IN THE COURT OF APPEALS OF IOWA

No. 0-077 / 08-1808
Filed April 8, 2010

DOUGLAS INDUSTRIES, INC.,
Plaintiff-Appellant/Cross-Appellee,

vs.

SANDSTROM PRODUCTS COMPANY,
Defendant-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Scott County, Marlita A. Greve, Judge.

Douglas Industries appeals from entry of summary judgment in Sandstrom Products' favor, contending res judicata does not bar its claims. Sandstrom Products cross-appeals from the denial of its motion for attorney fees and costs.

AFFIRMED ON BOTH APPEALS.

Amanda W. Trejo and Robert S. Gallagher of Gallagher, Millage & Gallagher, P.L.C., Davenport, for appellant.

Stuart R. Lefstein, Terri L. Fildes, and John P. Cratty of Pappas, Hubbard, O'Connor, Fildes, Secaras, P.C., Rock Island, Illinois, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

We must decide in this appeal whether the district court correctly concluded that res judicata bars the second litigation between these parties. We then turn to Sandstrom Products' cross-appeal from the denial of its motions for attorney fees and costs.

I. Background.

We borrow the district court's summarization of the case:

> Douglas [Industries, Inc.] manufactures and distributes sports products. Sandstrom [Products Co.] manufactured floor coverings for sports surfaces, such as tennis courts, under the product name "Douro Surface." The parties entered negotiations for an agreement by which Douglas would purchase Douro Surface from Sandstrom and sell the product to its end-users. After extensive attempts, negotiations fell through; and the parties never signed a formal agreement. However, the parties conducted business informally [in 2003 and 2004] until the relationship soured in 2005.
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> In April 2005, Sandstrom filed suit in the Circuit Court of Rock Island County, Illinois to recover $72,962 from Douglas for unpaid purchase orders. Sandstrom asserted that the price, credit and product quantity terms contained in the purchase orders reflected the agreement of the parties. In [its] answer, Douglas affirmatively stated that the terms of the business transactions were governed by an Exclusive Sales and Marketing Agreement that the parties entered into in May 2003. Douglas claimed that while the parties did not expressly sign the agreement, the agreement was ratified by their subsequent conduct. Thus, Douglas claimed it was not liable for the debt Sandstrom claimed.
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> In November 2005, Douglas paid Sandstrom $70,000 to settle the suit. On November 24, 2005, a judge of the Circuit Court of Rock Island County, Illinois entered a Consent Order of Dismissal with Prejudice for the Illinois lawsuit.[1]
>
> On March 28, 2006, Douglas filed the current suit against Sandstrom and Defendant Kevin Tee [Douglas later dismissed

[1] The consent order was entered pursuant to a "Stipulation of Dismissal with Prejudice" and dismisses Sandstrom's "Complaint and all causes of action of any type contained in any of the pleadings in this cause with prejudice, those causes having been satisfied and released."

> without prejudice the claims against Tee] in the District Court of Scott County, Iowa.

Douglas alleged five theories of recovery directed against Sandstrom: (1) breach of exclusive sales marketing agreement; (2) interference with contract and business relationships; (3) tortious interference with business relationships based upon willful and wanton conduct; (4) misappropriation of trade secrets based upon willful and wanton conduct; and (5) quantum meruit.

Sandstrom filed a motion for summary judgment asserting the Iowa proceedings were barred by the doctrine of res judicata.

On October 28, 2008, applying Illinois law and the "transactional test," *see River Park, Inc. v. City of Highland Park*, 703 N.E.2d 883, 893 (Ill. 1998), the district court concluded all of Douglas's claims for relief in the Iowa suit were barred because they arose from the business conduct of the parties related to the purchase orders and the alleged Exclusive Sales and Marketing Agreement, which were the issues litigated in Illinois. The court rejected Douglas's claim that it just learned of Sandstrom's wrongful ongoing conduct, concluding:

> While ongoing or recurrent wrongful conduct can preclude application of res judicata, there is no evidence of ongoing conduct here. Moreover, the discovery already conducted shows that, at the time of the prior suit, Douglas did know of the conduct giving rise to relief.

Also on October 28, the court granted Sandstrom's motion for leave to supplement its reply brief, but denied its request for attorney fees.

