2018 IL App (4th) 180358-U

NO. 4-18-0358

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 14, 2018
Carla Bender
4th District Appellate
Court, IL

MICHAEL DURBIN and DINA DURBIN, Plaintiffs, v. FLAVORCHEM CORPORATION, a/k/a, d/b/a, and/or f/k/a FLAVORCHEM/ORCHIDA; DANISCO USA, INC., a/k/a, d/b/a, and f/k/a DANISCO INGREDIENTS USA, INC., a/k/a, d/b/a, and f/k/a DANISCO CULTOR USA, INC.; GIVAUDAN FLAVORS CORPORATION; and FIRMENICH, INC., Defendants, and ARCHER-DANIELS-MIDLAND COMPANY, Respondent in Discovery (Michael Durbin and Dina Durbin, Plaintiffs-Appellants, v. Flavorchem Corporation, a/k/a, d/b/a, and/or f/k/a Flavorchem/Orchida; and Givaudan Flavors Corporation, Defendants-Appellees).	)	Appeal from the Circuit Court of Macon County No. 05L49 Honorable Thomas E. Little, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: A decision by the Illinois Workers' Compensation Commission collaterally estops plaintiffs from relitigating the essential element of causation in this products liability case.

¶ 2 Plaintiffs, Michael Durbin and Dina Durbin, brought this action for products liability against defendants, Flavorchem Corporation (Flavorchem) and Givaudan Flavors

Corporation (Givaudan). Defendants moved for summary judgment on the ground of collateral estoppel, and the Macon County circuit court granted their motion. Plaintiffs appeal. In our *de novo* review, we agree with the circuit court that an adverse decision against Michael Durbin (Durbin) by the Illinois Workers' Compensation Commission (Commission) collaterally estops plaintiffs from relitigating the essential element of causation in this products liability case. Therefore, we affirm the judgment.

¶ 3 I. BACKGROUND

¶ 4 On November 21, 2005, in the Macon County circuit court, plaintiffs filed a first amended complaint against defendants, in which plaintiffs alleged that while working for Archer-Daniels-Midland Company (ADM) in its plant in Decatur, Illinois, Durbin inhaled vapors from natural and artificial butter flavorings, which defendants had manufactured or distributed, and that the vapors damaged his lungs. Pursuant to settlement agreements, the trial court dismissed with prejudice the counts against Firmenich, Inc. (on December 10, 2008), and Danisco USA, Inc. (on March 5, 2009). In their first amended complaint, plaintiffs raised a number of legal theories against defendants—negligence, strict liability, and loss of consortium—but, regardless of the legal theory, the basic claim was that in the course of his employment at ADM, Durbin was exposed to the butter flavorings, the vapors of which inflicted severe, permanent, and progressive damage to his lungs.

¶ 5 In addition to filing this products liability action in the circuit court, Durbin filed with the Commission a claim against his former employer, ADM, for compensation under the Workers' Occupational Diseases Act (820 ILCS 310/1 *et seq.* (West 2004)) (*Durbin v. Archer Daniels Midland Co.*, No. 04-WC-49564). (His claim, which he filed with the Commission on October 15, 2004, purported to be pursuant to the Workers' Compensation Act (820 ILCS 305/1

et seq. (West 2004)), which might have been the wrong statute, considering that he alleged a respiratory disease instead of an accidental injury, but invoking the Workers' Compensation Act sufficed as an invocation of the Workers' Occupational Diseases Act. See 820 ILCS 305/19(a)(1) (West 2004).) In his claim before the Commission, Durbin alleged that he had contracted an obstructive lung disease as a result of workplace exposure to butter flavorings containing diacetyl.

¶ 6 On May 9, 2013, after an evidentiary hearing in the occupational disease case, an arbitrator found that on June 11, 2003, which was the alleged date of disablement, Durbin "*did not* sustain an accident that arose out of and in the course of employment." (Emphasis in original.) More specifically, the arbitrator found that ADM had affirmatively "shown that [Durbin's] COPD [(chronic obstructive pulmonary disease)] was not causally related to workplace exposures to [d]iacetyl and that [Durbin's] current pulmonary function [was] consistent with normal regression for smokers and age."

