2026 IL App (1st) 252539-U
No. 1-25-2539
Order Filed: November 16, 2026

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, FIRST DIVISION

HERBERT LOWE, Plaintiff-Appellant,

v.

GARAGE 2017 LLC, d/b/a Danley's Garage World, Defendant-Appellee.

Appeal from the Circuit Court of Cook County.
Honorable Arlene Coleman Romeo, Judge Presiding.
No. 25M1124890

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Fitzgerald Smith and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Reversed. Trial court improperly dismissed complaint based on *res judicata*.

¶ 2 Plaintiff Herbert Lowe contracted with defendant, doing business as Danley's Garage World, or "DGW," to demolish an old garage and build a new one on Lowe's property. Lowe kicked DGW off the job after paying two-thirds of DGW's fee. DGW sued Lowe's in 2023 to recover the remainder of the fee, $7,350. The court awarded DGW $5,850.

¶ 3 Two years later, allegedly prompted by concerns raised by a city building inspector, Lowe sued DGW for defective work, listing the seven deficiencies identified by the building inspector. That is the lawsuit at issue here. DGW moved to dismiss based on *res judicata*,

claiming that Lowe could have and should have raised these alleged defects in the 2023 lawsuit. The circuit court agreed and dismissed the complaint.

¶ 4 We reverse. DGW has not met its burden of showing, at the pleading stage, that Lowe could have known of some or all of these defects back in 2023. Whatever may come of this *res judicata* defense down the road, after discovery, dismissal at the pleading stage was premature.

¶ 5 BACKGROUND

¶ 6 I. The Complaint

¶ 7 As this case terminated at the pleading stage, we accept the allegations of the complaint as true. See *Petta v. Christie Business Holdings Co., P.C.*, 2025 IL 130337, ¶ 3.

¶ 8 On September 2, 2022, Lowe contracted with DGW to demolish and construct a new garage on Lowe's property in Chicago. The contract price was $22,050 over three payments of $7,350. The initial payment was a deposit, the second due on completion of concrete, and the third due after the final walkthrough.

¶ 9 The complaint alleges that DGW's work was deficient in the following ways:

(a) The garage was built without the required building inspections and not in compliance with the Chicago building codes, facts that DGW concealed from Lowe and which resulted in the city ordering the structure to be torn down and rebuilt;

(b) The garage was built with "defective materials and/or in an unworkmanlike and unprofessional manner with defective window frames and roofing materials, resulting in leaks with resulting water damage;"

(c) The garage contained a "bent main door which is out of plumb with the structure;" and

(d) Due to shoddy workmanship, "the main entrance [became] separated from the structure."

¶ 10 The complaint contained three counts, sounding in consumer-fraud violations (count 1) and violations of DGW's express and implied warranties (counts 2 and 3, respectively).

¶ 11 II. DGW's 2023 Lawsuit

¶ 12 In its motion to dismiss, DGW provided a fair amount of additional context, most notably this: In March 2023, DGW sued Lowe for refusing to pay the final $7,350 of this very same contract. We will call this suit the "2023 Lawsuit." The motion to dismiss attached the complaint from the 2023 Lawsuit and the final judgment order, which awarded DGW the sum of $5,850.

¶ 13 According to the 2023 complaint, after DGW had completed "substantially all of the work required" on the garage "except for part of the electrical work," Lowe ordered DGW to stop working and refused to pay the final installment. The 2023 complaint pleaded claims for breach of contract, *quantum meruit*, and unjust enrichment.

¶ 14 In the body of the motion to dismiss the current complaint, DGW stated (without verification) the following:

> "During the trial on that [2023 Lawsuit,] Lowe introduced evidence regarding the purported failure of [DGW] to properly construct the garage. Due to that testimony[,] the trial judge awarded [DGW] the sum of $5,85.00, reducing the amount sought by [DGW] due to those deficiencies."

¶ 15 DGW also attached to its motion to dismiss a letter from its counsel to Lowe's attorney in the suit before us, wherein DGW's counsel stated that DGW "sued Mr. Lowe in [the 2023 Lawsuit] and obtained a judgment against him for $5,850," which "represented a discount from

the amount claimed due *** as a result of the defects Mr. Lowe claimed existed with the garage at trial."

¶ 16 Based on this documentation, DGW sought dismissal based on *res judicata*, given that the 2023 Lawsuit was based on the same subject matter and covered the same issues, including DGW's alleged poor workmanship.

