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2012 IL App (3d) 110542-U

Order filed November 13, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

ROLAND E. CAMPBELL, an individual, and)	Appeal from the Circuit Court
MELODY L. CAMPBELL, an individual,)	of the 10th Judicial Circuit,
)	Tazewell County, Illinois,
Plaintiffs-Appellants,)	
)	Appeal No. 3-11-0542
v.)	Circuit No. 09-L-04
)	
INTERNATIONAL SUPPLY CO., an Illinois)	
Corporation, and E. LEE HOFMANN, an)	
individual,)	Honorable
)	Paul P. Gilfillan,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly dismissed plaintiffs' third amended complaint after applying the principles of *res judicata* because the plaintiffs' claims could have been brought in the prior lawsuit involving the same parties.
- ¶ 2 Plaintiffs, Roland E. Campbell and Melody L. Campbell (collectively, "the Campbells"), appeal the trial court's dismissal of their third amended complaint after applying the principles of *res judicata*. We affirm.

¶ 3

FACTS

¶ 4 On January 19, 2011, the Campbells filed their third amended complaint against defendants, International Supply, Co. (International Supply), and E. Lee Hofmann (Hofmann). Counts I, II, and III of the third amended complaint alleged Hofmann breached a fiduciary duty, breached a duty of loyalty, and intentionally interfered with the Campbells' prospective economic advantage arising out of a financial relationship with Hofmann. Count IV alleged intentional interference with a prospective economic advantage solely against International Supply.

¶ 5 The facts of the prior case, Tazewell County Case No. 06 MR 35, (*Hofmann I*) which are at the heart of the *res judicata* issue now before us in this appeal, were carefully and accurately detailed in this court's decision in *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439 (2009). Therefore, we adopt and incorporate the factual background from our opinion in *International Supply*, as part of this decision, without replicating those facts at length.

¶ 6 By way of a brief summary, the Campbells, Dr. John Miller (Miller), and Scott Pitcher (Pitcher) (collectively, "the original investors") were involved in a project to develop the East Peoria Convention Center. When additional financing became necessary, Hofmann and International Supply assisted the original investors in securing a multi-million dollar loan from Central Illinois Bank (CIB). As part of this arrangement, the original investors agreed to pay Hofmann and International Supply a fee for arranging the loan. In addition, Roland Campbell, Miller, and Pitcher further agreed to reimburse Hofmann for any financial losses suffered by

Hofmann in the event of a default on the multi-million loan from CIB.¹ Melody

¹The agreement with Hofmann actually consisted of four main documents, but were collectively viewed as one contract by this court in *International Supply Co. v. Campbell*, 391 Ill.

Campbell did not sign this personal guaranty. The project eventually failed and the CIB loan went into default.

¶ 7 After the parties were notified of the default, Hofmann and International Supply bought out Pitcher's interest in the development project. Thereafter, CIB assigned the loan to SPCP Group, LLC (SPCP). SPCP filed suit in federal court against the Campbells, Miller, Hofmann, and International Supply to collect on the loan. Hofmann and International Supply settled with SPCP for slightly less than the loan amount and took an assignment of the loan documents.

¶ 8 Thereafter, in *Hofmann I*, Hofmann and International Supply filed a lawsuit against Miller and the Campbells. Count I of the lawsuit sought to enforce the personal guaranty against Miller and Roland Campbell.

¶ 9 In response to the complaint in *Hofmann I*, the Campbells filed an affirmative defense claiming Hofmann and International Supply were estopped from seeking compensation from them because Hofmann and International Supply had promised to refrain from enforcing the personal guaranty for a period of two years after a default occurred. In addition, Miller filed affirmative defenses in which he alleged, in part, that Hofmann's defaults caused the loan to become due, thus depriving the Campbells and Miller of their opportunity to satisfy their obligations under the loan. Miller also filed a counterclaim in which he alleged that Hofmann could not enforce the personal guaranty against Miller because Hofmann fraudulently induced Miller to sign the personal guaranty. Specifically, Miller alleged that Hofmann promised he would wait two years after a default occurred before seeking to enforce the personal guaranty.

App. 3d 439 (2009).

The Campbells filed a motion *in limine* to join Miller's counterclaim, but the trial court did not rule on the motion.²

¶ 10 The trial court ruled in favor of Hofmann and International Supply to enforce the personal guaranty against Miller and Roland Campbell in *Hofmann I*. The trial court also denied Miller's counterclaim on the merits after finding Hofmann's actions did not constitute fraud under the applicable case law.

¶ 11 On appeal in *Hofmann I*, this court reversed the trial court and ruled in favor of Miller and Roland Campbell on the personal guaranty claim. This court held Hofmann and International Supply could not prevail on the personal guaranty claim because Hofmann did not prove damages in the trial court. *International Supply*, 391 Ill. App. 3d at 451. Since this court disposed of the personal guaranty claim in favor Miller and Roland Campbell based on Hofmann's inability to prove damages, we did not consider the purported fraud raised by Miller's counterclaim or the Campbells' affirmative defense. *Id.* at 450.

¶ 12 After this court issued its decision in *International Supply*, the Campbells initiated a lawsuit in Tazewell County Case No. 09-L-04 (*Hofmann II*) against International Supply and Hofmann for breach of fiduciary duty, breach of duty of loyalty, and intentional interference with the Campbells' prospective economic advantage regarding the East Peoria Convention Center project. In *Hofmann II*, Counts I and II of the Campbells' third amended complaint alleged Hofmann agreed to a two-year cure period in the event of a default on the CIB loan, but Hofmann

²The Campbells' attorney stated at the hearing on the motion to dismiss the third amended complaint that the trial court "never ruled on my motion [in limine] so by virtual [*sic*] of not ruling, I suppose it was denied."

fraudulently omitted this agreement from the documents at the time of closing on the loan.

