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IN THE
COURT OF APPEALS OF INDIANA

Towne & Terrace,
Appellant-Defendant,

v.

City of Indianapolis,
Appellee-Plaintiff.

May 12, 2021

Court of Appeals Case No.
20A-OV-1602

Appeal from the Marion Superior
Court

The Honorable Cynthia J. Ayers,
Judge

Trial Court Cause No.
49D04-1311-OV-42187

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Towne & Terrace Corporation (Towne & Terrace), appeals the trial court's Order to compel payment of one-half of the Receiver costs in its protracted litigation against Appellee-Plaintiff, the City of Indianapolis (City).
- [2] We affirm.

ISSUES

- [3] Towne & Terrace presents this court with three issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion in compelling Towne & Terrace to pay one-half of the Receivership costs.

FACTS AND PROCEDURAL HISTORY

- [4] This case comes before this court for a fourth time, after several years of protracted litigation. We set out the relevant facts in a previous appeal as follows:

Towne & Terrace is a residential complex near the intersection of East 42nd Street and Post Road in Indianapolis, Indiana. Incorporated in 1964 for the purpose of owning and maintaining the common areas of the condominium development, Towne & Terrace is a private, nonprofit Indiana corporation with volunteer directors. Unlike more recent condominium developments, Towne & Terrace homeowners are members of Towne & Terrace and do not own any interest in its common areas. The individual lots are transferred by deed. To keep Towne and Terrace

apprised of ownership changes in the individual condominiums, the corporation's Amended Articles of Incorporation require the issuance of a certificate of membership to each member, and it is each member's responsibility to inform Towne & Terrace when his or her lot is transferred to a new owner. The previous member must then request a new certificate of membership to be issued to the new member. As of 2017, the City owned at least 49 units in Towne & Terrace. Thirteen of the units were acquired as part of a settlement in an unrelated nuisance action. The remainder of the units became the City's possession after they were not purchased at tax sales. Since being acquired, each of the City's homes in Towne & Terrace have been left vacant and boarded up.

Over the years, the East side of Marion County suffered a major crime wave. In 2015, the Federal Bureau of Investigation, the United States Attorney's Office, the Indiana State Police, the Marion County Sheriff, and Indianapolis Metropolitan Police Department conducted raids throughout Indianapolis, leading to the arrest of thirty-five criminals—the vast majority on the East side.

City of Indianapolis v. Town & Terrace Corp., 106 N.E.3d 507, 509 (Ind. Ct. App. 2018) (*Towne I*). The original action was commenced on December 16, 2014, when the City filed its Complaint, bringing nuisance claims against Towne & Terrace. Towne & Terrace responded by filing a counterclaim, which included an allegation that the City owed maintenance fees on the individual units owned by the City. On July 3, 2018, we affirmed the trial court's grant of summary judgment in favor of Towne & Terrace, barring the City's nuisance action against Towne & Terrace.

[5] “While the summary judgment motions were pending in the trial court, on September 11, 2017, the City filed a motion for the appointment of a Receiver over” Towne & Terrace. *Towne & Terrace Corp. v. City of Indianapolis*, 122 N.E.3d 846, 850 (Ind. Ct. App. 2019) (*Towne II*). Towne & Terrace filed a corresponding motion for appointment of a Receiver over the City’s properties. Both motions were granted by the trial court on September 12, 2018. In *Towne II*, we reversed the trial court’s appointment of a Receiver over Towne & Terrace as there was no factual basis for the appointment pursuant to the Unsafe Building Law, but affirmed the trial court’s appointment of a Receiver over the City’s properties. *See id.* at 858.

[6] Upon remand of the case to the trial court, the trial court issued its Revised Appointment of Receiver on August 15, 2019, in which the trial court named the Receiver, set forth his duties and specifically stated that the Receiver is entitled to be paid a reasonable amount for services rendered, holding “both parties [] jointly and severally responsible for payment on a timely basis.” (Appellee’s App. Vol. II, p. 65). Several other issues were addressed in the fall and winter of 2019 regarding the Receivership and the City’s pending motion for mandatory injunction. In its February 19, 2020 Order, the trial court addressed the pending motions and reiterated its orders with respect to the Receiver’s role. Upon Towne & Terrace’s appeal of the trial court’s February 19, 2020 Order, this court affirmed the trial court’s mandate, on September 22, 2020, holding Towne & Terrace responsible for half of the Receiver’s costs. *See Towne & Terrace v. City of Indianapolis*, 156 N.E.3d 703 (Ind. Ct. App. 2020)

(*Towne III*). After its petition for rehearing was denied, Towne & Terrace filed its petition for transfer on December 15, 2020, which was denied by our supreme court on April 8, 2021.

[7] While the appellate proceedings in *Towne III* were unfolding, the trial court affirmed the February 19, 2020 Order and on August 25, 2020, compelled Towne & Terrace to pay one-half of the Receiver's fees as requested by the Receiver in its order Overruling Objections in the Reports of Receiver and Granting Receiver's Motion to Compel Payment of Fees. Towne & Terrace appealed the trial court's August 25, 2020 Order to this court. On December 17, 2020, the City filed a motion to stay proceedings with this court, asserting that it would be inefficient to proceed with the current appeal as the instant appeal will depend entirely on the outcome of *Towne III*. On February 1, 2021, this court granted an order to stay the proceedings pending the supreme court's decision on Towne & Terrace's petition to transfer in *Towne III*.

[8] Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[9] In its brief, Towne & Terrace solely disputes the trial court's order, compelling it to pay Receiver's fees, with its arguments focusing on the validity of having to pay one-half of the fees for the Receiver who was appointed to evaluate the City's properties. Towne & Terrace acknowledges that "[t]he present interlocutory appeal is being taken pursuant to App. Rule 14(A)(1), which allows an interlocutory appeal of right 'for the payment of money.' Although

the outcome of the appeal will depend on the final outcome of the previous appeal regarding such issue, this appeal is being taken to preserve Appellants' right to object to paying any part of the Receiver's fees." (Appellant's Br. p. 4).

[10] Towne & Terrace advances the same arguments that it advocated in *Towne III*. Specifically, arguments relating to voting status at Board meetings, the application of the Business Judgment Rule, non-payment of fees and debts, and the Receiver's role and payment of his fees. Final judgment on these issues was rendered by our supreme court's denial of transfer on April 8, 2021, thereby affirming the court of appeals' decision in *Towne III*.

[11] The doctrine of *res judicata* bars the litigation of a claim after a final judgment has been rendered in a prior action involving the same claim between the same parties or their privies. *MicroVote General Corp. v. Ind. Election Com'n*, 924 N.E.2d 184, 192 (Ind. Ct. App. 2010). The principle behind this doctrine is the prevention of repetitive litigation of the same dispute. *Id.* The following four requirements must be satisfied for a claim to be precluded under the doctrine of *res judicata*: 1) the former judgment must have been rendered by a court of competent jurisdiction; 2) the former judgment must have been rendered on the merits; 3) the matter now in issue was, or could have been, determined in the prior action; and 4) the controversy adjudicated in the former action must have been between the parties to the present suit or their privies. *Id.* As Town & Terrace's appellate claim against the City in the current appeal again focuses on the assessment of one-half of the Receiver's fees, which was finally decided through our supreme court's denial of transfer in *Towne III*, we conclude that

our review of Towne & Terrace's claim is barred by *res judicata* and therefore, it is responsible for payment of one-half of the Receiver's fees.

CONCLUSION

[12] Based on the foregoing, we hold that Towne & Terrace's claim is barred by *res judicata*.

[13] Affirmed.

[14] Najam, J. and Crone, J. concur