces, Judge.

Core Terms

mortgagor, redemption right, indebtedness, mortgagee, certificate of sale, foreclosure sale, final judgment, trial court, redemption, certificate of title, motion to vacate, statutorily, mortgage, bidder, funds, sales, period of prescription, equity of redemption, foreclosure decree, right to redeem, deny a motion, no objection, credit bid, civil law, no right, incomplete, tendering, impacted, amounts, winning

Case Summary

Overview

HOLDINGS: [1]-The circuit court properly denied a mortgagor's motion to vacate a judicial foreclosure sale and directed the clerk to issue the certificate of title to the mortgagee as the successful bidder at the sale because the record was devoid of any indication that the mortgagor sought to exercise its redemption rights under § 45.0315, Fla. Stat., either before or during the sale, no objection to the sale was filed, the mortgagor neither alleged nor adduced facts supporting the proposition that it was prevented from tendering the indebtedness, it had ample opportunity over the span of two years to tender payment and did not do so, and it further failed to timely object to the procedure of the sale.

Outcome

Order affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Real Property Law > Financing > Foreclosures > Judicial Foreclosures

Real Property Law > Deeds > Remedies > Rescission

HN1[] **Standards of Review, Abuse of Discretion**

Appellate courts review a trial court's ruling on a motion

to set aside a foreclosure sale for a gross abuse of discretion.

Insurance Law > ... > Property Insurance > Coverage > Hurricanes & Tornadoes

HN2[] **Coverage, Hurricanes & Tornadoes**

In Florida, the right of redemption is codified within § 45.0315, Fla. Stat.

Real Property Law > ... > Mortgages & Other Security Instruments > Redemptions > Mortgagor's Right

HN3[] **Redemptions, Mortgagor's Right**

In interpreting the reach of *§ 45.0315, Fla. Stat.*, the Florida Supreme Court has determined, a sale can still be prevented even after the public auction. Unless otherwise provided in the operative judgment, however, the right to redeem expires when the clerk files the certificate of sale.

Real Property Law > ... > Mortgages & Other Security Instruments > Redemptions > Mortgagor's Right

HN4[] **Redemptions, Mortgagor's Right**

A mortgagor need not obtain the permission of the trial court before exercising the right of redemption. In this regard, because no proceedings are ordinarily required to render redemption effective, the right has been termed self-executing. It is equally true, however, that the right must be timely claimed by tendering the amount due and owing within the statutorily prescribed period, or there is no right of redemption. *§ 45.0315, Fla. Stat.*

Counsel: Cardet Law, P.A., and Alberto M. Cardet; Birnbaum, Lippman & Gregoire, PLLC, and Nancy W. Gregoire Stamper (Fort Lauderdale), for appellant.

Dennis A. Donet, P.A., and Dennis A. Donet, for appellee.

Judges: Before EMAS, MILLER, and LOBREE, JJ.

Opinion by: MILLER

Opinion

MILLER, J.

Appellant, 2275 NE 120 Street, LLC, the mortgagor, challenges an order denying its motion to vacate a judicial foreclosure sale and directing the clerk to issue the certificate of title to the successful bidder at the sale, appellee, Sanchez Struve Business Advisors, LLC, the mortgagee. On appeal, the mortgagor contends the failure by the court to reduce the amount of indebtedness in the final judgment by the net funds derived from a myriad of prior unsuccessful foreclosure sales effectively prevented it from exercising its right of redemption. Discerning no error, we affirm.

BACKGROUND

In late 2017, the mortgagee obtained a final summary judgment of foreclosure against the mortgagor. Although the mortgagor did not challenge the validity of the judgment, it sought bankruptcy protection immediately after rendition. After the bankruptcy stay **[*2]** was lifted, the final judgment was amended several times to account for additional expenses incurred, and six consecutive public foreclosure sales ensued.

At each of the first five sales, conducted between February 2019 and December 2019, an affiliate or principal of the mortgagor was deemed the winning bidder. Following each sale, "final payment [was] not made within the prescribed period." *§ 45.031(3), Fla. Stat.* (2021). The clerk of courts deducted permissible costs and released remaining funds, totaling approximately $155,000.00, to the mortgagee, by means of a stipulated court order. See id.

