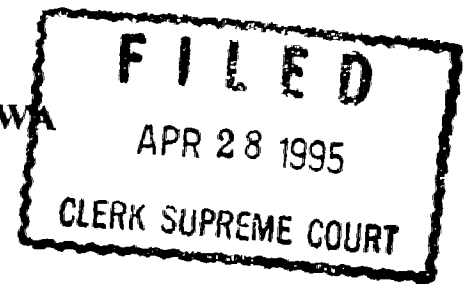


IN THE COURT OF APPEALS OF IOWA

No. 5-073 / 93-1655



LIBERTY BANK & TRUST, formerly FOREST CITY BANK & TRUST CO.,

Appellee,

vs.

**DONALD A. CROSSLEY, PATRICIA CROSSLEY, LARRY A. CROSSLEY,
and FRANCIS BALLARD,**

Appellants.

Appeal from the Iowa District Court for Winnebago County, Bryan H.
McKinley, Judge.

Defendants-appellants appeal a district court judgment denying their motion
to compel the plaintiff bank to turn over their forty-acre homestead. **AFFIRMED.**

Donald A. Crossley and Patricia Crossley, Forest City, pro see, for appellants.

Robert P. Cooper of Cooper, Cooper & Reding, Forest City, for appellee.

Heard by Donielson, C.J., and Hayden and Sackett, JJ.

DONIELSON, C.J.

Donald and Patricia Crossley ("Crossleys") appeal from an October 8, 1993, district court order denying their motion to compel Liberty Bank and Trust Company ("Liberty Bank") to turn over possession of a forty acre homestead. The district court denied the motion on the basis the claim was precluded by the doctrine of res judicata. We agree and affirm the ruling of the district court.

I. PROCEDURAL STATUS OF CASE.

Liberty Bank filed a petition in equity on October 20, 1988, in which it sought a personal judgment for the unpaid balance on three promissory notes executed by the Crossleys. In its petition Liberty Bank also sought a determination that it held a first and superior lien in the Crossleys' real estate and it requested foreclosure of its lien.

A trial on the petition was held on July 11, 1990.¹ An order was entered on October 24, 1990, finding Liberty Bank held an equitable mortgage in the Crossleys' property. A decree of foreclosure was filed on May 14, 1991. The decree provided for only a six-month period of redemption since Liberty Bank had waived its right to a deficiency judgment against the Crossleys. The property was sold and a sheriff's deed was issued to Liberty Bank in 1992.

¹The Crossleys were represented by counsel at this time.

On July 6, 1993, the Crossleys filed a motion to compel Liberty Bank to turn over the forty-acre homestead. The Crossleys contend Liberty Bank's waiver of its right to a deficiency judgment prevents it from selling their homestead. Liberty Bank resisted the Crossleys' motion on the basis it was barred by res judicata.

The Crossleys apparently equate a deficiency judgment as provided in Iowa Code chapter 564 with the term "deficiency" as used in Iowa Code section 561.21(1). They argue Iowa Code section 561.21(1) precludes a homestead from being sold to satisfy a mortgagor's indebtedness where a mortgagee has waived its right to a deficiency judgment under Iowa Code chapter 564. We do not reach the merits of this argument as we find its consideration is barred by the doctrine of res judicata.

II. RES JUDICATA.

"Res judicata as claim preclusion applies when a litigant has brought an action, an adjudication has occurred, and the litigant is thereafter foreclosed from further litigation on the claim." *In re Marriage of Legee*, 494 N.W.2d 453, 455 (Iowa App. 1992). The doctrine is based on the principle a party may not split or try a claim piecemeal, but must put in issue the entire claim or defense in the case on trial. *Id.* Under claim preclusion an adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. *See State ex. rel. Iowa DNR v. Shelley*, 512 N.W.2d 579, 581 (Iowa App. 1993).

The Crossleys do not contend the land encompassed within the forty-acre homestead was not included within the legal description of the real estate subjected to foreclosure and sheriff's sale. The Crossleys previously raised no objection or defense to the foreclosure and sale of the homestead. The record (App. 34) reveals it was only when the Crossleys subsequently learned of the provisions of section 561.21 that they raised a defense to the sale of the homestead. The Crossleys were obligated to raise all of their potential defenses at the time of the foreclosure proceedings. The district court properly denied their motion on the basis it was barred by res judicata.

AFFIRMED.