On November 6, Douglas filed a motion to reconsider the ruling on summary judgment, as well as a notice of appeal.

On November 7, Sandstrom filed a motion to reconsider the denial of attorney fees. Sandstrom moved to reconsider the denial of attorney fees arguing the court erred in not awarding attorney fees because: (1) Douglas had filed no resistance to its request; (2) a statement of the court "was tantamount to a ruling that the plaintiff . . . had violated Iowa Rule of Civil Procedure 1.413(1) and Iowa Code Sec. 619.19"; and (3) once a violation of a rule was found, the court was required to impose a sanction. Douglas resisted and the matter was set for hearing.

On December 1, 2008, Sandstrom filed a second motion for attorney fees and expenses. At the hearing that same date, the parties addressed both Douglas's motion to reconsider summary judgment and Sandstrom's earlier motion to reconsider the denial of attorney fees. The parties agreed that the court no longer had jurisdiction to rule on Douglas's motion to reconsider, since Douglas had filed its notice of appeal.

On December 5, 2008, the district court filed two orders: one noted it had lost jurisdiction of the motion to reconsider summary judgment; the second denied the motion to reconsider its order denying Sandstrom's first request for attorney fees. With respect to the attorney fee matter, the court rejected all three of Sandstrom's arguments. The court noted Sandstrom conceded its first argument regarding an alleged lack of resistance was "a technicality argument," which the court rejected because Douglas did participate in the oral argument and resisted the motion.

The court also rejected Sandstrom's assertion that to the extent its summary judgment ruling found Douglas's claims that it lacked knowledge of

Sandstrom's alleged wrongdoing were "simply untrue," the ruling implicitly found that Douglas's counsel violated Iowa Code section 619.19 (2005)[2] and rule 1.413(1).[3] The court stated,

> Considering that a lawyer's duty requires him to zealously represent his client, the court cannot find under these facts that Plaintiff's counsel violated either [section] 619.19 or [rule] 1.413(1). The court's finding Plaintiff's assertion there were additional facts discovered after the conclusion of the lawsuit were untrue is not an implicit finding Plaintiff's counsel violated their duty to read pleadings and reasonably inquire into the facts. What is evident here is Plaintiff's counsel and the court disagree on how those additional documents should be interpreted.

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[2] Iowa Code section 619.19 provides in part:

> The signature of a party, the party's legal counsel, or any other person representing the party, to a motion, pleading, or other paper is a certificate that:
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> 1. The person has read the motion, pleading, or other paper.
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> 2. To the best of the person's knowledge, information, and belief, formed after reasonable inquiry, it is grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.
>
> 3. It is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.
>
> If a motion, pleading, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.
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> If a motion, pleading, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose upon the person signing, the represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

[3] Iowa Rule of Civil Procedure 1.413(1) provides in part:

> If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee. The signature of a party shall impose a similar obligation on such party.

Lastly, the court concluded an award of attorney fees is not required even if there were a signing violation. It noted attorney fees are one type of sanction the court could consider. The court did permit Sandstrom to supplement the record with an additional reply brief, as another type of sanction against Douglas.

On January 13, 2009, the district court denied Sandstrom's second motion for attorney fees filed December 1, 2008, concluding its earlier ruling[4] "addressed all of the arguments" Sandstrom made in its second motion.

On January 23, Sandstrom filed a motion for reconsideration of its December 1 request for attorney fees. The court again found it could not "make the determination that [Douglas's] petition was not well grounded in fact or that [Douglas's] counsel did not make a reasonable inquiry into the facts before filing the lawsuit." The court also repeated that it was not required to assess attorney fees even if there had been a signing rule violation.

II. Douglas's Appeal.

Douglas contends its Iowa action is not barred by res judicata.

In *National Equipment Rental, Ltd. v. Estherville Ford, Inc*., 313 N.W.2d 538, 541 (Iowa 1981), our supreme court stated:

> The full faith and credit clause of the United States Constitution states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." That clause renders the doctrines of res judicata and collateral estoppel compulsory as between the States. It requires the courts of each state to give to the judgment of another state the same preclusive effect between the parties as is given such judgment in the state in which it was rendered, and this is so even if the judgment is obtained by default. Under the full faith and credit

[4] The district court stated its earlier ruling was filed on December 1, 2008, when it was actually filed on December 5, a mistake corrected in its denial of Sandstrom's motion for reconsideration.