By the time of the sixth and final sale, the final judgment, as amended, reflected indebtedness in the amount of nearly $600,000.00. The mortgagee received a credit bid in the amount of the judgment, and, after bidding approximately $400,000.00, was named the winning bidder. The record is devoid of any indication the mortgagor sought to exercise its redemption rights either before or during the sale. No objection to the sale was filed, and, on March 5, 2020, the clerk filed the certificate of sale.

Four months later, the mortgagor filed a motion to vacate the sale. In the motion, it contended the failure by the trial **[*3]** court to reduce the indebtedness reflected in the final judgment by the amounts released to the mortgagee following the prior incomplete sales negatively impacted its right of redemption. Concluding the mortgagor had neither filed a timely objection nor established it was "ready, willing, and able" to exercise the right of redemption, the trial court denied the motion. The instant appeal ensued.

STANDARD OF REVIEW

HN1[↑] We review a trial court's ruling on a motion to set aside a foreclosure sale for a gross abuse of discretion. *U.S. Bank, N.A. v. Vogel, 137 So. 3d 491, 493 (Fla. 4th DCA 2014)*.

ANALYSIS

Tracing its origins to Roman civil law, the now statutorily circumscribed right of redemption "is an incident of all mortgages and cannot be extinguished except by due process of law." *John Stepp, Inc. v. First Fed. Sav. & Loan Ass'n of Miami, 379 So. 2d 384, 386 (Fla. 4th DCA 1980)*; Thomas W. Bigley, Property Law—The Equity of Redemption: Who Decides When it Ends?, *21 Wm. Mitchell L. Rev. 315, 317 (1995)* ("[T]he equity of redemption principle found in English mortgage law originated under Roman civil law."). Historically, the right of redemption did not extend beyond the sale date. *Parker v. Dacres, 130 U.S. 43, 47, 9 S. Ct. 433, 32 L. Ed. 848 (1889)*. Thus, "[i]t is clear that the right to redeem after sale, wherever it exists, is statutory." *Id. at 48*.

HN2[↑] In Florida, the right of redemption is codified within *section 45.0315, Florida Statutes*. The statute provides, in pertinent part:

> At any time before **[*4]** the later of the filing of a certificate of sale by the clerk of the court or the time specified in the judgment, order, or decree of foreclosure, the mortgagor or the holder of any subordinate interest may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure . . . . Otherwise, there is no right of redemption.

§ 45.0315, Fla. Stat. *HN3*[↑] In interpreting the reach of the statute, the Florida Supreme Court has determined, "a 'sale' can still be 'prevent[ed]' even after the public auction." *Bank of N.Y. Mellon v. Glenville, 252 So. 3d 1120, 1129 (Fla. 2018)* (alteration in original). Unless otherwise provided in the operative judgment, however, "the right to redeem expires when the clerk files the certificate of sale." *Indian River Farms v. YBF Partners,*

777 So. 2d 1096, 1099 (Fla. 4th DCA 2001).

In the instant case, the judgment provided that "[o]n filing the Certificate of Sale, [the mortgagor's] right of redemption as proscribed by *Florida Statutes, Section 45.0315* shall be terminated." The certificate of sale was filed on March 5, 2020, and, despite having notice of the previously released funds, there has been no showing the mortgagor attempted to satisfy the mortgage prior to that date or objected within the statutorily prescribed ten-day window following the sale. See *§ 45.031(5), Fla. Stat.*

Instead, four **[*5]** months later, the mortgagor filed an unverified motion to vacate the sale. In the motion, it did not allege it was hindered in its ability to satisfy the indebtedness. Rather, it asserted in a relatively conclusory manner that its "redemption rights [were] inappropriately and negatively impacted by improper calculations," and the mortgagee "was given an unfair advantage of being able to credit bid its judgment for an amount higher than what was actually owed."

