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FIFTH DIVISION
June 29, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SRAM, LLC, a Delaware limited liability company,)	Appeal from the
)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10 CH 53082
)	
)	
PLANT BIKES, LLC, d/b/a RUGGED CYCLES,)	
a Texas limited liability company,)	Honorable
)	Lee Preston,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Epstein and Justice McBride concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court order dismissing plaintiff's complaint for declaratory judgment on the grounds that there was another case pending between the same parties for the same cause, pursuant to section 2-619(a)(3) of the Code, is affirmed. An analysis of the discretionary factors show no abuse of discretion

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by the trial court when it dismissed plaintiff's complaint.

¶ 2 Plaintiff SRAM, LLC, appeals from a circuit court order granting section 2-619(a)(3) motion to dismiss (735 ILCS 5/2-619(a)(3) (West 2010)) by defendant Plant Bikes, LLC, d/b/a Rugged Cycles (Rugged). For the reasons set forth below, we affirm the decision of the circuit court.

¶ 3 BACKGROUND

¶ 4 This case arose out of an alleged breach of contract between Plant Bikes, LLC, d/b/a/ Rugged Cycles (Rugged), a manufacturer of heavy-duty and industrial bicycles and SRAM, LLC (formerly SRAM Corporation), a manufacturer of bicycle parts.

¶ 5 On October 22, 2010, Rugged Cycles, Inc., filed a complaint against SRAM Corporation in the Nueces County, Texas, state court. The complaint alleged Rugged Cycles is a corporation organized under the laws of Texas and SRAM Corporation, is a Delaware corporation with its main office in Chicago. In the complaint, Rugged alleged it entered into an agreement to purchase bicycle parts from SRAM. Rugged alleged it received sample hubs from SRAM during negotiations and that Rugged selected a hub suitable for use in its bicycles. Under the agreement, SRAM shipped 500 hubs to a third party in Florida, J&B Importers, who paid SRAM for the hubs. J&B then installed the hubs into bicycle wheels. J&B then sold and shipped the

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wheels to Rugged in Texas. Rugged incorporated the wheels containing the hubs manufactured by SRAM into its bicycles which were then sold to customers.

¶ 6 According to the complaint, sometime after Thanksgiving 2008, Rugged began receiving customer complaints about the bicycles it sold. Rugged performed an investigation which revealed the axles in the hubs were breaking. Rugged alleged the parts furnished by SRAM were defective and SRAM breached the contract because the sample hubs provided by SRAM were of better quality than the hubs that SRAM later supplied. Among other defects, Rugged alleged critical parts in the samples of the hubs they selected were made of metal, but the same parts in the hubs shipped to J&B for use in Rugged's bicycles were made of plastic, causing the failures. Rugged alleged SRAM engaged in false, misleading and deceptive acts in violation of the Texas Business and Commerce Code by sending the defective hubs and seeks damages.

¶ 7 SRAM filed an answer in the Texas matter alleging it was not liable in the capacity in which it was sued and that SRAM Corporation is not an appropriate party to any lawsuit arising out of the contract between the parties.

¶ 8 Meanwhile, on December 15, 2010, SRAM, LLC, filed a complaint for declaratory judgment in the circuit court of Cook

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County, naming Rugged as defendant. In the complaint, SRAM, LLC, sought a declaratory judgment that:

"Plaintiff does not have any contractual obligations (ongoing or otherwise) to defendant...; Plaintiff is not engaging in any misrepresentations or fraud (ongoing or otherwise)...; Plaintiff is not breaching any warranties...; [and] Plaintiff does not owe defendant any money and has no obligation to pay defendant money now or in the future..."

¶ 9 In the complaint for declaratory judgment, SRAM, LLC, alleged that SRAM Corporation no longer exists after a merger with SRAM, LLC.

¶ 10 Rugged filed an amended complaint in Texas on January 4, 2011, making the same allegations as the original complaint but replacing SRAM Corporation as the defendant with SRAM, LLC. Rugged filed a third amended complaint in Texas on January 18, 2011, naming both SRAM Corporation and SRAM, LLC, as defendants.

¶ 11 Rugged filed a section 2-619(a)(3) motion to dismiss the Illinois complaint for declaratory judgement (735 ILCS 5/2-619(a)(3) (West 2010)) on February 10, 2011, claiming there was a pending case in Texas involving the same parties and

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the same cause of action and it had filed an earlier suit against SRAM in Texas on October 22, 2010.

¶ 12 On February 11, 2011, SRAM responded to Rugged's amended Texas complaint by filing a verified denial, original answer and request for dismissal of Rugged's Texas lawsuit on jurisdictional grounds. The motion remains pending.