¶ 17 In a sur-reply, Lowe did not deny the existence of the 2023 Lawsuit. He did deny, however, that DGW had properly established that the deficiencies identified in his lawsuit were the same ones that were (or even could have been) raised at the trial on the 2023 Lawsuit.

¶ 18 Lowe also attached a report from the City of Chicago Department of Buildings dated March 11, 2025, that identified seven code violations: (1) a cracked garage stoop separated from the garage door, (2) water-logged interior corners on the northwest and southwest side of the garage, (3) concrete at the garage door midpoint that is too high, leading to water travelling to northwest and southwest corners of the garage, (4) a bent and damaged garage door, (5) out-of-plumb installation of the garage door, (6) a loose window at the frame attachment, and (7) a curled up roof shingle. Lowe argued that these violations spawned his lawsuit, and he could not have known of these and other violations at the time of the 2023 Lawsuit.

¶ 19 In a written order, the court dismissed Lowe's complaint based on *res judicata*. This timely appeal followed.

¶ 20 ANALYSIS

¶ 21 The doctrine of *res judicata* prevents multiple lawsuits between the same parties for the same facts and issues. *Cooney v. Rossiter,* 2012 IL 113227, ¶ 18. The doctrine promotes judicial economy and finality of disputes and protects parties from the unjust burden of duplicative lawsuits. *Id.* ¶ 35.

¶ 22 *Res judicata* not only bars the re-litigation of matters decided in the original action; it also bars any matters that *could have been* litigated in that suit. *Id*. ¶ 18; *River Park, Inc. v. City of Highland Park*, 184 Ill.2d 290, 302 (1998). To put a finer gloss on that latter point, "*res judicata* 'extends only to claims that "could have been presented by the exercise of due diligence." ' " *Indian Harbor Insurance Co. v. MMT Demolition, Inc.*, 2014 IL App (1st) 131734, ¶ 34 (quoting *Kasny v. Coonen & Roth, Ltd*, 395 Ill. App. 3d 870, 874 (2009), quoting *Hughey v. Industrial Comm'n*, 76 Ill. 2d 577, 582 (1979)). "If a claim exists and a litigant does not discover it despite the litigant's due diligence, *res judicata* does not apply." *Id*.

¶ 23 Three requirements must be met: (1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity of causes of action, and (3) an identity of parties or privies. *Cooney*, 2012 IL 113227, ¶ 18. The parties agree that DGW established prongs (1) and (3); the 2023 Lawsuit ended in a final judgment on the merits and involved the same parties.

¶ 24 But Lowe says DGW has not established an identity of causes of action between the 2023 Lawsuit and this case. We follow the "transactional test" to determine identity of causes of action. *Cooney*, 2012 IL 113227, ¶ 21; *River Park*, 184 Ill. 2d at 311. We do not compare the theories of relief asserted in the two lawsuits or ask whether they involve the same evidence; instead, we ask whether the two lawsuits " 'arise from a single group of operative facts.' " *Cooney*, 2012 IL 113227, ¶ 21 (quoting *River Park*, 184 Ill. 2d at 311).

¶ 25 So it makes no difference, as Lowe argues, that the 2023 Lawsuit was a mere "debt collection" case (a characterization we dispute, in any event) or that the theories asserted in 2023 were for breach of contract and quasi-contractual claims, whereas the suit before us involves construction defects and theories of statutory fraud and breach of warranties. What matters is

whether the 2023 Lawsuit filed by DGW arose from the same group of operative facts as the suit before us now.

¶ 26 There is surface appeal to DGW's argument that the two suits arose from the same group of operative facts, as both actions involve DGW's construction of the same garage. And it may well be ultimately true that DGW is entitled to judgment based on *res judicata*. But DGW has not carried its burden of establishing as much as this early stage. Our reasoning requires a brief primer on motion practice under section 2-619.

¶ 27 A section 2-619 motion admits the sufficiency of the complaint but raises an affirmative basis for dismissal such as a time bar, immunity, lack of standing, or *res judicata*. See 735 ILCS 5/2-619(a) (West 2024). The affirmative matter must be apparent on the face of the complaint or supported by affidavit or other competent evidence. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 377 (2003); *Epstein v. Chicago Board of Education*, 178 Ill. 2d 370, 383 (1997). If (and only if) the defendant carries its initial burden of production with competent evidence, the burden shifts to the plaintiff to rebut the evidence or otherwise demonstrate the existence of a disputed question of material fact. *Van Meter*, 207 Ill. 2d at 377; *Epstein*, 178 Ill. 2d at 383.