HN4[↑] It is true a mortgagor need not obtain the permission of the trial court before exercising the right of redemption. See *Saidi v. Wasko, 687 So. 2d 10, 12 (Fla. 5th DCA 1997)*. In this regard, because no proceedings are ordinarily required to render redemption effective, the right has been termed self-executing. *72 Am. Jur. 2d State and Local Taxation § 889*. It is equally true, however, that the right must be timely claimed by tendering the amount due and owing within the statutorily prescribed period, or "there is no right of redemption." *§ 45.0315, Fla. Stat.*

Here, the mortgagor neither alleged nor adduced facts supporting the proposition that it was prevented from tendering the indebtedness, as reduced by the amounts derived from the prior incomplete sales. Instead, the protracted litigation history suggested the opposite conclusion. The mortgagor **[*6]** had ample opportunity over the span of two years to tender payment and did not do so, and it further failed to timely object to the procedure of the sale.

Given these circumstances, we conclude the trial court acted within its discretion in denying the motion to vacate and ordering the clerk to issue the certificate of title. See *§ 45.031(5), Fla. Stat.* ("If no objections to the sale are filed within 10 days after filing the certificate of sale, the clerk shall file a certificate of title and serve a copy of it on each party."). Accordingly, we affirm the order under review.

Affirmed.

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Roche v. Cyrulnik

Court of Appeal of Florida, Third District

November 10, 2021, Opinion Filed

No. 3D21-1741

Reporter
2021 Fla. App. LEXIS 14667 *; 2021 WL 5226566

Kyle Roche, et al., Petitioners, vs. Jason Cyrulnik, Respondent.

Notice: NOT FINAL UNTIL DISPOSITION OF TIMELY FILED MOTION FOR REHEARING.

Prior History: **[*1]** A Writ of Certiorari to the Circuit Court for Miami-Dade County, William Thomas, Judge. Lower Tribunal No. 21-5837.

Core Terms

state court action, federal action, extraordinary circumstances, general rule, motion to stay

Case Summary

Overview
HOLDINGS: [1]-Defendants' petition for certiorari review of the trial court's order denying their motion to stay proceedings in the lower tribunal pending disposition of a related action filed in the United States District Court for the Southern District of New York was granted, the order was quashed, and the cause was remanded with directions since based on the record, the extraordinary circumstances exception to the general rule requiring a stay of the subsequently filed state court action was inapplicable, and that the trial court should have granted petitioners' motion to stay the state court action.

Outcome
Petition granted, order quashed, and cause remanded with directions.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN1[] **Appellate Jurisdiction, State Court Review**

The Court of Appeal of Florida has certiorari jurisdiction to review orders determining motions to stay a cause pending the disposition of another case.

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Governments > Courts > Judicial Comity

Civil Procedure > ... > Entry of Judgments > Stays of Judgments > Multiple Claims & Parties

HN2[] **Judges, Discretionary Powers**

Generally, when a state lawsuit is filed that involves the

same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated. Although a trial court has broad discretion to order or refuse a stay of an action pending before it, it is nonetheless an abuse of discretion to refuse to stay a subsequent filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues. For that general rule to apply the causes of action asserted in the two cases need not be identical, nor must the two actions have identical parties. Rather, the rule is applicable if both actions involve substantially similar parties and substantially similar issues, , on a single set of facts such that resolution of the one case will resolve many of the issues involved in the subsequently filed case. Application of comity principles under these circumstances serves both to avoid wasting judicial resources and the risk of inconsistent judgments in the two tribunals; thus, certiorari is an appropriate remedy because the denial of a motion to stay the court action is error that cannot be remedied on appeal.

Civil Procedure > Judgments > Entry of Judgments > Stays of Judgments

Evidence > Burdens of Proof > Allocation

HN3[] **Entry of Judgments, Stays of Judgments**

Courts have recognized an exception to the general rule requiring a stay of the subsequently filed state court action when the party opposing the stay has made a showing of extraordinary circumstances. While Florida decisional law provides little guidance on what constitutes such extraordinary circumstances, the Florida Supreme Court has explained that there may well be circumstances under which the denial of a stay could be justified upon a showing of the prospects for undue delay in the disposition of a prior action.

Counsel: Leto Law Firm, and Matthew P. Leto; Roche Freedman LLP, and Colleen L. Smeryage, for petitioners.

