IN THE COURT OF APPEALS OF IOWA

No. 5-537 / 94-1425

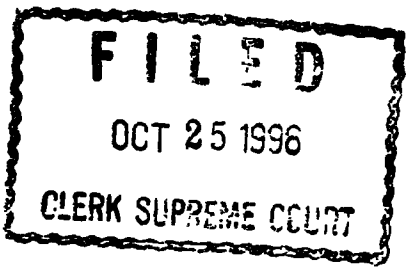
RAYMOND CREES and **LEOTA CREES,**

Appellants,

vs.

S&J INVESTMENTS a/k/a EDWIN SKINNER,

Appellee.



Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Raymond and Leota Crees appeal a district court ruling sustaining the defendant's motion to dismiss on the ground that their petition for declaratory and injunctive relief failed to state a cause of action. **AFFIRMED.**

Raymond and Leota Crees, Des Moines, pro se, appellants.

James E. Nervig of Petosa, Petosa, Boecker & Nervig, West Des Moines, for appellee.

Decided en banc. Streit, J., takes no part.

PER CURIAM

Raymond and Leota Crees appeal from a district court ruling sustaining the defendant's motion to dismiss their petition for declaratory and injunctive relief to enjoin the completion of a forfeiture on a real estate contract. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Plaintiffs purchased a house by real estate contract. S & J Investments, Inc., later purchased the interest of the contract vendor. The Crees failed to make payments after August 1989. On November 26, 1991, the district court determined the Crees were in default under the contract. The court authorized S & J to institute proceedings for forfeiture of the contract.

In 1994, S & J served the Crees with notice of forfeiture. The Crees then filed a petition for declaratory judgment and an injunction seeking to enjoin the forfeiture action. The district court dismissed the Crees' suit because it failed to state a cause of action. The court found that all issues raised in the Crees' suit had previously been litigated. Plaintiffs now appeal.

A motion to dismiss grounded on failure to state a cause of action is sustainable only when it appears to a certainty the pleader has failed to state a claim upon which any relief may be granted under any state of facts which could be proved in support of the claim asserted. *Hunt v. State*, 538 N.W.2d 659, 661 (Iowa App. 1995). In making this determination the pleading should be construed in the light

most favorable to the pleader. *Cutler v. Klass, Whicher & Mishne,* 473 N.W.2d 178, 181 (Iowa 1991).

In the present case, plaintiffs assert they were not in default under the contract, and therefore, defendant should not be permitted to proceed with the forfeiture. They also claim S & J does not have the right to forfeit the contract because the original contract was not with S & J.

The doctrine of res judicata may be raised by a motion to dismiss if the prior adjudication appears on the face of the petition or arises from judicially noticed matters. *Cornell v. State,* 529 N.W.2d 606, 610 (Iowa App. 1994). Issue preclusion prevents a parties from relitigating issues which have already been raised and decided. *Burns v. Board of Nursing,* 528 N.W.2d 602, 604 (Iowa 1995).

The decision of November 26, 1991, determined plaintiffs were in default. The prior decision also clearly gave defendant the right to institute forfeiture proceedings against plaintiffs. Because this issue has already been decided, issue preclusion prevents plaintiffs from relitigating it. We conclude their petition was properly dismissed.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.