New Supreme Court Ruling Serves As Warning for Lawyers To Think About *Res Judicata* Consequences Before Voluntarily Dismissing Claims

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On January 25, 2008, the Illinois Supreme Court rendered its decision in *Hudson v. City of Chicago*, ___ Ill.2d ___, 2008 Ill. LEXIS 12 (Jan. 25, 2008) and ruled that *res judicata* may bar the re-filing of a voluntarily dismissed claim where there was a previous involuntary dismissal of another claim in the case. The Court's decision in *Hudson* mandates that lawyers exercise great caution before voluntarily dismissing their clients' claims.

In *Hudson*, plaintiffs filed a two-count wrongful death complaint against the City of Chicago, the former Chicago Fire Commissioner, and unknown Chicago Fire Dept. personnel. In Count I, plaintiffs alleged negligence by defendants in providing emergency services. In Count II, plaintiffs alleged willful and wanton misconduct in providing emergency services. In October 1999, the circuit court of Cook County granted defendants' motion to dismiss the negligence count on the ground that defendants were immune from liability under the Emergency Medical Services Systems Act, 210 ILCS 503.150. Thereafter, on July 25, 2002, plaintiffs voluntarily dismissed their remaining count for willful and wanton misconduct. On July 23, 2003, plaintiffs re-filed their action asserting only one count for willful and wanton misconduct. The defendants then moved to dismiss plaintiff's re-filed action on the basis of *res judicata*. The circuit court of Cook County granted the motion to dismiss on the basis of *res judicata*, the appellate court affirmed the circuit court's ruling, and the Supreme Court ultimately did the same.

In reaching its conclusion, the Supreme Court relied on its prior decision in *Rein v. David A. Noyes & Co.*, 172 Ill.2d 325, 665 N.E.2d 1199 (1996). The Court initially noted that three requirements must be present for *res judicata* to apply: (1) a final judgment on the merits; (2) an identity of causes of action; and (3) the parties or their privies are identical in both actions. Only the first of these elements was at issue in *Hudson*. The plaintiffs contended that *res judicata* could not bar their re-field complaint since their claim for willful and wanton misconduct was never adjudicated on the merits. However, the Court disagreed. The Court ruled that the involuntary dismissal of plaintiffs' negligence claim was an adjudication on the merits pursuant to Supreme Court Rule 273. The Court then held – based on its decision in *Rein* – that "a plaintiff who splits his claims by voluntarily dismissing and refiling part of an action after a final judgment has been entered on another part of the case subjects himself to a res judicata defense." The basis for the Court's so holding is the principle that *res judicata* will bar "not only every matter that was actually determined in the first suit, but also every matter that might have been raised and determined in that suit."

In short, the claim for willful and wanton misconduct by the plaintiffs in *Hudson* could have been determined along with plaintiffs' negligence claim in their previously filed case; plaintiffs were thereafter barred from re-filing their willful and wanton claim because the negligence claim was adjudicated on the merits and dismissed. The right to re-file a claim under the Code of Civil Procedure did not prevent this result and did not allow the plaintiffs to avoid the application and preclusive effects of *res judicata*.

As draconian as the Court's ruling in *Hudson* appears, it is limited under certain circumstances. First, there must have been an "adjudication on the merits" in the original action for *res judicata* to apply and bar the re-filing of a voluntarily dismissed claim. An "adjudication on the merits" under Supreme Court Rule 273 is "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." Second, the Court in *Hudson* cites to § 26 of the Restatement of Judgments which lists six instances where so-called "claim splitting" will be allowed and *res judicata* will not bar a later filed claim.

The plaintiffs in *Hudson* argued that applying *res judicata* under the circumstances presented before the Court would mean that "whenever any count in a multi-count complaint is dismissed on the merits, none of the surviving counts may be voluntarily dismissed and subsequently refiled." The Court dismissed this notion by noting that one of the six instances cited in § 26 of the Restatement of Judgment is if the defendant acquiesces to the splitting of claims. "Thus, if an attorney is considering taking a voluntary dismissal after a final judgment has been entered on part of his case, he can seek the defendant's acquiescence in the refiling. If the defendant is unwilling to do so, then the attorney will know that he proceeds at his peril."

The Court's words in *Hudson* should sound a warning to all attorneys before they unilaterally voluntarily dismiss a client's claim. Lawyers need to consider the posture of their case and the consequences of such a choice. Specifically, a lawyer must consider whether any other claims in the case have been adjudicated on the merits and whether the other elements of *res judicata* have been met. If so, a client may be barred under *Hudson* from re-filing the voluntarily dismissed claim at a later date.

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