Kasowitz Benson Torres LLP, and Maria H. Ruiz, for respondent.

Judges: Before LOGUE, SCALES and LINDSEY, JJ.

Opinion by: SCALES

Opinion

SCALES, J.

Petitioners Kyle Roche, Devin Freedman, Amos Friedland, Nathan Holcomb, Edward Normand, and Roche Cyrulnik Freedman LLP (a/k/a Roche Freedman LLP), the defendants below, petition this Court for certiorari review of the trial court's July 27, 2021 order denying their motion to stay proceedings in the lower tribunal pending disposition of the related federal action filed in the United States District Court for the Southern District of New York.[1] *HN1*[] "We have certiorari jurisdiction to review orders determining motions to stay a cause pending the disposition of another case." *REWJB Gas Invs. v. Land O'Sun Realty, Ltd., 645 So. 2d 1055, 1056 (Fla. 4th DCA 1994)*. Because the record does not reveal "extraordinary circumstances" warranting an exception to the general rule requiring a stay of the subsequently filed action, we grant the petition, quash the July 27, 2021 order, and direct the circuit court to enter a stay pending disposition of the federal action. **[*2]**

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[1] *Roche Cyrulnik Freedman LLP v. Jason Cyrulnik*, SDNY, Case No. 1:21-cv-1746 (JGK).

I. RELEVANT BACKGROUND

On December 27, 2019, respondent Jason Cyrulnik signed a memorandum of understanding to form the law firm Roche Cyrulnik Freedman LLP ("the Firm"). In the ensuing months, the working relationship between Cyrulnik and the Firm's partners deteriorated, resulting in the Firm's February 27, 2021 filing of a declaratory judgment action against Cyrulnik in the federal district court. The Firm's lawsuit seeks determinations that, pursuant to the memorandum of understanding, (i) the Firm's partners validly removed Cyrulnik from the Firm for cause, and (ii) Cyrulnik is entitled only to certain compensation delineated upon his removal from the Firm. Cyrulnik was served in the federal action on March 3, 2021.

On March 9, 2021, Cyrulnik filed the instant state court action against the Firm and the Firm's partners (i.e., the petitioners herein) in the complex business litigation division of the Miami-Dade County Circuit Court. Although the claims asserted in the two actions are not identical, each of the claims asserted in Cyrulnik's state court action arise from the same nucleus of facts upon which the Firm's federal action is premised, **[*3]** to wit: the Firm's purported removal of Cyrulnik from the Firm and Cyrulnik's entitlement to compensation under the memorandum of understanding.

II. ANALYSIS

A. The General Rule Requiring a Stay of the Subsequently Filed State Court Action

HN2[↑] Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated. *See* OPKO Health, Inc. v. Lipsius, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) ("Although a trial court has broad discretion to order or refuse a stay of an action pending before it, it is nonetheless an abuse of discretion to refuse to stay a subsequent filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues. This rule is based on principles of comity." (quoting Fla. Crushed Stone Co. v. Travelers Indem. Co., 632 So. 2d 217, 220 (Fla. 5th DCA 1994) (citations omitted))). For this general rule to apply the causes of action asserted in the two cases need not be identical, *see* Ocwen Loan Servicing, LLC v. 21 Asset Mgmt. Holding, LLC, 307 So. 3d 923, 926 (Fla. 3d DCA 2020), nor must the two actions have identical parties. *See* Pilevsky v. Morgans Hotel Grp. Mgmt., LLC, 961 So. 2d 1032, 1035 (Fla. 3d DCA 2007) ("Although only PSB is named as a plaintiff in the New York action, the only additional parties **[*4]** named as defendants in the Florida action are PSB's individual investors and officers."). Rather, the rule is applicable if both actions involve "substantially similar parties and substantially similar issues," Id., on a "single set of facts [such] that resolution of the one case will resolve many of the issues involved in the subsequently filed case." *Id.* (quoting Fla. Crushed Stone Co., 632 So. 2d at 220). Application of comity principles under these circumstances serves both to avoid wasting judicial resources and the risk of inconsistent judgments in the two tribunals; thus, certiorari is an appropriate remedy because "the denial of . . . [a] motion to stay the court action is error that cannot be remedied on appeal." Ocwen Loan Servicing, LLC, 307 So. 3d at 926.

