

\*\*\*\*\*

The “officially released” date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the “officially released” date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

\*\*\*\*\*

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
TRUSTEE *v.* ELITA DOREUS  
(AC 45502)

Alvord, Prescott and Suarez, Js.

*Syllabus*

The plaintiff bank sought to foreclose a mortgage on certain real property owned by the defendant. The plaintiff previously had commenced a foreclosure action against the defendant with respect to the same property. Although the trial court rendered judgment of strict foreclosure in that prior action, that judgment was opened and vacated, and the action subsequently was dismissed for failure to prosecute pursuant to the applicable rule of practice (§ 14-3 (a)). The trial court in the present action denied the defendant's motion to dismiss, in which she claimed that the plaintiff's action was barred by the doctrines of res judicata and collateral estoppel as a result of the dismissal of the prior action. The court thereafter granted the plaintiff's motion for summary judgment as to liability and, subsequently, rendered judgment of strict foreclosure, from which the defendant appealed to this court. *Held* that the defendant could not prevail on her claim that the trial court improperly rendered judgment of strict foreclosure because the doctrines of res judicata and collateral estoppel barred the plaintiff's action: the doctrine of res judicata was inapplicable because the dismissal of the prior action pursuant to Practice Book § 14-3 (a) was not a judgment on the merits, and the doctrine of collateral estoppel was inapplicable because no issues were ultimately determined in the prior action, the judgment in that action having been opened and vacated and the case dismissed for failure to prosecute.

Argued February 2—officially released March 7, 2023

*Procedural History*

Action to foreclose a mortgage on certain of the defendant's real property, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Hon. Alfred J. Jennings, Jr.*, judge trial referee, denied the defendant's motion to dismiss; thereafter, the court, *Bruno, J.*, granted the plaintiff's motion for summary judgment as to liability and rendered judgment of strict foreclosure; subsequently, the court, *Spader, J.*, denied the defendant's motion to dismiss and granted the plaintiff's motion to open the judgment; thereafter, the court, *Spader, J.*, rendered judgment of strict foreclosure, from which the defendant appealed to this court. *Affirmed.*

*Elita Doreus*, self-represented, the appellant (defendant).

*Geraldine A. Cheverko*, for the appellee (plaintiff).

*Opinion*

ALVORD, J. The self-represented defendant, Elita Doreus, appeals from the judgment of strict foreclosure rendered by the trial court in favor of the plaintiff, Wells Fargo Bank, National Association, as Trustee for the Holders of the First Franklin Mortgage Loan Trust 2006-FF17 Mortgage Pass-Through Certificates, Series 2006-FF17. On appeal, the defendant claims that the court improperly rendered a judgment of strict foreclosure because the action is barred by the doctrines of res judicata and collateral estoppel.<sup>1</sup> We affirm the judgment of the trial court.

The following facts and procedural history are necessary for our resolution of this appeal. The defendant is the owner of real property in Stratford. In March, 2014, the plaintiff commenced a prior foreclosure action against the defendant with respect to the property (prior foreclosure action). See *Wells Fargo Bank, National Assn. v. Doreus*, Superior Court, judicial district of Fairfield, Docket No. CV-14-6041980-S. The defendant was defaulted for failure to plead and failure to disclose a defense. A judgment of strict foreclosure was rendered in June, 2015, and the court set a law day for December 1, 2015. The plaintiff filed a motion to open the judgment on the basis that “the parties [we]re negotiating a loan modification as a potential alternative resolution to [the] foreclosure action,” and the court granted the motion. In May, 2016, the plaintiff filed a “request for exemption from docket management program . . . dismissal” under Practice Book § 14-3.<sup>2</sup> The court granted the request for “a period of one month to and including June 20, 2016.” When that date passed, on June 21, 2016, the court dismissed the action. The plaintiff filed a motion to open the judgment of dismissal, which the court denied. The plaintiff did not file an appeal.

In October, 2017, the plaintiff commenced the present foreclosure action. The defendant filed a motion to dismiss the action for lack of subject matter jurisdiction, based on the dismissal entered in the prior foreclosure action, and a memorandum of law in support of her motion. Specifically, she argued that the present action was barred by the doctrines of res judicata and collateral estoppel.<sup>3</sup> The plaintiff objected to the motion to dismiss, arguing that the court’s dismissal of the prior foreclosure action, pursuant to Practice Book § 14-3, did not constitute an adjudication of the merits of the case. Thus, according to the plaintiff, res judicata and collateral estoppel were not applicable. On March 26, 2018, the court, *Hon. Alfred J. Jennings, Jr.*, judge trial referee, denied the motion to dismiss on the ground that the dormancy dismissal of the prior foreclosure action did not constitute an adjudication on the merits that could be treated as res judicata.

