

2012 IL App (2d) 110892-U
No. 2-11-0892
Order filed June 21, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

ABDI ABDIU,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-AR-665
)	
GEORGE BOUNDRAKAS,)	Honorable
)	John D. Bolger,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: The trial court properly dismissed plaintiff's complaint on res judicata grounds: under the "same transaction" test, plaintiff's prior complaint, which alleged that defendant had violated the parties' lease and which led to a settlement terminating the tenancy, raised the same cause of action as his present complaint, which asserted rights in property that plaintiff left behind when he vacated the premises.

¶ 1 Plaintiff, Abdi Abdiu, appeals a judgment dismissing his complaint against defendant, George Boundrakas, for conversion and unjust enrichment. The trial court held that, because the claims that the complaint raised originated from the same operative facts as a settlement that resolved plaintiff's earlier complaint against defendant, it was barred by *res judicata*. We affirm.

¶ 2 Plaintiff's complaint alleged as follows. Defendant owns real property in Harvard. Beginning in August 2007, plaintiff operated a restaurant on the property. He vacated the property on March 3, 2008, but left some restaurant equipment there, with the understanding that he could retrieve it later.¹ However, despite his demands, defendant had refused to return the equipment.

¶ 3 Defendant moved per section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2010)) to dismiss the complaint as barred by *res judicata*. He alleged as follows. In 2008, plaintiff filed a complaint against defendant, alleging that defendant had violated his obligations under the lease. On February 13, 2008, the trial court approved a settlement that dismissed the complaint with prejudice, ended the parties' landlord-tenant relationship, and resolved issues relating to the possession of restaurant equipment. Defendant contended that, had plaintiff wanted to litigate such issues further, he should have done so before agreeing to the settlement.

¶ 4 Defendant's motion attached copies of the settlement order. In pertinent part, it read:

“1. [Plaintiff] agrees to vacate the property no later than 3-3-08 at 10 a.m. unless otherwise agreed, and shall release [defendant] from any and all liability regarding the property. [Plaintiff] shall leave the property in good condition and is entitled to remove the exhaust hood, unless [defendant] pays [plaintiff] \$7,000.00 for the hood. If [plaintiff] vacates by March 3, 2008, or any other date agreed upon, the lease shall be terminated in all respects; and

2. [Defendant] shall forgive, and agree not to collect, the rent owed for Dec. '07, Jan. '08, and Feb. '08, and any other rights with respect to this rent.”

¹The complaint referred to an exhibit listing the items that plaintiff sought to have returned, but, in the record on appeal, the exhibit is not attached to the complaint.

¶ 5 In response to the motion, plaintiff argued that, although defendant had proved two of the three elements needed to apply *res judicata*—an identity of the parties and a final judgment on the merits—he had not shown the remaining element, an identity of causes of action. Plaintiff asserted that the issues in the first case had been different. Then, plaintiff had sought to force defendant to repair the building’s heating system and roof; here, plaintiff sought the return of property that defendant had retained after the first case had been settled. Thus, according to plaintiff, he was basing his complaint on facts that had not even arisen when the settlement was approved. Plaintiff’s response attached a copy of the 2008 complaint, which pleaded causes of action for specific performance and for damages for breach of contract, based on allegations that defendant had failed to keep the restaurant’s heating system and roof in repair.

¶ 6 After hearing arguments, the trial court granted defendant’s motion to dismiss. The court held that there was an identity of causes of action, because the present complaint and the 2008 settlement arose from the same group of operative facts, regardless of the differing theories of recovery. At the hearing, the trial judge noted that *res judicata* barred not only relitigating claims but also raising claims that could have been raised in the first proceeding. Here, the judge observed, the complaint asserted that plaintiff was entitled to the return of certain restaurant equipment; however, the settlement could have addressed plaintiff’s rights in that property. Indeed, by specifying that plaintiff owned the exhaust hood, the settlement did resolve property issues similar to the one that plaintiff now sought to litigate. There was no reason why, in 2008, the parties could not have specified plaintiff’s rights to the equipment that he now claimed. However, the settlement resolved all claims and freed defendant from further liability, without stating that plaintiff had any rights to the equipment at issue. After the court dismissed the complaint, plaintiff timely appealed.

¶ 7 On appeal, plaintiff essentially reiterates his arguments before the trial court. He contends that *res judicata* does not apply here, because the facts on which his complaint is based had not even arisen when the trial court entered the order approving the settlement, thus negating any identity of causes of action. Plaintiff contends that, because the first suit was based on the parties' contractual relationship, but the present suit is based on what happened after that relationship was ended, the two proceedings were not part of a single transaction. For the reasons that follow, we disagree.