¶ 28 The procedure, for all practical purposes, is the functional equivalent of that for a motion for summary judgment. *Van Meter*, 207 Ill. 2d at 377; *Epstein*, 178 Ill. 2d at 383. On review of a section 2-619 dismissal, this court "must consider whether ' "the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." ' " *Van Meter*, 207 Ill. 2d at 377-78 (quoting *Epstein*, 178 Ill. 2d at 383, quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)).

¶ 29 The problem with DGW's section 2-619 motion is that it did not resolve material questions of fact. Lowe concedes the authenticity of the complaint from the 2023 Lawsuit and the final judgment order. But that is not nearly enough. We know that the court entered judgment for DGW in the amount of $5,850, a haircut from the $7,350 DGW sought. But we don't know the reason for that discount. DGW told the circuit court—literally *told* the court in the body of its motion—that the discount was because Lowe had complained at trial of defects in the work. But that is not sworn testimony or any other kind of competent evidence.

¶ 30 DGW attached a letter from its counsel to Lowe's counsel in this matter claiming the same thing—that the reduced award was because of defects Lowe identified at trial. But even if that letter were authenticated (it was not), that is likewise incompetent evidence. Absent an admission by Lowe or an affidavit or other sworn testimony from someone with personal knowledge, DGW has presented no competent proof that the issue of construction defects ever reared its head in the 2023 Lawsuit.

¶ 31 And the reduced award need not be attributable to construction defects. We know DGW did not fully complete the construction, and it would be entirely logical that an award for $5,850 instead of $7,350 was proper under a *quantum meruit* theory, reduced to account for the electrical work that was still remaining when DGW was kicked off the job.

¶ 32 By no means are we suggesting that DGW's counsel is not being forthcoming. But the fact remains that we require competent evidence before accepting assertions as fact. We cannot merely assume that the award reduction was due to Lowe's claim of construction defects.

¶ 33 And even if we could, we still would not uphold this dismissal. The word "defect" covers a lot of ground. In the current complaint, Lowe has identified several issues found by the city building inspector, including water damage and warping of wood. It may prove to be the case

that all of the defects that led to these problems were apparent to Lowe, or on reasonable diligence should have been apparent to Lowe, back when DGW filed the 2023 Lawsuit. But any homeowner understands that some construction defects are not immediately noticeable to a layperson, and it is not until the effects of those defects—like water damage or warping—become apparent that the homeowner becomes aware of the underlying construction defect.

¶ 34 We have no idea, at this preliminary stage, whether the defects alleged in the current complaint were things that Lowe knew or should have known of back in 2023. And if Lowe was unaware of these defects and could not have discovered them through the exercise of reasonable diligence, then *res judicata* will not bar his claim for them. *Hughey,* 76 Ill. 2d at 582; *Indian Harbor Insurance Co.*, 2014 IL App (1st) 131734, ¶ 34 ("If a claim exists and a litigant does not discover it despite the litigant's due diligence, *res judicata* does not apply.").

¶ 35 At a minimum, we would note that at least one of Lowe's claims in the current claim, taking his allegations as true at this stage, would survive: Lowe alleges that DGW failed to obtain the required building inspections from the city and concealed that fact from Lowe. Taking that allegation as true, as we must at this stage, DGW would be hard-pressed to convince us that Lowe should have complained about something that DGW withheld from his knowledge.

¶ 36 It may well be the case, in the end, that DGW has the better of this argument. Indeed, some or all of the defects alleged in the current lawsuit might be the reason Lowe kicked DGW off the job in the first place. But we know none of that at this early stage. DGW is free to renew its *res judicata* defense if, after the appropriate discovery, it can establish that Lowe knew, or through the exercise of reasonable diligence should have known, of these defects at the time of the 2023 Lawsuit.

¶ 37 DGW raised other bases for dismissal below. But DGW did not elaborate on them in its appellate brief, nor did the trial court ever reach them. We will not undertake an analysis without the benefit of adversarial briefing. The trial court is certainly free to consider those other arguments on remand.

¶ 38 CONCLUSION

¶ 39 The judgment of the circuit court is reversed. The cause is remanded for further proceedings.

¶ 40 Reversed and remanded.