B. The "Extraordinary Circumstances" Exception to the General Rule

HN3[↑] Courts have recognized an exception to the

general rule requiring a stay of the subsequently filed state court action when the party opposing the stay has made a showing of "extraordinary circumstances." *Id.* While Florida decisional law provides little guidance on what constitutes such "extraordinary circumstances," the Florida Supreme Court has explained that "[t]here may well be circumstances under which the denial of a stay could be justified **[*5]** upon a showing of the prospects for undue delay in the disposition of a prior action." *Siegel v. Siegel, 575 So. 2d 1267, 1272 (Fla. 1991)* (quoting *Schwartz v. DeLoach, 453 So. 2d 454, 455 (Fla. 2d DCA 1984)*).

C. Application in this Case

In the challenged order, the trial court made the express, albeit conclusory, finding that "litigation in the federal court will cause undue delay if the state action is stayed." This determination, though, is without any evidentiary basis in the record. Indeed, the only suggestion that there will be any delay — undue or otherwise — in adjudicating the Firm's federal action is the mere supposition of Cyrulnik's counsel at the hearing on the petitioners' motion for stay; such supposition alone constitutes an insufficient showing. *See* *Schwartz, 453 So. 2d at 455* ("There may well be circumstances under which the denial of a stay could be justified upon a *showing* of the prospects for undue delay in the disposition of a prior action. Here, however, without taking any testimony, counsel simply debated the progress of the federal case which had only been pending in the federal court for slightly more than four months.") (emphasis added).

There being no *showing* of extraordinary circumstances on this or any other basis in the lower proceeding, we conclude that, based on the record now before us, **[*6]** the "extraordinary circumstances" exception to the general rule requiring a stay of the subsequently filed state court action is inapplicable, and that the trial court should have granted petitioners' motion to stay Cyrulnik's state court action. *Id.*

III. CONCLUSION

Accordingly, we grant the petition, quash the July 27, 2021 order denying the petitioners' motion to stay, and remand to the circuit court with directions to stay Cyrulnik's state court action pending disposition of the Firm's federal action. Our ruling is without prejudice to Cyrulnik later seeking to lift the stay "upon a showing of interminable delay in the federal case," *Id. at 456*, or other extraordinary circumstances.

Petition granted, order quashed, and cause remanded with directions.

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Crescent Shore Condo. Ass'n v. Lani Kai, L.P.

Court of Appeal of Florida, Second District

November 10, 2021, Decided

No. 2D21-234

Reporter
2021 Fla. App. LEXIS 14639 *; 2021 WL 5225873

CRESCENT SHORE CONDOMINIUM ASSOCIATION, INC., Appellant, v. LANI KAI, L.P., Appellee.

Prior History: [*1] Appeal from the County Court for Lee County; Maria E. Gonzalez, Judge.

Core Terms

easement, lawsuit, res judicata, summary judgment, parties, settlement agreement, cause of action, trial court, dumpsters, trash

Case Summary

Overview
HOLDINGS: [1]-Because the condominium association's 2018 claim against the owner of an adjacent property for failing to adhere to an easement agreement was based on a separate, new violation of the easement agreement than its 2000 claim, the 2018 claim was not barred by res judicata.

Outcome
Judgment reversed; case remanded.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

HN1[] **Standards of Review, De Novo Review**

The doctrine of res judicata bars relitigation in a subsequent cause of action not only of claims raised, but also claims that could have been raised. Whether a claim for relief is barred by res judicata is subject to de novo review.

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

HN2[] **Preclusion of Judgments, Res Judicata**

Res judicata bars a subsequent lawsuit when there is: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality in the person for or against whom the claim is made. The general test when deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions. Identity of causes of action means an identity of the facts essential to the maintenance of the action. However, res judicata does not bar claims of

subsequent breach arising from the same contract.

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

HN3[] **Preclusion of Judgments, Res Judicata**

The doctrine of res judicata - which requires that the second suit present the identical cause of action as was previously litigated - is not applicable where the claims in the two cases concern different periods of time.

