

2013 IL App (1st) 123550-U

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

Third Division  
July 31, 2013

No. 1-12-3550

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CHICAGO TITLE LAND TRUST COMPANY,	)	Appeal from the
as Trustee Under Trust Agreement dated August 1,	)	Circuit Court of
1984, and known as Trust No. 62111, and Trust	)	Cook County.
No. A7706211106, HARMS ROAD	)	
ASSOCIATES LIMITED PARTNERSHIP	)	
and MARK GOODMAN,	)	
	)	
Plaintiffs-Appellants,	)	
v.	)	12 L 001961
	)	
POTASH CORPORATION OF	)	
SASKATCHEWAN SALES LIMITED, PCS	)	
SALES (CANADA) INC., PCS SALES (USA),	)	
INC., and POTASH CORPORATION OF	)	
SASKATCHEWAN, INC.,	)	Honorable
	)	Sanjay T. Taylor,
Defendants-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE NEVILLE delivered the judgment of the court.  
Justice Hyman and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* The dismissal of a federal lawsuit with prejudice under the doctrine of *res judicata*

operates as a bar to a subsequent lawsuit in state court between the same parties arising from the same core of operative facts. A cause of action for breach of a lease accrues when the tenant fails to pay rent or other amounts due under the lease.

¶ 2 Chicago Title Land Trust Company sued PCS Sales (Canada) for breach of a lease. The trial court dismissed the lawsuit under the doctrine of *res judicata*, and because Chicago Title failed to file the complaint within the applicable limitations period. We hold that both *res judicata* and the statute of limitations justify dismissal of the lawsuit.

¶ 3 **BACKGROUND**

¶ 4 In 1995, PCS Sales (Canada) leased space in an office building which American National Bank & Trust Company owned as trustee under a trust for the benefit of Harms Road Associates Limited Partnership. Potash Corporation of Saskatchewan, Inc. (hereinafter, "PCS"), parent of PCS Sales (Canada), guaranteed payment of the rent PCS Sales (Canada) owed under the lease. The 10-year lease includes the following provision for early cancellation:

"30. Right to Cancel

If at the end of the fifth (5th) year of the lease Tenant shall require additional space of not less than 40% of Tenant's current leased space and Landlord is unable to provide such (contiguous space \*\*\*) within eight (8) months of notice from Tenant of expansion needs, then Tenant shall have the option to cancel this Lease upon at least ninety (90) days prior written notice to Landlord. Upon exercising their Right to Cancel, Tenant shall pay to Landlord any unamortized portion of the new construction tenant improvements plus leasing

commission."

¶ 5 In January 2000, PCS Sales (Canada) sent American National a letter demanding more space. American National provided some additional space, but far less than PCS Sales (Canada) requested. In September 2000, PCS Sales (Canada) relocated its offices to a different building, vacating American National's premises. On December 15, 2000, PCS Sales (Canada) notified American National that it was exercising its right to cancel the lease. PCS Sales (Canada) stopped paying rent to American National in April 2001.

¶ 6 In 2001, American National and Harms Road sued PCS Sales (Canada) and PCS for breach of the lease and breach of the guaranty. The trial court dismissed the lawsuit in several stages, ending with a final dismissal with prejudice in 2008. The appellate court affirmed the dismissal. *American National Bank & Trust Co. v. Potash Corporation of Saskatchewan Sales Ltd.*, No. 1-09-1598 (2010) (unpublished order under Supreme Court Rule 23).

¶ 7 In 2004, American National and Harms Road sued William Doyle, the chief executive officer of PCS, and John Hampton, general counsel for PCS Sales (Canada), charging them with fraud in connection with the cancellation of the lease. The trial court also dismissed the lawsuit against Doyle and Hampton with prejudice in 2008. The appellate court affirmed the dismissal. *Harms Road Associates Limited Partnership v. Doyle*, No. 1-09-2558 (2010) (unpublished order under Supreme Court Rule 23).

¶ 8 Chicago Title acquired American National's interest in the claims related to the lease. In 2010, Chicago Title, Harms Road, and Mark Goodman, the president of a general partner in Harms Road, filed a lawsuit in federal court, charging PCS Sales (Canada) and PCS with breach of the

lease, breach of the guaranty, and fraud. The district court dismissed the lawsuit, with prejudice, under the doctrine of *res judicata*, and the United States Court of Appeals for the Seventh Circuit affirmed the dismissal. *Chicago Title Land Trust Co. v. Potash Corp. of Saskatchewan Sales Ltd.*, 664 F.3d 1075 (7th Cir. 2011).

¶ 9 In February 2012, Chicago Title, Harms Road and Goodman filed the lawsuit at issue in this appeal, charging PCS with breach of guaranty, and charging PCS Sales (Canada) and PCS Sales (USA) with breach of the lease. The plaintiffs alleged that PCS Sales (Canada) transferred its interest in the lease to a different subsidiary of PCS, named PCS Sales (USA), and PCS Sales (USA), PCS Sales (Canada) and PCS breached the lease and the guaranty by failing to pay to American National, upon cancellation, the cancellation fee required in paragraph 30 of the lease.

¶ 10 The defendants filed a motion to dismiss the lawsuit under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)) contending that it was barred by a prior judgment and the statute of limitations. The trial court found both arguments persuasive and dismissed the complaint with prejudice. The plaintiffs now appeal.