¶ 7 On August 12, 2013, on Givaudan's motion, the Macon County circuit court stayed the products liability case to await the final outcome of the occupational disease case pending before the Commission.

¶ 8 On June 30, 2014, the Commission affirmed and adopted the arbitrator's decision.

¶ 9 Durbin petitioned for judicial review of the Commission's decision, and on January 12, 2015, the Macon County circuit court confirmed the Commission's decision.

¶ 10 Durbin appealed, and on July 21, 2016, the appellate court affirmed the circuit court's judgment in the occupational disease case. *Durbin v. Illinois Workers' Compensation Comm'n*, 2016 IL App (4th) 150088WC, ¶ 5. The potential for further review in that case is exhausted.

¶ 11 On February 22, 2018, in the present products liability case, Flavorchem moved for summary judgment on the ground that the Commission's decision, upheld by both the circuit court and the appellate court, collaterally estopped plaintiffs from "establish[ing] causation to the material complained of, *i.e.*[,] diacetyl butter flavoring."

¶ 12 On April 24, 2018, Givaudan joined Flavorchem's motion for summary judgment.

¶ 13 On April 26, 2018, the circuit court lifted the stay and granted the motion for summary judgment in favor of Flavorchem and Givaudan and against plaintiffs.

¶ 14 On May 18, 2018, plaintiffs filed their notice of appeal.

¶ 15 II. ANALYSIS

¶ 16 If the facts are undisputed, we decide *de novo* whether a party is collaterally estopped. See *Pine Top Receivables of Illinois, LLC v. Transfercom, Ltd.*, 2017 IL App (1st) 161781, ¶ 7. The facts appear to be undisputed in this appeal; defendants base their defense of collateral estoppel on administrative and judicial decisions in the occupational disease case, and plaintiffs do not dispute the authenticity of those decisions. Therefore, we decide *de novo* the extent to which the final determination in the occupational disease case collaterally estops plaintiffs in this products liability case. See *id.*

¶ 17 Collateral estoppel, also called "issue preclusion," bars a party from relitigating an issue if all three of the following propositions hold true:

> "(1) the issue decided in the prior litigation is identical to the one presented in the current case, (2) there was a final adjudication on the merits in the prior case, and (3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior litigation." *Id.* ¶ 8.

¶ 18 In this appeal, plaintiffs dispute only the first of those three elements of collateral estoppel: whether "the issue decided in the prior litigation is identical to the one presented in the current case." *Id.* Plaintiffs remind us that an application of the collateral estoppel doctrine must be "narrowly tailored" to the precise facts and issues that were "clearly determined" in the prior judgment. *Nowack v. St. Rita High School*, 197 Ill. 2d 381, 390-91 (2001). They discuss two cases, *Nowack* and *Demski v. Mundelein Police Pension Board*, 358 Ill. App. 3d 499 (2005), in which the first element of collateral estoppel was unsatisfied because the issue determined in the previous litigation was not precisely the same issue that had to be determined in the subsequent litigation.

¶ 19 Plaintiffs argue that the occupational disease case addressed different issues than the ones plaintiffs raise in this products liability case. They write:

> "Plaintiff's occupational disease arbitration against his employer addressed the issues of whether the Plaintiff was injured in the course of his employment by exposure to diacetyl on the job and if his injuries were caused by said exposure. If the arbitrator had found such causation, the employer would be liable. The purpose of product liability cases is to remedy injuries resulting from unreasonably dangerous condition of products. [Citation.] The arbitration decision did not address the concerns raised in the Plaintiff's negligence and strict liability claims against the manufacturer of diacetyl."

