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2018 IL App (3d) 170479-U

Order filed August 22, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

ALEJANDRO ARTEAGA,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	La Salle County, Illinois.
)	
v.)	Appeal No. 3-17-0479
)	Circuit No. 17-L-20
PISSETZKY & BERLINER, LLC; GAIL)	
PISSETZKY; and JOHN DELEON,)	Honorable
)	Eugene P. Daugherty,
Defendants-Appellees,)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed plaintiff's complaint under the doctrine of *res judicata* where there was a prior final judgment on the merits, the cause of action and the parties were identical, and no exception to the doctrine applied.

¶ 2 Plaintiff, Alejandro Arteaga, appeals from an order of the circuit court dismissing his complaint against defendants, Pissetzky & Berliner, LLC, Gail Pissetzky, and John DeLeon, on the ground of *res judicata*. We affirm, finding that all three requirements of *res judicata* have been met and no exception to the doctrine applies.

¶ 3 In 2010 and 2011, Arteaga hired attorneys Pissetzky and DeLeon to represent him in two criminal cases, one in La Salle County and one in Bureau County. Arteaga posted bond in the La Salle County case in the amount of \$75,000 and was released during the trial proceedings. He did not post bond in the Bureau County case.

¶ 4 On June 7, 2011, Arteaga was convicted and sentenced in the La Salle County case. In entering the sentencing order, the trial court instructed the bond to be released to Pissetzky “for payment of legal services rendered.” Virginia Arteaga, plaintiff’s wife, signed the order and waived “all claim, title and interest” in the bond. Arteaga also signed the order, stating “I hereby waive all claim, title and interest in said Bail Bond deposit.” The order further provided that any refund due should be paid to Pissetzky. Shortly thereafter, Pissetzky and DeLeon filed an appeal from the La Salle County criminal case on Arteaga’s behalf. The attorneys then used the bond funds to pay Arteaga’s legal bills.

¶ 5 On May 10, 2012, Arteaga filed a complaint against Pissetzky and DeLeon with the Attorney Registration and Disciplinary Commission (ARDC) regarding attorney fees for the 2010 and 2011 cases and requested that the bond money be returned to him. In a letter dated September 25, 2012, ARDC counsel advised Arteaga that the commission would not bring formal charges against Pissetzky and DeLeon for allegations of ineffective assistance of counsel and for allegations of failing to return the bond money. The letter stated that ARDC could not address Arteaga’s claims of ineffective assistance until he raised the issue in court. It also advised Arteaga that if he wished to pursue a fee refund, “fee disputes may be decided through court action.”

¶ 6 Arteaga later filed a complaint with the Chicago Bar Association (CBA). The CBA dismissed the complaint. In a statement to Arteaga, the CBA noted that the fees Pissetzky and DeLeon charged “appear to be substantiated by evidence.”

¶ 7 In 2015, Arteaga filed a complaint against Pissetzky and DeLeon in circuit court. In his complaint, Arteaga claimed that the attorneys were obligated to return the bond money to him. In count 1, he alleged that the attorneys breached an oral agreement to return \$20,500 of the bond money. Arteaga alleged that their failure to return the funds caused him financial difficulty. Arteaga further alleged that there was a breach of fiduciary duty and that the attorneys violated his trust and confidence. Count 2 alleged that the attorneys committed constructive fraud when they intentionally converted Arteaga’s bond money to their own financial accounts “and cheated [Arteaga] out of the petition by stating a different oral statement.” Arteaga also claimed that the attorneys’ failure to release the unearned portion of the bond caused him emotional distress and anguish. At the end of the complaint, Arteaga alleged that his English language skills were poor in 2012 and attached a reading test administered by the prison on which he scored a “4”. The test did not include an explanation of his score.

¶ 8 Pissetzky and DeLeon moved to dismiss the lawsuit. On January 19, 2017, after hearing oral arguments on the attorneys’ motion, the trial court dismissed Arteaga’s complaint. The court held that he knew or should have known about his injury in 2012 or 2013 and that the two-year statute of limitations had passed. Arteaga then filed an appeal.