> clause, the preclusive effect of a judgment must be determined by the law of the state in which it was rendered.

(Citations omitted.) We must therefore apply Illinois law to determine whether the Illinois judgment precludes Douglas's suit.

Pursuant to Illinois law, the doctrine of res judicata bars any subsequent lawsuits between the same parties or their privies involving the same cause of action where there was a final judgment on the merits rendered by a court of competent jurisdiction. *Piagentini v. Ford Motor Co.*, 901 N.E.2d 986, 990 (Ill. App. Ct. 2009). "Res judicata is an equitable doctrine that is designed to prevent multiplicity of lawsuits between the same parties where the facts and issues are the same." *Id.* "The doctrine prohibits not only those matters which were actually litigated and resolved in the prior suit, but also any matter which might have been raised in that suit to defeat or sustain the claim or demand." *Rein v. David A. Noyes & Co.*, 665 N.E.2d 1199, 1205 (Ill. 1996).

For res judicata to apply, three requirements must be met: (1) a final adjudication on the merits rendered by a court of competent jurisdiction; (2) an identity of the causes of action; and (3) an identity of the parties or their privies. *Id.* at 1204.

There is no real doubt, and Douglas concedes, that the first and third requirements have been met. The first requirement for res judicata is met because the parties entered into a settlement agreement and the Illinois court entered an order of dismissal with prejudice. This constitutes a final adjudication on the merits. Ill. S. Ct. R. 273 ("Unless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a

dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits.").

The third res judicata factor is also met because the parties in the two suits are identical.

The sole source of contention is whether there is an identity of causes of action and whether Sandstrom committed a continuing or recurring wrong since the Illinois judgment. Douglas contends its Iowa action is not barred by res judicata because (1) the counts directed to Sandstrom[5] in its Iowa suit are wholly unrelated to the alleged oral contract between the parties; (2) it did not discover Sandstrom's illegal activities as alleged in the petition until after November 4, 2005, when the Illinois case was dismissed; and (3) the case involves continuing, wrongful conduct by Sandstrom.

A. Identity of Causes of Action. The district court applied Illinois law as enunciated in *River Park, Inc. v. City of Highland Park*, 703 N.E.2d 883, 893 (Ill. 1998), wherein the Illinois Supreme Court adopted the "more liberal transactional" test for determining whether causes of action are the same for purposes of res judicata. "[P]ursuant to the transactional test, 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*, 703 N.E.2d at 893; *see also Corcoran-Hakala v. Dowd*, 840 N.E.2d 286, 294 (Ill App. Ct. 2005) (finding that where

[5] Douglas concedes that its first count, breach of contract, is an identical claim barred by res judicata. Counts III, V, and VIII are directed at Kevin Tee personally, and are not at issue since those claims have been dismissed by Douglas.

defendant brought an action against plaintiff to recover on the contingency agreement and plaintiff was ordered to pay, her subsequent suit against defendant claiming that the Agreement was procured by fraud was barred by res judicata).

> Under the transactional test, a valid final judgment bars further action by the plaintiff regarding any part of a transaction or series of connected transactions from which the claim arose. Different claims are considered part of the same cause of action if they arise from a single group of operative facts. Whether a group of facts constitutes a transaction is "'to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'" It is well established that the facts as they exist at the time of judgment determine whether res judicata bars a subsequent action.

Altair Corp. v. Grand Premier Trust & Inv., Inc., 742 N.E.2d 351, 355 (Ill. App. Ct. 2000) (citations omitted) (summarizing *River Park* transactional test).[6]

The Iowa petition includes counts of interference and tortious interference with contract and business relationships, misappropriation of trade secrets, quantum meruit, and unjust enrichment, which Douglas did not plead either as counterclaims or as defenses to the collection action in Illinois. We agree with the district court that, under the transactional analysis, these claims arise from the same course of business conduct that was the subject of the Illinois suit. The principle of res judicata, which prohibits a party from seeking relief on the basis of issues that could have been resolved in a previous action, serves to prevent

[6] Under the transactional analysis, res judicata does not bar further litigation where "the relief sought in the second proceeding was previously unavailable because of limitations on the subject matter jurisdiction of the court or other tribunal in the earlier proceeding" or when the separate claims belong to adverse parties. *Dowrick v. Village of Downers Grove*, 840 N.E.2d 785, 792 (Ill. App. Ct. 2005).

parties from splitting their claims into multiple actions. *Rein*, 665 N.E.2d at 1206. "This rule is founded on the premise that litigation should have an end and that nobody should be harassed with a multiplicity of lawsuits." *Id*. at 1207.