According to the third amended complaint, Roland Campbell asked Hofmann about the missing clause, and Hofmann agreed his attorney would add the clause later, which did not occur. Counts III and IV, which were pled against Hofmann and International Supply, alleged Hofmann, after becoming involved in the project, intentionally sabotaged the Campbells' efforts to raise funds for the development project, causing the Campbells to default on the loan.

¶ 13 Hofmann and International Supply filed a motion to dismiss the third amended complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) on the grounds that the Campbells' claims were barred under the doctrine of *res judicata*.³ A hearing was held on the section 2-619 motion to dismiss on June 16, 2011. During the hearing, Hofmann and International Supply argued that all of the "bad acts" allegedly committed were "in play" in *Hofmann I*.

¶ 14 In response, the Campbells argued that *Hofmann I* involved operative facts that occurred *after* the loan default involving the enforcement of the personal guaranty while *Hofmann II* involved Hofmann's "bad acts" that occurred *before* the loan went into default. However, during the hearing, the Campbells admitted that *Hofmann II* "conceivably could have been brought as a counterclaim" in *Hofmann I*.

¶ 15 In a written order dated July 1, 2011, the trial court took judicial notice of the pleadings from *Hofmann I*. The court found that the doctrine of *res judicata* applied under the

³Hofmann and International Supply also filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), but it appears the trial court did not rule on it, and that motion is not the subject of the instant appeal.

"transactional test" of *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 310 (1998). The court further declared that the facts *Hofmann II* arose "from the same core of operative facts as in Tazewell Case #06 MR 35 and could have been decided in the former case." The Campbells' third amended complaint was dismissed by the trial court in *Hofmann II*, and they now appeal.

¶ 16

ANALYSIS

¶ 17 On appeal, the Campbells contend the trial court erred by applying the doctrine of *res judicata*. Specifically, the Campbells argue the operative facts now at issue in *Hofmann II* are not related in time to the operative facts at issue in *Hofmann I*, and therefore *res judicata* should not apply. Hofmann and International Supply maintain that the issues raised in *Hofmann II* could have been decided during the litigation resulting from *Hofmann I*.

¶ 18 *Res judicata* operates to bar matters that could have been decided in a prior lawsuit.

Agolf, LLC v. Village of Arlington Heights, 409 Ill. App. 3d 211, 225-26 (2011). The purpose of *res judicata* is to promote judicial economy by requiring the parties to litigate, in a single case, all the issues that arise from the same set of operative facts. *River Park*, 184 Ill. 2d at 319. There are three elements to the *res judicata* test: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there is an identity in cause of action; and (3) there is an identity of parties or their privies. *River Park*, 184 Ill. 2d at 302. In this case, the only dispute is whether there was an identity in cause of action between *Hofmann I* and *Hofmann II*.

¶ 19 In *River Park*, our supreme court relied on the transactional test to determine whether there was an identity in cause of action in two separate lawsuits. *Id.* at 310. Under the transactional test, "the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Id.* at 307

(quoting *Rodgers v. St. Mary's Hospital*, 149 Ill. 2d 302, 312 (1992)). The factors the court must consider when determining whether a group of facts constitutes the same transaction are whether the facts are related "in time, space, and origin, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.* at 312 (quoting Restatement (Second) of Judgments § 24, at 196 (1982)).

¶ 20 The Campbells contend the "related in time" factor of the transactional test fails in this case because *Hofmann I* focused on operative facts that occurred after the loan default. The Campbells argue *Hofmann II* now focuses on operative facts related to Hofmann's alleged fraud during contract negotiations and subsequent deliberate misconduct which occurred prior to the default.

¶ 21 A similar argument was made in *Cload ex rel. Cload v. West*, 328 Ill. App. 3d 946 (2002). In that case, a medical malpractice action, the plaintiffs argued *res judicata* did not apply because the prior lawsuit involved the prenatal care and delivery of an infant, and the second lawsuit involved events that occurred after the delivery. *Id.* at 951. Thus, it was alleged there was no identity in the cause of action because the events were not related in time. The reviewing court disagreed, finding that some of the events between the two lawsuits overlapped. *Id.* The court noted that labor, delivery, and immediate postpartum care constituted a single transaction. *Id.*

¶ 22 In this case, although the Campbells argue that *Hofmann I* and *Hofmann II* are separated in time by the loan default, we find that, like in *Cload*, the two cases involve overlapping facts. Moreover, both lawsuits involved Hofmann's bad faith and purported motivations of fraud when assisting the original investors in securing additional financing for their investment project as evidenced by the fact that both lawsuits refer to Hofmann's fraudulent promise of a two-year cure period in the event of a default.

¶ 23 In addition, we find the issues raised in *Hofmann I* and *Hofmann II* would have formed a convenient trial unit. In *Hofmann I*, one of the defendants, Miller, actually filed an affirmative defense in which he alleged Hofmann improperly caused the loan to become due, which deprived Miller and the Campbells of their opportunity to satisfy their obligations under the loan. Therefore, in *Hofmann I*, the Campbells could have filed a counterclaim for loss of economic advantage based on the same or similar acts of misconduct. Thus, we conclude the Campbells could have raised the claims, now included in *Hofmann II*, based on fraud, misconduct and deliberate sabotage, in *Hofmann I*.

¶ 24 Allowing the Campbells to proceed in this case would essentially allow them a second "bite at the apple." *Mann v. Rowland*, 342 Ill. App. 3d 827, 838 (2003) (quoting *Peregrine Financial Group, Inc. v. Ambuehl*, 309 Ill. App. 3d 101, 109 (1999)). Accordingly, the trial court properly granted the motion to dismiss after correctly applying the principles of *res judicata*.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 27 Affirmed.