Business & Corporate Compliance > ... > Contracts Law > Types of Contracts > Settlement Agreements

Civil Procedure > Settlements > Settlement Agreements > Validity of Agreements

HN4[] **Types of Contracts, Settlement Agreements**

Clearly, if neither party is aware of the essential terms of an agreement, it is inferential that the same settlement agreement may not be enforced.

Real Property Law > Encumbrances > Adjoining Landowners > Easements

Real Property Law > ... > Limited Use Rights > Easements > Termination of Easements

Real Property Law > Deeds > Defenses Against Deed Enforcement > Statute of Frauds

Real Property Law > ... > Contracts of Sale > Enforceability > Statute of Frauds

Real Property Law > ... > Easements > Easement Creation > Express Easements

HN5[] **Adjoining Landowners, Easements**

Because an easement constitutes an interest in land and is subject to the statute of frauds, it follows that an easement cannot be modified or extinguished by a subsequent agreement that does not comply with the statute of frauds.

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

HN6[] **Summary Judgment, Entitlement as Matter of Law**

A material fact, for summary judgment purposes, is a fact that is essential to the resolution of the legal questions raised in the case.

Counsel: Ehren J. Frey, Fort Myers, and Jamie B. Schwinghamer, Naples, of Roetzell & Andress, LPA, Naples, for Appellant.

Robert B. Burandt of Burandt, Adamski, Feichthaler & Sanchez, PLLC, Cape Coral, for Appellee.

Judges: VILLANTI, Judge. LUCAS and ROTHSTEIN-YOUAKIM, JJ., Concur.

Opinion by: VILLANTI

Opinion

VILLANTI, Judge.

I.

Crescent Shore Condominium Association appeals the

final summary judgment entered in favor of Lani Kai, L.P., based upon the trial court's conclusion that Crescent Shore's claims for injunctive relief and declaratory judgment were barred by res judicata. Because the trial court did not have a valid basis to make a finding of res judicata in this case, we reverse. We also decline discussion of the remaining procedural issues raised by Crescent Shore in this appeal because they are immaterial to our holding.

Crescent Shore is an incorporated group of owners of the Crescent Shore condominiums in Fort Myers. Lani Kai owns property adjacent to the Crescent Shore condominiums in which it operates a restaurant and bar. In 1979, the parties executed a cross-easement agreement wherein Lani Kai was granted a three-foot access easement onto Crescent **[*2]** Shore's property; in return, Crescent Shore received an area to be used for parking on Lani Kai's property.

In 2000, Crescent Shore filed a two-count lawsuit for injunctive and declaratory relief against Lani Kai in the circuit court of Lee County, alleging that Lani Kai was storing trash bins and dumpsters on the easement property, causing rodents and unpleasant odors to infiltrate its property.[1] Crescent Shore alleged that Lani Kai's actions were a breach of the easement agreement and requested injunctive relief in the form of a prohibition against Lani Kai placing dumpsters and trash bins in the easement area. Crescent Shore also requested the trial court render a declaratory judgment regarding Lani Kai's obligations under the easement agreement at that time. The parties reportedly[2] settled the matter and the 2000 lawsuit was dismissed with prejudice. Neither party presently has a copy of the executed settlement agreement, nor was one ever filed in the 2000 case. Nor are the parties aware of any specific terms of the purported settlement agreement.

In 2018, Crescent Shore again filed a lawsuit against Lani Kai for failing to adhere to the terms of the easement agreement, this time in **[*3]** the county court of Lee County. Crescent Shore again requested injunctive relief along with a declaratory judgment. Crescent Shore's 2018 amended complaint alleged that Lani Kai is obligated to landscape the easement area pursuant to the easement agreement and failed to do so. The amended complaint did not reference any improper storage of trash bins or dumpsters on the easement.