We note that when the second action might have been a *counterclaim* in the first action, Illinois courts appear to apply the res judicata bar more restrictively. Under that circumstance, the Illinois courts focus on whether a favorable judgment for the plaintiff in the second lawsuit would undermine the judgment entered in the prior litigation. *Corcoran-Hakala*, 840 N.E.2d at 294; *Dowrick*, 840 N.E.2d at 791. In this regard, Illinois appears to follow section 22 of the Restatement (Second) of Judgments. *See* Restatement (Second) of Judgments § 22 (1982) ("A defendant who may interpose a claim as a counterclaim in an action but fails to do so is precluded, after rendition of judgment in that action, from maintaining an action on the claim if . . . [t]he relationship between the counterclaim and the plaintiff's claim is such that successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action."). However, both in the district court and here, Douglas has failed to raise section 22 or related case law. Instead, Douglas has conceded that the standard we are to apply is no different from the standard that would apply if Douglas had been the plaintiff in the first action. Douglas cites to *River Park* and *Rein* and accordingly that is the law we apply here.

B. Ongoing Wrongful Conduct. Moreover, we find that Douglas's counts against Sandstrom in the Iowa petition do not fit within the exceptions to the rule against claim-splitting where there has been an omission due to

ignorance, mistake, or fraud listed in *Rein*.[7] Res judicata should be applied only to facts and conditions as they existed at the time judgment was entered—November 2005 here. *See Dowrick*, 840 N.E.2d at 791. In its brief, Douglas asserts that after the November 2005 Illinois settlement:

> Douglas discovered Sandstrom had covertly committed various wrongful acts in violation of the Iowa Code and common law. The parties were no longer pursuing the same business relationship they had previously shared when Douglas discovered Sandstrom had stolen their customer lists and misappropriated various trade secrets through a former Douglas employee. Sandstrom continued to commit those wrongful acts as late as November 2008.

Douglas contends that Kevin Tee was terminated in February 2005 and "[f]rom that point forward, Sandstrom continued selling the product it created for Douglas to market, directly to the end users." However, other than assertions in its brief before the district court, Douglas presented no facts on summary judgment to support its claim of ignorance before November 2005. In this court, Douglas states that summary judgment was granted before several key depositions were taken, and that those testimonies were not included in the summary judgment record. There was no request to re-open the record in district court. The court

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[7] As set forth in section 26(1) of the Restatement (Second) of Judgments (1982) and adopted in *Rein*, the court noted that the rule against claim-splitting would not bar a second action if:

> (1) the parties have agreed in terms or in effect that plaintiff may split his claim or the defendant has acquiesced therein; (2) the court in the first action expressly reserved the plaintiff's right to maintain the second action; (3) the plaintiff was unable to obtain relief on his claim because of a restriction on the subject-matter jurisdiction of the court in the first action; (4) the judgment in the first action was plainly inconsistent with the equitable implementation of a statutory scheme; (5) the case involves a continuing or recurrent wrong; or (6) it is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason.

665 N.E.2d at 1207.

did permit Sandstrom to present additional documents that indicated Douglas had knowledge of the claimed interference and misappropriation in March 2005. We agree with the district court that the record on summary judgment demonstrates Douglas was aware of at least some of Sandstrom's ongoing conduct before it settled with Sandstrom in November 2005.

III. Sandstrom's Cross-appeal.

Sandstrom argues the district court abused its discretion in failing to award attorney fees. After a thorough review and consideration of the record, we affirm the denial of Sandstrom's motion for attorney fees. *See* Iowa R. App. P. 6.24(1), (4) (2008).

IV. Conclusion.

Douglas's claims were barred under the doctrine of res judicata. The district court did not abuse its discretion in denying attorney fees to Sandstrom. We therefore affirm.

AFFIRMED ON BOTH APPEALS.