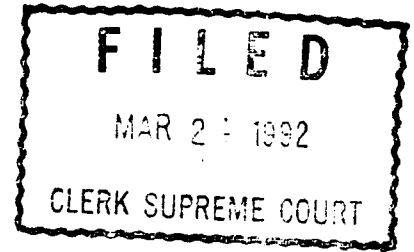


IN THE COURT OF APPEALS OF IOWA

No. 1-462 / 91-331



LORAN C. RECKER and MARY C. RECKER,

Appellants,

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vs.

PRODUCTION CREDIT ASSOCIATION OF THE MIDLANDS, f/k/a
Northeast Iowa Production Credit Association,

Appellee.

Appeal from the Iowa District Court for Fayette County,
C. W. Antes, Senior Judge.

Reckers appeal a district court judgment dismissing
their claim PCA's forfeiture action was invalid. **AFFIRMED.**

J.D. Villont of Donohue Law Office, P.C., West Union,
for appellants.

Dale L. Putnam of Putnam and Strand Law Offices,
Decorah, for appellee.

Considered en banc.

HAYDEN, J.

In August 1979 Loran and Mary Recker entered into a real estate contract with Gustafsons.¹ Reckers received a loan from Production Credit Association (PCA) at the same time. Reckers assigned the real estate contract to PCA as security for the loan. In March 1984 Reckers borrowed an additional amount from PCA.

On January 23, 1985, PCA filed a petition seeking to foreclose the contract assignment. A receiver was appointed. Reckers then filed a chapter 11 bankruptcy, which was later converted to a chapter 7 bankruptcy. The receiver was dismissed during the course of the bankruptcy. Reckers received a discharge in bankruptcy in October 1986.

On September 2, 1986, Gustafsons obtained a mediation release from Iowa Farmer/Creditor Mediation Service due to Reckers' failure to attend mediation. Reckers were served with a forfeiture notice at about that time for a delinquent March 1986 payment. The forfeiture was cured when PCA paid the delinquent payment.

In January 1987 PCA continued with the foreclosure proceedings filed almost two years previously and requested a receiver. A receiver was appointed. In February 1987 PCA purchased Gustafsons' rights in the real estate contract, including the mediation release. Reckers failed

1. Several issues involving the purchase of this real estate are discussed in Recker v. Gustafson, 279 N.W.2d 744 (Iowa 1979).

to make the final balloon payment which was due in March 1987. They were then served with a notice of forfeiture. Reckers failed to cure the forfeiture, and an affidavit of forfeiture was filed on April 13, 1987.

A hearing was held at the termination of the receivership. Reckers did not appear at any of the receivership hearings, although they received notice of the proceedings. PCA dismissed its foreclosure petition. The real estate was sold to a third party.

On May 5, 1989, Reckers filed the present petition against PCA asking for the forfeiture proceedings to be set aside because PCA did not have a valid mediation release. Reckers also claimed PCA should not be allowed to commence forfeiture proceedings once it elected the remedy of foreclosure.

The district court upheld the assignment of the mediation release and its use by PCA. The court also found there had been no election of remedies to bar PCA's forfeiture proceedings. Reckers appeal. We affirm.

In an equity action our review is de novo. Federal Land Bank of Omaha v. Recker, 460 N.W.2d 480, 481 (Iowa App. 1990). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. Id. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Id.

Reckers claim the forfeiture should be set aside because PCA did not have a valid mediation release as required by Iowa Code section 654A.6. They believe the mediation release could not be assigned. They also claim the default which served as the basis for the issuance of the release had been cured prior to the utilization of the release. Furthermore, Reckers claim PCA made an improper election of remedies.

We observe Reckers' claims are barred by the doctrine of res judicata. The doctrine of res judicata provides a final judgment on the merits of an action precludes the parties from relitigating issues which were or could have been raised in that action. Gail v. Western Convenience Stores, 434 N.W.2d 862, 863 (Iowa 1989). A judgment may be attacked collaterally only if it was entered without jurisdiction. Id.

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. Bagley v. Hughes A. Bagley, Inc., 465 N.W.2d 551, 554 (Iowa App. 1990). A party may not split or try a claim piecemeal, but must put in issue and try the entire claim or put forth the entire defense in the case on trial. Id. A party must raise all theories of recovery or suffer the consequences of claim preclusion. Id.

Clearly Reckers are making a collateral attack on the forfeiture proceedings since Reckers ask in their petition

for the forfeiture proceedings to be set aside and to be declared null and void. The issues they are raising in the present suit are ones which could have been raised in the forfeiture proceedings as affirmative defenses. The doctrine of res judicata required Reckers to put forth their entire defense in the first case. Reckers have not alleged they did not receive notice of the proceedings. They have not alleged PCA engaged in fraud or misrepresentation which prevented them from presenting their claims in the forfeiture proceedings. See B & B Asphalt Co., Inc. v. T.S. McShane Co., Inc., 242 N.W.2d 279, 286 (Iowa 1976).

A subsequent claim between the same parties is not barred if it is distinct from the original claim. Leuchtenmacher v. Farm Bureau Mutual Insurance Co., 460 N.W.2d 858, 860 (Iowa 1990). A second claim is likely to be considered precluded if the acts complained of, and the recovery demanded, are the same, or when the same evidence will support both actions. Id.

Reckers' claims in the present case are not a distinct cause of action from the forfeiture proceedings. Reckers' evidence in this case is the file of proceedings in the former case. No new evidence has been presented to support this cause of action.

We hold Reckers' claims are barred by the doctrine of

res judicata. We affirm the district court dismissing their suit.

AFFIRMED.

Oxberger, C.J., and Donielson and Schlegel, JJ., concur; Sackett and Habhab, JJ., concur in part and dissent in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur with the result reached by the majority. I cannot, however, subscribe to language in their opinion suggesting a forfeiture of a real estate contract is an adjudication. And I also do not agree with the majority that the plaintiffs could have raised issues as an affirmative defense in the forfeiture.

Habhab, J., joins this partial concurrence.