¶ 9 On February 10, 2017, despite filing an appeal in the 2015 case, Arteaga filed another complaint in the circuit court. In his 2017 complaint, he attempted to detail the amount of money that was allegedly owed to him from the bond funds and the legal work the attorneys provided in the 2010 and 2011 criminal cases. Count 1 alleged breach of duty and breach of

contract for the unreturned bail bond funds. Count 2 sought relief from the attorneys' failure to return the bond. Count 3 alleged that Pissetzky and DeLeon fraudulently retained money paid to them for work they claimed to have completed. Count 4 requested punitive and compensatory damages for intentional infliction of emotional distress and fraudulent conduct.

¶ 10 Pissetzky and DeLeon filed a motion to dismiss pursuant to section 2-619(a)(4) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2016)), arguing that the refilled complaint was barred by *res judicata*. At the hearing on the motion, Arteaga admitted that both complaints presented some of the same allegations but asserted an exception existed due to his language barrier. The trial court dismissed Arteaga's complaint with prejudice.

¶ 11 ANALYSIS

¶ 12 On appeal, Arteaga contends that the trial court improperly dismissed his 2017 complaint based on *res judicata*.

¶ 13 "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Rein v. David A Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). *Res judicata* consists of three requirements: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. *Downing v. Chicago Transit Authority*, 162 Ill. 2d 70, 73-74 (1994). If all three requirements are met, *res judicata* bars not only what was actually decided in the first action but whatever could have been decided. *La Salle National Bank v. County Board of School Trustees*, 61 Ill. 2d 524, 529 (1975). The standard of review from a dismissal pursuant to section 2-619(a)(4) based on the doctrine of *res judicata* is *de novo*. *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 489 (2009).

¶ 14 Here, all three requirements of *res judicata* are met. First, there was a final judgment on the merits in a prior case. In January 2017, the trial court entered an order dismissing Arteaga's 2015 complaint based on a violation of the two-year statute of limitations. A dismissal due to a violation of the statute of limitations is a final adjudication on the merits. *Rein*, 172 Ill. 2d at 335-36.

¶ 15 We also find an identity of the cause of action. If the same set of facts are essential to both lawsuits, or if the same evidence is needed to sustain both complaints, then an identity of the cause of action exists. See *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). Even if there is not a substantial overlap of evidence, claims are identical for purposes of *res judicata* if they arise from the same transaction. *Id.* In this case, the facts asserted by Arteaga did not change from his 2015 complaint to the complaint he filed in 2017. Both lawsuits stem from the same set of operative facts: the attorney's representation of Arteaga in the criminal cases in 2010 and 2011 and the sentencing order in the La Salle County case releasing the bond money to Pissetzky.

¶ 16 Last, all the parties in the 2015 complaint and the 2017 complaint are the same. Neither party contests that Arteaga named the same defendants' in both lawsuits. Thus, the "privity of parties" element has been met.

¶ 17 Arteaga asserts that *res judicata* should not apply to the 2017 complaint based on exceptional circumstances. He claims that his limited language skills prevented him from properly asserting his claims in the trial court and present an extraordinary reason to override the doctrine. Despite his assertion, the record reflects Arteaga did not need a translator at the criminal proceedings in 2010 and 2011, nor did he request language assistance when he filed his civil complaints. In addition, Arteaga filed *pro se* complaints with both the ARDC and the CBA

in which he was able to communicate his concerns in a cogent manner. And he filed two *pro se* complaints in the circuit court without difficulty. In the 2015 complaint, Arteaga quotes full conversations that he had with Pissetzky and DeLeon in English. We find no reason to ignore the doctrine's application where, as here, the alleged exceptional circumstance is not supported by the record.

¶ 18

CONCLUSION

¶ 19

The judgment of the circuit court of La Salle County is affirmed.

¶ 20

Affirmed.