The complaint was amended in September, 2018, and the defendant filed an answer in October, 2018. In November, 2018, the plaintiff filed a motion for summary judgment as to liability, and the defendant filed an objection. The court, *Bruno, J.*, granted the motion in January, 2019. On March 28, 2019, the plaintiff filed a motion for a judgment of strict foreclosure. The defendant did not file an objection. On April 15, 2019, the court rendered a judgment of strict foreclosure, finding that the property had a fair market value of \$192,000 and that the debt owed as of the judgment date was \$307,571.63. The court set a law day for September 17, 2019.

On September 16, 2019, the plaintiff filed an affidavit with the court in which the plaintiff's counsel averred that the defendant had filed a bankruptcy petition. No filings were made with the court until April 6, 2021, when the plaintiff filed a notice indicating that the bankruptcy action was closed and that the plaintiff intended to proceed with the foreclosure action. Also on that date, the plaintiff filed a motion to open the judgment for the purpose of setting a new law day. On November 22, 2021, the plaintiff filed a "request for exemption from dormancy docket dismissal," in which the plaintiff represented that its "servicer has placed [the] file on a FEMA hold." In March, 2022, the plaintiff filed a motion to open the judgment for the purpose of setting a new law day, in which it represented that its servicer had lifted all holds with respect to the loan.

On March 8, 2022, the defendant filed a motion to dismiss, which she captioned "motion to dismiss request for exemption from dormancy docket dismissal." She also filed a memorandum of law in support of that motion, again relying on the dormancy dismissal of the prior foreclosure action. The plaintiff filed a memorandum in opposition to the defendant's motion, in which it argued, *inter alia*, that the court's March 26, 2018 denial of the defendant's first motion to dismiss constituted the law of the case. The defendant filed a reply memorandum. On May 2, 2022, the court, *Spader, J.*, denied the defendant's motion to dismiss.

On April 5, 2022, the plaintiff filed a motion to make new findings and to reenter judgment. On May 2, 2022, the court, *Spader, J.*, opened the judgment of strict foreclosure and reentered it as follows. The court found that the property had a fair market value of \$310,000 and that the debt owed as of the judgment date was \$348,908.93. The court set a law day for September 20, 2022.<sup>4</sup> This appeal followed.

On appeal, the defendant claims that the trial court improperly concluded that the present action is not barred by the doctrines of *res judicata* and *collateral estoppel*.<sup>5</sup> We disagree.

We first set forth our standard of review and general

principles of law. “The issue of whether the doctrines of res judicata and collateral estoppel apply to the facts of this case presents a question of law. Our review, therefore, is plenary. . . .

“Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion . . . prevents a party from relitigating an issue that has been determined in a prior suit. . . . The doctrines of res judicata and collateral estoppel protect the finality of judicial determinations, conserve the time of the court, and prevent wasteful relitigation.” (Citation omitted; internal quotation marks omitted.) *U.S. Bank, N.A. v. Foote*, 151 Conn. App. 620, 625, 94 A.3d 1267, cert. denied, 314 Conn. 930, 101 A.3d 952 (2014).

We first address the defendant’s argument that the doctrine of res judicata precluded the court from rendering a judgment of strict foreclosure in the present action. “[T]he doctrine of res judicata, or claim preclusion, [provides that] a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim. . . . The doctrine of res judicata applies if the following elements are satisfied: the identity of the parties to the actions are the same; the same claim, demand or cause of action is at issue; the judgment in the first action was rendered on the merits; and the parties had an opportunity to litigate the issues fully. . . . Judgments based on the following reasons are not rendered on the merits: want of jurisdiction; pre-maturity; *failure to prosecute*; unavailable or inappropriate relief or remedy; lack of standing.” (Citation omitted; emphasis altered; internal quotation marks omitted.) *Id.*, 626.

In the present case, there is no dispute that the prior foreclosure action was dismissed pursuant to Practice Book § 14-3 for failure to prosecute. That disposition plainly is not a judgment on the merits, and the doctrine of res judicata, therefore, does not apply. See, e.g., *Wilmington Trust, National Assn. v. N’Guessan*, 214 Conn. App. 229, 238, 279 A.3d 310 (2022) (res judicata not applicable where prior action was dismissed for failure to prosecute).

