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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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DREMCO, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-1078
	)	
JEFFREY ROUSE DIVER,	)	Honorable
	)	Dorothy French Mallen,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Presiding Justice Hudson and Justice McLaren concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court properly dismissed plaintiff's complaint as barred by *res judicata*: given defendant's and his wife's mutual and successive property interests, defendant was in privity with his wife, whom plaintiff had sued in the pertinent prior action.

¶ 2 Plaintiff, Dremco, Inc., appeals from the judgment of the circuit court of Du Page County dismissing on *res judicata* grounds its complaint against defendant, Jeffrey Rouse Diver. Because the trial court did not err in applying *res judicata*, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2015, plaintiff filed a two-count complaint against defendant, alleging claims for slander of title and tortious interference with a prospective economic advantage. Plaintiff alleged that Maple Woods Estates, LLC (Maple Woods), owned a development known as Maple Woods Estates Townhome Subdivision (MWE). In 2008, Maple Woods executed a declaration of covenants, easements, and restrictions for MWE. In December 2009, plaintiff purchased MWE. As part of the purchase, plaintiff acquired all rights under the declaration.

¶ 5 Defendant's wife, through her revocable trust, purchased a townhome in MWE. She and defendant occupied the townhome. Several others also purchased townhomes.

¶ 6 In January 2010, defendant "hatched a plan for the [h]omeowners to strip [plaintiff] of [its] rights" under the declaration. As part of that plan, defendant tried to seize control of the homeowners' association by convincing the homeowners that they had the right to elect a board of directors. Upon electing the board, the homeowners elected defendant as association chairman, even though he was not an owner. They also elected defendant's wife to, and appointed her president of, the board.

¶ 7 Defendant subsequently drafted proposed amendments to the declaration, which the homeowners adopted. The amendments, which were recorded, interfered with plaintiff's rights under the original declaration, including the right to develop and market the property. The amendments also authorized the homeowners' association to collect from plaintiff monthly assessments.

¶ 8 In March 2011, before this case was filed, plaintiff filed a lawsuit against the homeowners and the association, seeking, among other things, a judgment that plaintiff was the declarant, that the association's actions were null and void, and that the homeowners were enjoined from acting as the association (Dremco I). Plaintiff alleged that the homeowners

violated its rights under the declaration by electing a board, adopting the amendments, and recording the amendments. Plaintiff did not sue defendant in Dremco I. In May 2015, following a bench trial, at which defendant was a key witness, the trial court entered judgment for plaintiff.

¶ 9 Meanwhile, in 2014, plaintiff had entered into negotiations to sell MWE to a third party. However, the third party conditioned the sale on plaintiff and the homeowners settling Dremco I, and the homeowners conditioned settling the lawsuit on the third party paying the balance of the outstanding monthly assessments owed by plaintiff. Because the third party was unable to both pay the outstanding assessments and finance the purchase, the proposed deal collapsed.

¶ 10 In October 2012, while Dremco I was pending, plaintiff filed a complaint in the United States District Court for the Northern District of Illinois against the same homeowners named in Dremco I (Dremco II). Again, plaintiff did not sue defendant. In Dremco II, plaintiff alleged a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USC § 1961 *et seq.* (2006)), based on essentially the same underlying facts as those alleged in Dremco I.

¶ 11 In May 2013, the district court dismissed Dremco II for failing to state a cause of action. The district court subsequently awarded sanctions to the defendants.

¶ 12 Defendant moved to dismiss this action pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). In the motion to dismiss, defendant contended that, because of the prior two actions, this action was barred by *res judicata*. In support of that aspect of his motion, defendant submitted his wife's affidavit, in which she averred that she had created a revocable trust. The affidavit included the trust declaration, which provided, in pertinent part, that defendant was a beneficiary. Alternatively, defendant asserted that neither claim stated a cause of action. In its response, plaintiff solely contended, as to

*res judicata*, that defendant was not in privity with any of the defendants in either Dremco I or Dremco II.

¶ 13 The trial court granted with prejudice defendant's motion to dismiss based on *res judicata*. In so ruling, the court noted that the sole issue was whether defendant was in privity with any of the defendants in the prior two cases. In finding that he was, the court pointed to plaintiff's allegations in the complaint that defendant was the "driving force behind [the homeowners' actions] and he [was] the one that \*\*\* actually [got] the ball rolling." The court further found that the claims for tortious interference and slander of title could have been brought in Dremco I and Dremco II.

¶ 14 Plaintiff then filed a motion to reconsider. In denying that motion, the trial court stated that it would first address plaintiff's argument that Dremco I and Dremco II did not involve the same set of operative facts as those in this case. The court found that this case shared the same set of operative facts with the prior two cases, including the allegations regarding the proposed sale of MWE to a third party.

¶ 15 Regarding privity, the trial court ruled that it did not require a "legal relationship." The court explained that, to have privity, the interests of a party and nonparty must be so closely aligned that the party was a virtual representative of the nonparty. The court added that the party must have adequately represented the interests of the nonparty. The court found that defendant was in privity with the defendants in Dremco I and Dremco II, because he was the "main actor" involved in the operative facts underlying both of those cases. Plaintiff, in turn, filed a timely notice of appeal.

