
IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES HALAS,)	
)	
Plaintiff-Appellant,)	
)	Appeal from
v.)	the Circuit Court
)	of Cook County
ROY S. MATTHEWS, and PAUL RAUSEO,)	
)	2015-M1-124993
Defendants,)	
)	Honorable
and)	Israel A. Desierto,
)	Judge Presiding
ISRAEL KUSHNIR,)	
)	
Defendant-Appellee.)	

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

Held: Where suit against corporation for underpayment of wages barred later suit against corporate officer for same damages, dismissal of later suit based on *res judicata* was affirmed.

¶ 1 In 2011, James Halas sued his former employer, George S. May International Company (GSMIC), of Park Ridge, Illinois for allegedly underpaying his wages by \$1251 before terminating him in 2005. GSMIC was no longer doing business when Halas filed suit in the circuit court in 2011 and the \$1251 *ex parte* default judgment that he obtained against GSMIC in 2012 proved to be uncollectible. In 2015, Halas filed the instant suit seeking the same \$1251, but

from the three GSMIC corporate officers who allegedly failed to pay the wages Halas was owed: GSMIC's former president, Israel Kushnir; former vice president of finance, Roy S. Matthews; and former managing director, Paul Rauseo. The circuit court dismissed Halas's 2015 suit with prejudice on the basis of *res judicata*. Halas appeals from that ruling, as to Kushnir only.

¶ 2 Although Kushnir has not filed an appellee's brief, we will consider the appeal on Halas's brief only, pursuant to the principles of *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (allowing consideration of appeal on appellant's brief only where the record is simple and errors can be considered without additional briefing).

¶ 3 When considering the circuit court's grant or denial of such a section 2-619 motion to dismiss, our review is *de novo*. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The questions on appeal are whether a genuine issue of material fact exists and whether the defendant is entitled to a judgment as a matter of law. *Nowak*, 197 Ill. 2d at 389.

¶ 4 The equitable doctrine of *res judicata* prohibits a party from continuing to litigate a matter which has been decided. Pursuant to the doctrine, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand[,] or cause of action." *Nowak*, 197 Ill. 2d at 389; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). The doctrine bars not only what was actually decided in the original action, but also bars matters which could have been decided in that suit. *Rein*, 172 Ill. 2d at 334-35. As a matter of public policy, litigation should have an end and no person should be unnecessarily harassed with a multiplicity of lawsuits. *Rein*, 172 Ill. 2d at 340. Moreover, *res judicata* promotes judicial economy by requiring parties to litigate, in one case, all rights arising out of the same set of operative facts. *Nowak*, 197 Ill. 2d at 393.

¶ 5 For *res judicata* to apply, there must be (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity or sameness of cause of action, and (3) identical parties or their privies in both actions. *Nowak*, 197 Ill. 2d at 389; *Rein*, 172 Ill. 2d at 334.

¶ 6 Here, the first element of *res judicata* was satisfied by the circuit court's entry in 2012 of a final judgment on the merits of Halas's claim. The second element, identity of sameness of cause of action, is satisfied by the fact that both of Halas's lawsuits seek the full amount of wages he earned for his work in GSMIC's survey department in October 2005 and both lawsuits indicate that his GSMIC pay for that month was wrongfully reduced by \$1251. Moreover, Halas concedes that the first two elements of *res judicata* are satisfied.

¶ 7 Halas limits his appeal to the third element of *res judicata*. He contends that there is no identity of parties because the defendant in his first action was a corporation but the defendant in his second action was an individual. He contends Kushnir's harmful actions "were on behalf of the employer-corporation, but did not constitute actions by the corporation itself." Halas misconstrues the nature of a corporation and its relationship to its officers. " 'One of the purposes of a corporate entity is to immunize the corporate officer from individual liability[.]' " *People ex rel. Madigan v. Tang*, 346 Ill. App. 3d 277, 284 (2004). Accordingly, corporate status generally shields corporate officers from corporate liabilities and debts. *Tang*, 346 Ill. App. 3d at 284. Thus, Halas's allegations in 2011 that the GSMIC corporation underpaid his wages are identical to Halas's allegations in 2015 that Kushnir underpaid his wages from the GSMIC corporation.