¶ 13 After briefing, the Illinois trial court granted Rugged's section 2-619(a)(3) motion to dismiss SRAM's declaratory action. The Illinois trial court found that the Texas action remains pending, both lawsuits arise out of the same transaction, Rugged's Texas lawsuit was filed prior to SRAM's Illinois lawsuit, Texas has a greater interest in resolving the matter, dismissing the Illinois lawsuit prevents multiplicity, SRAM may obtain complete relief in Texas, and an Illinois resolution to the matter would have a *res judicata* effect on the Texas action.

¶ 14 SRAM filed this timely appeal of the trial court's order granting the defendant's 2-619(a)(3) motion to dismiss. In this appeal, SRAM claims the trial court abused its discretion when it granted Rugged's section 2-619(a)(3) motion to dismiss because no case was pending between the parties. SRAM also claims the trial court failed to conduct a proper analysis of the factors to be considered in a section 2-619(a)(3) motion to dismiss and invokes Supreme Court Rule 366(a)(5) to request we

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rule on the motion and reverse the trial court without remand for further hearings.

¶ 15 Rugged argues SRAM's declaratory judgment action should be dismissed because it was filed for the purpose of seeking a declaration of nonliability, which is not permitted under Illinois law.

¶ 16 ANALYSIS

¶ 17 Section 2-619(a)(3) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(3) (West 2010)) permits a defendant to seek a dismissal or a stay when there is another action pending between the same parties for the same cause. *Continental Casualty Company v. Radio Materials Corp.*, 366 Ill. App. 3d 345, 347 (2006). This provision is designed to avoid duplicative litigation. *John Crane Inc. v. Admiral Insurance Company*, 391 Ill. App. 3d 693, 698 (2009).

¶ 18 The movant bears the burden of demonstrating by clear and convincing evidence that the two actions involved the "same parties" and the "same cause." *Whittmanhart, Inc. v. CA, Inc.*, 402 Ill. App. 3d 848, 853 (2010). The parties need not be identical in both actions; rather, a substantial similarity is sufficient. *Continental*, 366 Ill. App. 3d at 347. Actions present the same cause when the relief requested is based on substantially the same set of facts. *Whittmanhart*, 402 Ill. App.

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3d at 853.

¶ 19 Even if the "same cause" and "same parties" requirements are met, section 2-619(a)(3) does not mandate automatic dismissal. *Performance Network Solutions, Inc. v. Cyberklix US, Inc.*, 2012 IL App (1st) 110137, ¶33. Rather, the trial court should consider four additional discretionary factors: (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in a foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum. *Id.*

¶ 20 We review the circuit court's decision to dismiss an action pursuant to section 2-619(a)(3) for an abuse of discretion. *Whittmanhart*, 402 Ill. App. 3d at 852. Under the abuse of discretion standard, we do not substitute our judgment for that of the trial court, nor do we determine whether the trial court acted wisely. *Crane*, 391 Ill. App. 3d at 700. The cornerstone of this standard of review allows us to reverse only when no reasonable person could adopt the view taken by the lower court. *Id.*

¶ 21 SRAM claims the trial court abused its discretion because there was not an another action pending between the same parties when it filed its complaint. The threshold factor required to file a section 2-619 (a)(3) motion is that there is

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another action pending between the same parties for the same cause. SRAM notes that Rugged initially filed suit in Texas against SRAM Corporation and subsequently filed an amended complaint naming SRAM, LLC. Finally, Rugged filed an amended complaint naming both SRAM, LLC, and SRAM Corporation.

¶ 22 SRAM claims, under Texas law, when a party's name is omitted from an amended pleading, the case is effectively dismissed. *Jauregui v. Jones*, 695 S.W. 2d 258 (1985). SRAM claims that since Rugged removed "SRAM Corporation" as a defendant in its first amended complaint, the case was effectively dismissed. SRAM argues the Texas court has no jurisdiction over SRAM, LLC, in Rugged's amended complaints because SRAM Corporation was served with process, while SRAM, LLC, was not served. SRAM has filed a motion to dismiss in the Texas case on this basis. The Texas court has not ruled on the motion. SRAM asks that we anticipate the ruling of the Texas trial court that its jurisdictional argument is correct and that we find there is no case pending.

¶ 23 In *Jauregui*, the court held that the filing of an amended complaint which omits an originally named party is equivalent to dismissing that party. However, the underlying case in *Jauregui* remained pending even though the party was effectively dismissed. SRAM's motion to dismiss on

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jurisdictional grounds is pending before the Texas court. As the trial court noted, there is nothing in the record to show the Texas case has been dismissed because SRAM's motion to dismiss is still pending.

¶ 24 The trial court determined SRAM, LLC, is substantially similar to SRAM Corporation for purposes of determining the "same parties" requirement for section 2-619(a)(3). *Continental*, 366 Ill. App. 3d at 347. The trial court made a finding that another case was pending between the same parties for the same cause although the motion to dismiss the Texas case is still pending. We cannot say the court abused its discretion when it made the finding.