¶ 8 We review *de novo* a dismissal under section 2-619 of the Code. *Cload v. West*, 328 Ill. App. 3d 946, 949 (2002). *Res judicata* precludes subsequent litigation between the same parties over a cause of action if a court of competent jurisdiction has already rendered a final judgment on the merits. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 301 (1998); *Cload*, 328 Ill. App. 3d at 949. Thus, to invoke *res judicata*, a defendant must establish (1) identity of parties; (2) identity of causes of action; and (3) a final judgment on the merits. *Cload*, 328 Ill. App. 3d at 950-51. *Res judicata* bars not only those claims that were actually decided in the prior proceeding, but also those that could have been decided. *River Park*, 184 Ill. 2d at 302; *Cload*, 328 Ill. App. 3d at 950.

¶ 9 Plaintiff concedes that defendant established the first and third elements of *res judicata*. He contests only the second element: identity of causes of action. Illinois uses the "transactional test" to decide whether causes of action are identical. *River Park*, 184 Ill. 2d at 307. Under this test, separate claims are considered the same cause of action if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *Id.* In rejecting the "same evidence" test, *River Park* held that claims may be considered part of the same cause of action even if the evidence does not substantially overlap, so long as they arise from the same transaction. *Id.* at 311. In deciding whether the two claims are "linked in a manner such that they are part of a single

transaction,” courts consider (1) their relationship in time, space, origin, and motivation; (2) whether they form a convenient trial unit; and (3) whether their treatment as a single unit conforms to the parties’ expectations and business usage. *Cload*, 328 Ill. App. 3d at 951.

¶10 We hold that the two proceedings in this case must be treated as a single unit, even though some of the facts on which the present complaint is based did not arise until shortly after the judgment in the first case. We agree with defendant that our decision in *Cload* is highly instructive. There, the plaintiff filed two medical malpractice complaints. The first was based on the defendants’ alleged negligence in the prenatal care and delivery of her baby, who was born with severe injuries. The trial court granted the defendants summary judgment. The second complaint was based on the defendants’ alleged negligence shortly after delivery. We held that, despite this difference, *res judicata* barred the second suit, because the claims in both cases arose from a single group of operative facts. *Id.*

¶11 We explained as follows. The two cases were closely related temporally: the events at issue formed one continuous series. *Id.* The cases were also closely related spatially: the crucial events occurred at the same location. *Id.* Third, the cases had the same origin: all of the events at issue occurred in the course of the birth and the medical treatment appurtenant to it. *Id.* at 952. Further, the events were so close as to form a convenient trial unit. Finally, given how close in time, space, and origin the two cases were, treating them as a unit could not have been contrary to the parties’ expectations, and treating them as such thus conformed to business understandings and usages, because a single medical professional was in charge of events both before and after delivery. *Id.*

¶12 We agree with defendant that, for reasons similar to those in *Cload*, the pertinent factors compel the application of *res judicata* here. Defendant rightly observes that, although the first suit

started off as one for breach of contract, it ended in a judgment that terminated the parties' landlord-tenant relationship and was intended to resolve all outstanding matters that had arisen from the original lease. The obvious purpose of the judgment, which embodied the settlement, was to enable the parties to cut their ties for good.

¶13 In that context, we apply the pertinent factors. The two cases are closely linked in time. Plaintiff's assertion that the events giving rise to the present suit did not occur until after the judgment was entered in the first suit is unavailing for two reasons. First, defendant's allegedly unlawful retention of the equipment began immediately after the entry of the judgment. Plaintiff's argument is no more persuasive than was the plaintiff's analogous argument in *Cload*: the events in the two cases were part of a continuous series, and, whatever merit plaintiff's assertion might have under the "same evidence" test, it fails under the "same transaction" test. See *River Park*, 184 Ill. 2d at 312; *Cload*, 328 Ill. App. 3d at 953. Second, plaintiff's assertion is misleading at best. The second complaint is based on the allegation that, under the 2008 judgment, plaintiff owned the equipment at issue. Thus, the complaint depends on plaintiff's rights before and as of February 13, 2008. Its premise is that, as of then, he owned certain items that were then inside the restaurant on defendant's property. Thus, unless we construe the complaint as one to enforce the 2008 judgment—which plaintiff has never requested—the unavoidable conclusion is that *the complaint is in substance one to declare and enforce certain property rights that existed before and as of February 13, 2008.*

