

Successive Actions on Same Guaranty Not Barred by Res Judicata

The Appellate Court of Illinois, Second District, recently rejected the arguments of two loan guarantors that a bank's current claims against them were barred by res judicata because the current claims arose out of the same guaranty that the bank used to sue them in a prior action.

In so ruling, the Court held that where a single guaranty contemplates multiple loan transactions, each loan transaction constitutes a distinct transaction implicating the guaranty. Therefore, the operative "transaction" for purposes of res judicata is each of the loans.

A copy of the opinion is available at: [Link to Opinion](#).

On Jan. 12, 2012, the bank filed an action for a breach of a loan agreement, breach of a written guaranty, and foreclosure on a mortgage on a loan. On Nov, 5, 2014, the trial court entered summary judgment in favor of the bank, and eventually entered the final judgment in favor of the bank on March 30, 2015.

On Aug. 10, 2012, the bank filed the current action involving different loan agreements. Two of the counts in the current action relied on the same guaranty as in the prior action. On Feb. 25, 2015, the trial court in the current action entered summary judgment in favor of the bank on all counts.

On May 6, 2015, after the final judgment in the prior action, but before the Feb. 25 order in the current action became final and appealable, the defendant guarantors filed a motion to reconsider the summary judgment order in the current action. The guarantors argued that res judicata barred the current claims under the guaranty, as the bank had already obtained final relief against them on the same guaranty in the prior action.

The trial court found that, under the terms of the guaranty, the bank was entitled to bring a separate action for each alleged breach of the guaranty. The guarantors appealed.

As you may recall, under the res judicata doctrine, a final judgment rendered by a court of competent jurisdiction bars subsequent suits between the same parties and involving the same cause of action. The bar includes not only claims actually decided, but those that could have been decided. For the doctrine to apply, the following requirements must be met: (1) a final judgment on the merits by a court

of competent jurisdiction; (2) an identity of causes of action; and (3) an identity of parties or their privies.

Illinois courts apply a transactional test in determining whether there is an identity of actions. Separate claims will be considered the same cause of action if they arose from a single group of operative facts, regardless of whether they assert different theories of relief. There need not be a substantial overlap of evidence, so long as the claims arose from the same transaction. Considerations include 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.

The Appellate Court found that the defendants executed a single guaranty. However, the guaranty language contemplated that there would be multiple loan transactions, each of which would trigger potential liability. The express language in the guaranty stated, "that the guarantors agree to guarantee payment and satisfaction on the indebtedness of [the defendants], whether existing or in the future, and to do so on an 'open and continuing basis.'"

The Appellate Court found that the parties to the guaranty anticipated future loan transactions. Instead of entering into a new guaranty for each loan, the Court found that the parties opted for a continuing guaranty that would create a new obligation for each new loan. Thus, the Court held, each loan including a distinct guaranty conforms to the parties' business expectations.

The Court also noted that examining the terms of each loan agreement, and the potential liability for each loan agreement under the guaranty, would be unique to each case and therefore it would not be a convenient trial unit. According to the Court, each loan was also unique as to the amount, payment, and other terms, and the potential liability would vary greatly with the terms of each loan. The Court held this strongly supports a finding that the operative transactions were the separate loan transactions, each of which incorporated the guaranty.

Thus, the Appellate Court held that the operative "transaction" for purposes of res judicata was each of the loans, and affirmed the judgment of the trial court.