¶ 16

## II. ANALYSIS

¶ 17 On appeal, plaintiff contends that: (1) the trial court erred in ruling that Dremco II gave rise to *res judicata*, because the facts regarding the sale could not have been alleged in Dremco II, as they did not arise until after Dremco II was dismissed; and (2) the court erred in ruling that defendant was in privity with the homeowners, because: (a) defendant offered no evidence that he and the homeowners were conspirators, (b) defendant did not prove any shared property rights, and (c) defendant provided no evidence that he was an agent of the homeowners.

¶ 18 Section 2-619(a)(4) of the Code permits a court to dismiss an action on the grounds that it is barred by a prior judgment. 735 ILCS 5/2-619(a)(4) (West 2014). Thus, section 2-619(a)(4) incorporates the doctrine of *res judicata*. *Marvel of Illinois, Inc. v. Marvel Containment Control Industries, Inc.*, 318 Ill. App. 3d 856, 863 (2001). The burden of proving that *res judicata* applies is on the party invoking the doctrine. *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41. Review of a trial court's application of *res judicata* under section 2-619(a)(4) is *de novo*. *Marvel of Illinois, Inc.*, 318 Ill. App. 3d at 863. Further, we review the lower court's judgment, not its reasoning, and therefore we may affirm the judgment on any basis in the record, regardless of whether the court relied on that basis or whether its reasoning was correct. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 21.

¶ 19 Under the *res judicata* doctrine, a final judgment on the merits, rendered by a court of competent jurisdiction, acts as a bar to a subsequent suit between the parties involving the same cause of action. *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 512 (2010). The bar extends to what was actually decided in the first action, along with those matters that could have been decided in that suit. *St. John's United Church of Christ*, 404 Ill. App. 3d at 512. *Res judicata* requires satisfaction of the following three elements: (1) a court of competent jurisdiction rendered a final judgment on the merits; (2) there is an identity of causes of action;

and (3) there is an identity of parties or their privies. *St. John's United Church of Christ*, 404 Ill. App. 3d at 512.

¶ 20 As for privity, the term is imprecise, and there is generally no prevailing definition that can be applied automatically in all cases. *St. John's United Church of Christ*, 404 Ill. App. 3d at 513. Privity reflects the idea that, as to certain matters and in certain circumstances, persons who were not parties to an action, but who are connected with it in their interests, are affected by the judgment as if they were parties. *St. John's United Church of Christ*, 404 Ill. App. 3d at 513. Privity exists where parties adequately represented the same legal interests, where parties and nonparties share a mutual or successive relationship in property rights that were the subject of an earlier action, or where the interests of the nonparty are so closely aligned with a party that the party was the virtual representative of the nonparty. *St. John's United Church of Christ*, 404 Ill. App. 3d at 513. Privity is further defined as a derivative interest founded upon, or growing out of, a contract, connection, or union between a party and nonparty. *Purmal v. Robert N. Waddington & Associates*, 354 Ill. App. 3d 715, 723 (2004).

¶ 21 In this case, we note initially that, as long as either Dremco I or Dremco II gives rise to *res judicata*, we may affirm the trial court. Thus, we first address whether the judgment in Dremco I bars this action.

¶ 22 Plaintiff does not contest that Dremco I satisfies the final-judgment and same-cause-of-action elements of *res judicata*. Rather, plaintiff solely contends that defendant was not a privy of any of the defendants in Dremco I. We disagree.

¶ 23 As discussed, for purposes of *res judicata*, a mutual or successive property interest gives rise to privity. See *St. John's United Church of Christ*, 404 Ill. App. 3d at 513. Here, in support of his section 2-619 motion to dismiss, defendant submitted his wife's affidavit. The affidavit

referred to, and included, a revocable trust created by defendant's wife. According to the trust declaration, the trust was created for the benefit of, among others, defendant. Additionally, plaintiff alleged that defendant's wife, via the trust, owned a townhome in MWE. Together, the trust and the allegations establish that defendant had a successive property interest in his wife's townhome. Thus, defendant was in privity with his wife, a defendant in Dremco I.

¶ 24 Alternatively, although defendant did not own a current interest in the townhome, he occupied the townhome with his wife. Therefore, they shared an interest in the living conditions at, and operations of, MWE. Further, as an occupant of the townhome, defendant shared an interest in the outcome of Dremco I. Indeed, the judgment in Dremco I impacted both defendant and his wife. Because defendant's interests in living in the same townhome, and in the litigation related thereto, were so closely aligned with his wife's, she was defendant's virtual representative in Dremco I. Thus, on that separate basis, defendant was in privity with his wife.

¶ 25 Because defendant was in privity with his wife, and the other elements of *res judicata* were satisfied, the trial court did not err in ruling that the judgment in Dremco I barred this action. Having concluded that the judgment in Dremco I barred this action, we need not address whether Dremco II did not give rise to *res judicata*.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Du Page County dismissing plaintiff's complaint with prejudice.

¶ 28 Affirmed.