Lani Kai filed a motion for summary judgment on April 9, 2020, alleging that the matter was litigated eighteen years prior, resulting in a dismissal with prejudice and that therefore, Crescent Shore was estopped from its 2018 lawsuit. The motion was verified by Lani Kai's owner, Robert Conidaris. Attached as exhibits to its motion were the 2000 lawsuit complaint, the 1979 easement agreement, presuit correspondence from 2017 and 2018 from Crescent Shore's counsel to Lani Kai's counsel regarding the breach of the easement agreement, a hand-drawn diagram of the parties' property lines, and the civil cover sheet and order of dismissal from the 2000 lawsuit. The purported 2000 settlement agreement was not attached as an exhibit. A few days later, Lani Kai supplemented the motion with an affidavit from Ken Conidaris **[*4]** and two unverified photographs of the easement area in question. Lani Kai also requested that the trial court take judicial notice of the court's record from the 2000 litigation.

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[1] Crescent Shore's 2000 lawsuit against Lani Kai did not include a count for public nuisance.

[2] This averment is based upon the allegations of both parties' present counsel, neither of whom were involved in the 2000 litigation. The parties' current counsel have also expressed the possibility that the terms of the 2000 settlement agreement were never even reduced to writing.

Crescent Shore subsequently filed its response and its own supporting affidavit from its president, Denny Loken, along with accompanying photographs. Crescent Shore argued in its response that res judicata did not apply under these circumstances because Lani Kai's actions constituted *new* violations of the 1979 easement agreement. Following a hearing, the trial court granted summary judgment in Lani Kai's favor. The order did not contain specific findings or reference any specific terms of the purported settlement agreement.

II.

The trial court granted summary judgment in favor of Lani Kai based upon the principle of res judicata—the procedural bar that prohibits the relitigation of issues that were or should have been raised in a prior lawsuit. *See* Topps v. State, 865 So. 2d 1253, 1255 (Fla. 2004) (HN1[] "The doctrine of res judicata bars relitigation in a subsequent cause of action not only of claims raised, but also claims that could have been raised."); *Neapolitan Enters. LLC v. City of Naples, 185 So. 3d 585, 591 (Fla. 2d DCA 2016)* (same). Whether a claim for relief is barred by res judicata is subject to de novo review. *See* U.S. Bank Nat'l Ass'n v. Amaya, 254 So. 3d 579, 581 (Fla. 3d DCA 2018); *see also* Major League Baseball v. Morsani, 790 So. 2d 1071, 1074 (Fla. 2001) **[*5]** ("The standard of review governing a trial court's ruling on a motion for summary judgment posing a pure question of law is de novo.").

HN2[] "Res judicata bars a subsequent lawsuit when there is: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality in the person for or against whom the claim is made." AMEC Civ., LLC v. State, Dep't of Transp., 41 So. 3d 235, 239-40 (Fla. 1st DCA 2010). "The general test when 'deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions.'" U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc., 861 So. 2d 74, 76 (Fla. 4th DCA 2003) (quoting *Hittel v. Rosenhagen, 492 So. 2d 1086, 1090 (Fla. 4th DCA 1986)*). "Identity of causes of action 'means an identity of the facts essential to the maintenance of the action.'" M.C.G. v. Hillsborough Cnty. Sch. Bd., 927 So. 2d 224, 227 (Fla. 2d DCA 2006) (quoting City of Miami Beach v. Prevatt, 97 So. 2d 473, 477 (Fla. 1957)). However, res judicata does not bar claims of subsequent breach arising from the same contract. *See, e.g., Albrecht v. State, 444 So. 2d 8, 12 (Fla. 1984)*, *superseded by statute on other grounds;* U.S. Project Mgmt., 861 So. 2d at 77; Parker v. State Bd. of Educ. ex rel. Fla. State Univ., 865 So. 2d 559, 560 (Fla. 1st DCA 2003).

Here, it is undisputed that three of the four elements required for res judicata to apply—identity of the thing sued for, identity of the parties, and identity of the quality of the person or thing sued for, i.e., their same capacities under the agreement—are present. The fourth element, identity of the cause of action, is missing. At the hearing on Lani Kai's motion **[*6]** for summary judgment, Lani Kai's counsel argued to the trial court that Crescent Shore had the "same complaint. Same parties. Same request." On appeal, Lani Kai repeats the following argument: "There can be no new violation based on the same allegations." Lani Kai also argues that because the 2000 lawsuit was dismissed, Lani Kai's "obligation to landscape the demised premises was . . . abrogated by the [d]ismissal with prejudice."