We now turn to the defendant’s argument that the doctrine of collateral estoppel precluded the court from rendering a judgment of strict foreclosure in the present action. “Collateral estoppel . . . is that aspect of res judicata which prohibits the relitigation of an issue when that issue was actually litigated and necessarily determined in a prior action between the same parties upon a different claim. . . . Collateral estoppel means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be relitigated between the same par-

ties in any future lawsuit. . . . Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment. . . . Collateral estoppel may be invoked against a party to a prior adverse proceeding or against those in privity with that party.” (Citation omitted; internal quotation marks omitted.) *U.S. Bank, N.A. v. Foote*, supra, 151 Conn. App. 628–29.

The defendant has not directed this court to any issue raised in the present action that was determined by a valid and final judgment in the prior foreclosure action. Although the court rendered a judgment of strict foreclosure in the prior action, that judgment was opened and vacated, and the action subsequently was dismissed for failure to prosecute pursuant to Practice Book § 14-3. Thus, no issues were ultimately determined in the previous action. “Collateral estoppel can be applied only to bar relitigation of facts that were formally put in issue *and ultimately determined* by a valid, final judgment. . . . To conclude otherwise would improperly infringe on a party’s right to seek a judicial determination of disputed issues of fact.” (Emphasis in original; internal quotation marks omitted.) *Pollansky v. Pollansky*, 162 Conn. App. 635, 660, 133 A.3d 167 (2016).

On the basis of our plenary review of the defendant’s claim, we conclude that neither the doctrine of res judicata nor the doctrine of collateral estoppel precluded the court from rendering a judgment of strict foreclosure.

The judgment is affirmed.

In this opinion the other judges concurred.

<sup>1</sup> The defendant asserts other claims in her statement of issues but does not brief them adequately. Thus, we decline to address them. “We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. . . .

“In addition, briefing is inadequate when it is not only short, but confusing, repetitive, and disorganized. . . . We are mindful that [i]t is the established policy of the Connecticut courts to be solicitous of [self-represented] litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the [self-represented] party. . . . Nonetheless, [a]lthough we allow [self-represented] litigants some latitude, the right of self-representation provides no attendant license not to comply with relevant rules of procedural and substantive law.” (Internal quotation marks omitted.) *C. B. v. S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022).

<sup>2</sup> Practice Book § 14-3 (a) provides: “If a party shall fail to prosecute an action with reasonable diligence, the judicial authority may, after hearing, on motion by any party to the action pursuant to Section 11-1, or on its own motion, render a judgment dismissing the action with costs. At least two weeks’ notice shall be required except in cases appearing on an assignment list for final adjudication. Judgment files shall not be drawn except where an appeal is taken or where any party so requests.”

<sup>3</sup> We note that a motion to dismiss for lack of subject matter jurisdiction is not a proper vehicle for presentation of a claim that the doctrines of res judicata and collateral estoppel operate to bar an action, as those doctrines

do not provide the basis for a judgment of dismissal. See *Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 223, 982 A.2d 1053 (2009) (“[T]he doctrine of collateral estoppel does not implicate a court’s subject matter jurisdiction. . . . Even when applicable, therefore, collateral estoppel does not mandate dismissal of a case.” (Internal quotation marks omitted.)); *Geremia v. Geremia*, 159 Conn. App. 751, 772 n.15, 125 A.3d 549 (2015) (“[r]es judicata does not provide the basis for a judgment of dismissal; it is a special defense that is considered after any jurisdictional thresholds are passed” (internal quotation marks omitted)).

<sup>4</sup> On September 12, 2022, the defendant filed a motion to open the judgment, which was denied. On September 19, 2022, the defendant filed a notice of bankruptcy. On October 28, 2022, the plaintiff filed a notice of termination of the bankruptcy stay.

<sup>5</sup> We note that the defendant did not assert a special defense of res judicata or collateral estoppel in her answer. Res judicata and collateral estoppel are affirmative defenses that may be waived if not properly pleaded. See *Wilcox v. Webster Ins., Inc.*, 294 Conn. 206, 222, 982 A.2d 1053 (2009). The plaintiff, however, did not object, either before the trial court or in its appellate brief, to consideration of the defendant’s res judicata or collateral estoppel arguments on the basis that the defendant failed to plead the applicability of those doctrines as a special defense. See *Carnese v. Middleton*, 27 Conn. App. 530, 537, 608 A.2d 700 (1992) (plaintiff may waive any objection to defendant’s failure to plead special defense if plaintiff fails to challenge evidence and argument offered in support of affirmative defense that should have been pleaded). The trial court expressly considered and rejected the defendant’s claim that res judicata and collateral estoppel were applicable. Accordingly, we consider the defendant’s claim on appeal.

---