¶14 Not only are the cases closely linked in time, they are closely linked spatially. Indeed, they concern the same space: the property that plaintiff leased from defendant. The cases are closely linked in origin and motivation: they both arise from the May 2007 lease and the need to resolve the

disputes over the parties' rights thereunder. Next, the events are so closely connected as to form a convenient trial unit. The present complaint's premise is that, as of the judgment of February 13, 2008, he owned certain items that were then inside defendant's property. There is no reason why, before agreeing to the judgment in the first case, plaintiff could not have raised, and the parties could not have resolved, the issue of who owned the equipment that he now seeks to have returned.² Indeed, the parties did specifically resolve the matter of who owned the exhaust hood. The trial judge rightly questioned why, two years later, plaintiff finally decided to claim rights in the other

²Arguably, in the first case, the parties did raise and resolve the issue of who owned the equipment, other than the exhaust hood, that plaintiff left inside the building. The February 13, 2008, judgment specifically granted plaintiff ownership of the exhaust hood but did not do so with regard to any other equipment, and it also freed defendant from all further liability arising out of the parties' dealings. Thus, there is a strong argument that the 2008 judgment definitively resolved the issue that plaintiff raised in his second complaint. Of course, this would not help plaintiff at all: if the 2008 judgment established that he has no rights in the equipment that he now seeks to have returned, then *res judicata* is plainly a bar to the present complaint.

Plaintiff construes the trial judge's remarks at the hearing as holding that the 2008 judgment did indeed resolve who owned the restaurant equipment other than the exhaust hood. He contends that this interpretation was erroneous, because "[n]othing in the prior order dealt with the ownership of the restaurant equipment, or any disposition thereof (with the exception of the exhaust hood)." Even if this assertion is correct, it does not matter. *Res judicata* applies not only to claims that were actually raised in the first action, but also to claims that could have been raised then. *River Park*, 184 Ill. 2d at 302; *Cload*, 328 Ill. App. 3d at 950.

equipment. There is no doubt that the issues in the first case and those in the second case formed a convenient trial unit—or, in this instance, a convenient settlement unit.

¶ 15 Finally, we agree with defendant that treating the two cases as a unit conforms to the parties' expectations or business understanding. The present complaint involves the parties' relationship as landlord and tenant, and the first case addressed all aspects of the termination of that relationship, including the disposition of restaurant equipment on the premises. In sum, all of the pertinent factors support a conclusion that the present case and the first case are identical causes of action under the transactional test. Therefore, the trial court correctly held that the present complaint is barred by *res judicata*, and it did not err in dismissing it.

¶ 16 Plaintiff cites three opinions as “instructive.” See *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484 (1993); *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302 (1992); *Saxon Mortgage, Inc. v. United Financial Mortgage Corp.*, 312 Ill. App. 3d 1098 (2000). Curiously, plaintiff does not discuss these opinions or explain why they support his position, other than noting that the first two opinions held that there was no identity of causes of action between the pertinent suits. Essentially, plaintiff requests that we assume his burden of argument, which would be improper. See *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 208 (2007).

¶ 17 In any event, we agree with defendant that the opinions do not help plaintiff at all. *Torcasso* is based on the now-abandoned same-evidence test. *Torcasso*, 157 Ill. 2d at 491-92. *Rodgers* uses both the same-evidence test and the transactional test, but it is distinguishable. There, the plaintiff initially sued a hospital, obstetricians, and radiologists for the allegedly wrongful death of his wife shortly after childbirth. Eventually, he won a verdict against the obstetricians (and settled with them on appeal) but lost to the other defendants. After filing the first suit, but before the judgment against

the obstetricians, the plaintiff filed a separate suit against the hospital, claiming that, after his wife died, the hospital violated a statute and its own regulations by failing to preserve an X ray that would have strengthened the case against the obstetricians and radiologists. The supreme court held, somewhat cursorily, that the medical malpractice and the subsequent loss of the X ray involved wholly distinct transactions: causing the death was separate from, and antecedent to, losing evidence much later on. Thus, the unities that are present here did not exist in *Rodgers*. Finally, *Saxon*, which plaintiff does not even discuss minimally, involved two lawsuits that centered on securitized mortgage loans that the plaintiff had purchased from the defendant. The court held that the second suit was not barred by *res judicata*. The alleged acts of wrongdoing had occurred at different times, some of the acts on which the second suit was based not occurring until after the first suit. The suits involved wholly different transactions: the first suit was based on an alleged deficiency in the quality of one loan that led to a default, but the second was for refunds of premiums based on the timely payment of the loans. *Saxon*, 312 Ill. App. 3d at 1106. *Saxon* is a case in which the appellate court addressed *res judicata*, but that is about the extent of its pertinence to this case.

¶ 18 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 19 Affirmed.