The "same complaint" Lani Kai refers to is Crescent Shore's 2018 demand that Lani Kai landscape the easement area, but to call that "the same" complaint is not accurate. The 2000 complaint alleged that Lani Kai had placed a large commercial dumpster and numerous trash bins on the easement, leading to rodent and pest infestation and noxious odors. In the 2000 complaint,

Crescent Shore cited a provision of the easement agreement that required Lani Kai to "landscape" and "beautify" the area in question, but that is because the same provision barred Lani Kai from storing trash dumpsters on the easement. To establish as true the allegations in the 2018 complaint, Crescent Shore was required to prove facts different than those required to substantiate the allegations **[*7]** in its 2000 complaint.

In addition to there being different precipitating events prompting Crescent Shore to seek relief under the easement agreement, there is also an entirely different time period at issue between the 2000 and 2018 complaints. *HN3*[] As this court explained in *M.C.G., 927 So. 2d at 227*, "[t]he doctrine of res judicata—which requires that the second suit present the *identical* cause of action as was previously litigated—is not applicable where the claims in the two cases concern different periods of time." *Cf. Forero v. Green Tree Servicing, LLC, 223 So. 3d 440, 443 (Fla. 1st DCA 2017)* ("In this case the subsequent and separate alleged default created a new and independent right in the mortgagee to accelerate payment on the note in a subsequent foreclosure action." (quoting *Singleton v. Greymar Assocs., 882 So. 2d 1004, 1008 (Fla. 2004)*)). Both of those factors prohibit the conclusion that res judicata applies here because "[i]dentity of causes of action 'means an identity of the facts essential to the maintenance of the action.'" *M.C.G., 927 So. 2d at 227* (quoting *City of Miami Beach, 97 So. 2d at 477*). The facts that were essential to maintain Crescent Shore's 2018 lawsuit differed than the facts necessary to maintain its 2000 lawsuit.

On appeal, Lani Kai contends, as it did below, that the missing settlement agreement prohibits Crescent Shore from asserting any further claims regarding the easement. **[*8]** But neither party alleges what the essential terms of the settlement agreement were. The lack of evidence of the settlement agreement presents a problem. *HN4*[] Clearly, if neither party is aware of the essential terms of an agreement, it is inferential that the same settlement agreement may not be enforced.[3]

Summary judgment in this case was inappropriate because of the existence of genuine issues of material facts, i.e., the rights and obligations of Crescent Shore and Lani Kai, which the parties hotly disputed. *See Howell v. Pasco County, 165 So. 3d 12, 14 (Fla. 2d DCA 2015)* (*HN6*[] "A material fact, for summary judgment purposes, is a fact that is essential to the resolution of the legal questions raised in the case." (quoting *Cont'l Concrete, Inc. v. Lakes at La Paz III Ltd. P'ship, 758 So. 2d 1214,1217 (Fla. 4th DCA 2000)*)).

III.

Crescent Shore's 2018 claim against Lani Kai for failing to adhere to the easement agreement was based on a separate, new violation of the easement agreement than its 2000 claim and is therefore not barred by res judicata. Accordingly, we reverse the final summary judgment entered below and remand for further proceedings consistent with this opinion.

Reversed and remanded.

LUCAS and ROTHSTEIN-YOUAKIM, JJ., Concur.

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[3] *HN5*[] Further, because "[a]n easement constitutes an interest in land [and] is subject to the statute of frauds," *Lodestar Tower N. Palm Beach, Inc. v. Palm Beach Television Broad., Inc., 665 So. 2d 368, 370 (Fla. 4th DCA 1996)*; *cf. Haight v. Hall, 625 So. 2d 1311 (Fla. 3d DCA 1993)* (holding that a document purporting to grant an easement was invalid for failure to comply with statutory requirements for witnesses), it follows that an easement cannot be modified or extinguished by a subsequent agreement that does not comply with the statute of frauds. *See 72 Am. Jur. 2d Statute of Frauds § 90* (2021).

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