¶ 8 Corporate officer status does not insulate a corporate officer from individual liability for tortious conduct in which the officer actively participated. *Tang*, 346 Ill. App. 3d at 284. Halas, however, did not allege tortious conduct. Instead, Halas's 2015 allegations portray Kushnir as his

direct employer. The doctrine of *res judicata* required Halas to include in his original lawsuit all the corporations and individuals who were potentially liable for underpaying his wages. The doctrine applies to not only to what was actually determined in the original action, but also to issues which could have been raised and determined in that suit. *Rein*, 172 Ill. 2d at 334-35.

¶ 9 Halas contends, however, that Kushnir was not in privity with GSMIC or was not its privity.

“Privity is said to exist between parties who adequately represent the same legal interests. It is the identity of interest that controls in determining privity, not the nominal identity of the parties. *** [M]any appellate court decisions discussing privity for purposes of *res judicata* have relied on the definition found in the Restatement of Judgments: ‘Privity *** expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties.’ (Restatement of Judgments § 83, Comment *a*, at 389 (1942).)” (Internal quotations omitted.) *People ex rel. Burriss v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296-97 (1992).

¶ 10 A similar definition is found in a case Halas cites:

“The Restatement (Second) of Judgments explains that ‘“privity” refers to a cluster of relationships, [citation], under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party.’ Restatement (Second) of Judgments, Introduction at 1 (1982). *** [Those relationships include] ‘an array of substantive legal relationships,’ *** in which one of the parties to the relationship is ‘treated as having the capacity to bind the other to a

judgment in an action to which the latter is not a party.’ Restatement (Second) of Judgments § 75(2), Comment a, at 210 (1982). These relationships include, *inter alia*, *** corporations and their officers, directors, and shareholders, and members of partnerships.” *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 560 (2009).

¶ 11 Halas also relies on *Upper Lakes Shipping*, which indicates “The word ‘privy’ includes those who control an action although not parties to it; those whose interests are represented by a party to the action; successors in interest to those having derivative claims.” *Upper Lakes Shipping Ltd. v. Seafarers’ Int’l Union of Canada*, 40 Ill. App. 2d 392, 401 (1963) (*quoting* Restatement of Judgments, § 83, Comment a, at 389 (1942)).

¶ 12 Plainly, GSMIC and a GSMIC corporate officer who allegedly directed that Halas be unpaid in 2005 would have the same legal interests in responding to Halas’s 2011 lawsuit about his 2005 paychecks. The preclusive effect of the judgment Halas obtained extends beyond the defendant to that original action, GSMIC, and applies to Kushnir, because he was a GSMIC officer. Thus, when GSMIC was named as a defendant in 2011, its corporate officer, Kushnir, was in privity with GSMIC or was GSMIC’s privy.

¶ 13 Halas attempts to avoid this conclusion by discussing irrelevant authority. Although “privy” in this forum is a noun, Halas proposes that we rely on The Free Dictionary’s definition of the adjective “privy.”

Priv•y *adj.*

1. Made a participant in knowledge of something private or secret: was privy to classified information. 2. Belonging or proper to a person, such as the British sovereign, in a private rather than official capacity. 3. Secret; concealed.” <https://www.>

thefreedictionary.com/privy (last visited April 5, 2019).

¶ 14 Halas then points out that he has not alleged that Kushnir privately or secretly reduced the paychecks. He contends that Kushnir's actions were actually "open and notorious," and thus, Kushnir was not a privy of GSMIC. Halas misconstrues the meaning of "privy" in the current context. Halas continues in this vein by citing *White Brass Castings* which defines the irrelevant, narrower phrase "privy to the record," *White Brass Castings Co. v. Union Metal Manufacturing Co.*, 232 Ill. 165, 167 (1907) ("No person is entitled to [appeal] who is not a party or privy to the record, or who is not shown by the record to be prejudiced by the judgment."). Halas's resort to alternative definitions is unpersuasive.

¶ 15 The record discloses that the circuit court correctly concluded that Halas's 2015 suit was barred by Halas's 2011 suit, due to the application of *res judicata*. Accordingly, we affirm the dismissal of the 2015 suit.

¶ 16 Affirmed.