¶ 11 ANALYSIS

¶ 12 *Res Judicata*

¶ 13 We review *de novo* an order dismissing a lawsuit under section 2-619. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). Our supreme court explained *res judicata* as follows:

"Under the doctrine of *res judicata*, 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. [Citations.] The bar extends to what was actually decided in the first action, as well as those matters that could have been decided in that suit. [Citation.] For the doctrine of *res judicata* to apply, the following three requirements must be satisfied: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998).

¶ 14 The federal lawsuit involved the same plaintiffs, and the plaintiffs have named all of the federal defendants as defendants here. The plaintiffs have added only one new defendant, PCS Sales (USA), which, as the alleged assignee of the lease, apparently stands in privity with PCS Sales (Canada). See *Marvel of Illinois, Inc. v. Marvel Contaminant Control Industries*, 318 Ill. App. 3d 856, 865 (2001). Plaintiffs have not argued in their briefs that PCS Sales (USA) lacks privity with the defendants in the federal lawsuit, so they have forfeited any objection based on lack of privity. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Illinois Health Maintenance Organization Guaranty Assn. v. Department of Insurance*, 372 Ill. App. 3d 24, 45 (2007).

¶ 15 Plaintiffs based the lawsuit before us, like the federal lawsuit, on the alleged breach of the lease and the alleged breach of the guaranty of the lease. Plaintiffs have changed only the theory of relief. They now argue that the lease entitles them to payment of the cancellation fee, instead of the rent payments they sought in the federal lawsuit. But our supreme court held that "separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single

group of operative facts, regardless of whether they assert different theories of relief." *River Park*, 184 Ill. 2d at 311. Because the lawsuit here arises from the same operative facts at issue in the federal lawsuit, we find that the two cases involve the same cause of action.

¶ 16 Finally, the federal court's order dismissing the complaint with prejudice constitutes a final judgment on the merits. See Ill. S. Ct. R. 273 (eff. Jan. 1, 1967); *River Park*, 184 Ill. 2d at 306.

¶ 17 Plaintiffs argue that we should not allow the federal decision to preclude their lawsuit because the "7th Circuit Misapplied Illinois' Res Judicata and Joinder Rules." But "a judgment does not lose its effectiveness as *res judicata* from the mere fact that it is irregular or erroneous. The doctrine of *res judicata* is not dependent upon the correctness of the judgment, or of the verdict or finding on which it is based." *People v. Kidd*, 398 Ill. 405, 410 (1947). Because the federal decision meets all three criteria for preclusive *res judicata* effect, we find that the trial court correctly dismissed the lawsuit under section 2-619(a)(4) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(4) (West 2012).

¶ 18 Statute of Limitations

¶ 19 We choose to address the statute of limitations issue, to make a remand to this court unnecessary if our supreme court reverses our judgment on the issue of *res judicata*. A plaintiff suing for breach of contract must commence the action less than ten years after the cause of action accrued. 735 ILCS 5/13-206 (West 2010). Plaintiffs contend that the cause of action for breach of contract that they present in their complaint did not accrue until the federal court entered the judgment that ended the lawsuit on their unsuccessful claim that PCS Sales (USA) had not

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effectively cancelled the contract, and it breached the contract by failing to pay rent. They cite in support *Lucey v. Law Offices of Pretzel & Stouffer, Chartered*, 301 Ill. App. 3d 349 (1998). In *Lucey*, the court held that a cause of action for legal malpractice did not accrue until the plaintiff suffered damages due to the alleged malpractice, and the plaintiff in *Lucey*, like the plaintiffs in many legal malpractice cases, did not sustain any damages from the malpractice until the trial court entered a judgment against the plaintiff in the litigation in which the alleged malpractice occurred. *Lucey*, 301 Ill. App. 3d at 356.

¶ 20 Here, the cause of action for breach of contract accrued when PCS Sales (Canada) cancelled the lease without paying the plaintiffs the cancellation fee. See *Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 477 (2008). The cancellation took effect when PCS Sales (Canada) stopped paying rent. The decisions of the courts on plaintiffs' complaints only confirmed that PCS Sales (Canada) had effectively cancelled the contract. Plaintiffs suffered compensable damages for failure to pay the cancellation fee when PCS Sales (Canada) cancelled the contract. PCS Sales (Canada) notified plaintiffs of its intent to cancel the lease in December 2000, and it stopped paying rent in April 2001. Thus, the action for failure to pay the cancellation fee accrued no later than April 2001. Plaintiffs filed the present action for breach of contract in February 2012. Because plaintiffs failed to file the lawsuit within 10 years of the date on which the cause of action accrued, the trial court correctly held that the statute of limitations barred the lawsuit. 735 ILCS 5/13-206 (West 2010).

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¶ 21

## CONCLUSION

¶ 22 The federal court's dismissal of the plaintiffs' lawsuit against these defendants for breach of contract and breach of guaranty justifies the trial court's decision to dismiss this lawsuit under the doctrine of *res judicata*. Also, the plaintiffs filed this lawsuit more than 10 years after the cause of action for breach of contract accrued, so the statute of limitations bars the action. Accordingly, we affirm the trial court's judgment dismissing the lawsuit with prejudice.

¶ 23 Affirmed.