¶ 20 Granted, this products liability case raises issues that the occupational disease case never addressed. For example, one issue in this products liability case is whether defendants were manufacturers or distributors of the allegedly defective products, the butter flavorings. See

Hammond v. North American Asbestos Corp., 97 Ill. 2d 195, 206 (1983). That issue would have been irrelevant to the occupational disease case.

¶ 21 The doctrine of collateral estoppel, however, does not require that *all* the issues in the previous and subsequent cases be identical. Rather, "[c]ollateral estoppel operates to preclude relitigation of *an* issue that has been fairly, completely, and necessarily resolved in a prior proceeding." (Emphasis added.) *Taylor v. Peoples Gas Light & Coke Co.*, 275 Ill. App. 3d 655, 660 (1995). One legal theory of recovery might raise issues that are irrelevant to another legal theory—but the doctrine of collateral estoppel does not require that the *legal theories* in the prior and subsequent litigation be identical; it merely requires *an identical issue* that those (otherwise different) legal theories share, an issue that necessarily was determined in the prior litigation. See *Baird & Warner, Inc. v. Addison Industrial Park, Inc.*, 70 Ill. App. 3d 59, 66 (1979). As the appellate court has held:

> "[Collateral estoppel] dictates that where some controlling fact or question material to the determination of both causes has been adjudicated in the former suit by a court of competent jurisdiction and the same fact or question is again at issue between the same parties, its adjudication in the first cause will be conclusive of the same question in the later suit, *irrespective of the question of whether the cause of action is the same in both suits*." (Emphasis added.) *People ex rel. Village of Justice v. City of Hickory Hills*, 43 Ill. App. 3d 632, 635 (1976).

¶ 22 One of the issues in the occupational disease case was causation: "a claimant must establish the existence of a disabling disease and a direct causal connection between the disease and the conditions of employment." *Payne v. Industrial Comm'n*, 61 Ill. 2d 66, 69 (1975). Durbin claimed, before the Commission, that a condition present in his employment with ADM,

i.e., the vapors from the butter flavorings, caused his respiratory disease. Likewise, in this products liability case, plaintiffs must prove causation: they must prove that Durbin's respiratory disease "resulted from an unreasonably dangerous or defective condition of the product," the butter flavorings. *Schultz v. Hennessy Industries, Inc.*, 222 Ill. App. 3d 532, 540 (1991). The final determination by the Commission in the occupational disease case was that the butter flavorings at ADM did not cause Durbin's respiratory disease. From that determination, it necessarily follows that an unreasonably dangerous or defective condition of the butter flavorings did not cause Durbin's respiratory disease. Consequently, Durbin and his spouse, whose claim of loss of consortium is predicated on Durbin's claim (see *Monroe v. Trinity Hospital-Advocate*, 345 Ill. App. 3d 896, 899 (2003)), are collaterally estopped from litigating an essential element of their products liability case: the element of causation (see *Schultz*, 222 Ill. App. 3d at 540).

¶ 23 We acknowledge that the previous and current litigation differ in that to recover compensation in the occupational disease case, Durbin had to prove that his disease arose out of and in the course of his employment (see 820 ILCS 310/1(d) (West 2004)), whereas, in this products liability case, the harm he suffered from a product did not have to arise out of and in the course of employment. That difference would defeat the defense of collateral estoppel if, in this products liability case, plaintiffs alleged that Durbin contracted lung disease from breathing the vapors of butter flavorings outside ADM. According to the first amended complaint, however, he was exposed to the butter flavorings "at ADM's Decatur plant." The Commission found that such employment-related exposure to the butter flavorings did not in fact cause Durbin's respiratory disease. Plaintiffs are collaterally estopped from relitigating that question (see *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 26 (observing that "the preclusive effect of

workers' compensation judgments has been recognized for over 90 years")), and, hence, they cannot make out a *prima facie* case of products liability (see *Schultz*, 222 Ill. App. 3d at 540).

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the trial court's judgment.

¶ 26 Affirmed.