¶ 25 When the threshold requirements of section 2-619(a)(3) are met, the court is not required to dismiss a case. Rather, the trial court should consider four additional factors: (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in a foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum. *S. Kellerman v. MCI Communications*, 112 Ill. 2d 428, 447 (1986).

¶ 26 SRAM claims that the trial court abused its discretion because an analysis of the four discretionary factors overwhelmingly favor denial of the motion to dismiss and we

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should find the trial court abused its discretion, citing *Whittmanhart*, 402 Ill. App. 3d at 853. Accordingly, we will evaluate the four discretionary factors in this case to determine whether the circuit court abused its discretion when it dismissed this case. *Kellerman*, 112 Ill. 2d at 447.

¶ 27 The trial court first made the finding that the Texas case was the first filed and that Texas has a greater interest in resolving this case. SRAM disputes the finding that the Texas case was the first filed because it was not the first to name SRAM, LLC, as a party. However, as we stated earlier, the parties need not be identical in both actions; rather, a substantial similarity is sufficient. *Continental*, 366 Ill. App. 3d at 347. The trial court here found that the names were substantially the same, therefore, the Texas case was the first filed. We cannot say no reasonable person would take the position of the trial court, therefore, we find no abuse of discretion.

¶ 28 Moreover, Illinois courts have held that the respective filing time of the actions is not outcome determinative. *A.E. Staley v. Swift*, 84 Ill. 2d. 245 (1980). In *A.E. Staley*, the court found that "no mention is made in section 48(1)(c) of the respective filing times of the actions, and it is therefore apparent that the statute does not attribute any significance to

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that factor." *Id.* at 252. "On this point we agree with the analysis of the appellate court ***. That one action is filed prior to the other would not be determinative." *Id.*

¶ 29 The record shows that SRAM is a Delaware limited liability company which has its principal place of business in Illinois. During negotiations, Rugged employees made telephone calls to SRAM employees in Illinois and sent correspondence to SRAM employees in Illinois. Illinois does have a legitimate interest in the case. Although Illinois may have a legitimate and substantial interest in a case that was filed first, that fact does not trump further consideration of the four discretionary factors in deciding a 2-619(a)(3) motion to dismiss. *Continental*, 366 Ill. App. 3d at 347.

¶ 30 We note the performance of the agreement here was not alleged to take place in Illinois and not all the events leading to the breach of contract took place in Illinois. Rugged's principal place of business is in Texas. During negotiations, SRAM sent sample hubs to Rugged in Texas. SRAM allegedly shipped 500 hubs to Florida, knowing they would be subsequently used by Rugged in Texas in the construction of Rugged's bicycles. Rugged alleged SRAM violated the Texas Business and Commerce Code, a Texas statute and sought damages provided by that statute. Illinois courts would not have more expertise than Texas in

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applying the Texas Business and Commerce Code and Texas has a strong interest in interpreting its own laws. Although Illinois has a legitimate interest in the case, we cannot say no reasonable person could adopt the view taken by the circuit court that comity considerations favored the Texas court hearing this case.

¶ 31 We next consider the second factor - the prevention of multiplicity, vexation and harassment. The circuit court made a finding that the dismissal of the case would prevent multiplicity of cases. If the Illinois case were allowed to proceed, the resolution of the case would require Illinois and Texas courts to consider the same issues, contracts, and alleged product defects and possibly have divergent outcomes. Dismissal would prevent multiplicity. SRAM argues the multiplicity consideration favors allowing its case to proceed because the Texas case will be dismissed after the Texas court acts on the motion to dismiss, thus, there will be no Texas case. However, as we stated earlier, the issue of whether the Texas case should be dismissed because Rugged named and served SRAM corporation rather than SRAM, LLC, is a matter not yet decided by the Texas court. If SRAM is correct that the Texas case has been "effectively" dismissed, the Texas court will dismiss the Texas case based on the procedural issue of whether SRAM was properly served with

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process. If SRAM is correct, SRAM will win this dispute in Texas without requiring the Illinois courts to consider the merits of whether the contract was breached. Dismissal would prevent multiplicity and this factor weighs in favor of dismissal. See *Whittmanhart*, 402 Ill. App. 3d at 855.

¶ 32 The circuit court determined the third factor - the likelihood of obtaining complete relief in a foreign jurisdiction - favored dismissal. The court found SRAM could get full relief in the Texas courts. We note SRAM is not seeking damages from Rugged. SRAM filed its declaratory judgment action seeking a declaration that it did not breach any contract with Rugged, they had no contractual obligation with respect to Rugged and that they do not owe money to Rugged. The Texas courts, in the course of evaluating Rugged's complaint, would be required to determine whether there was a contract and a breach of that contract and whether Rugged is entitled to damages from SRAM or whether SRAM owes money to Rugged. Therefore, the Texas court would fully evaluate SRAM's claims in the course of evaluating Rugged's breach of contract and other claims.

¶ 33 Conversely, if SRAM fails to persuade the Illinois court that it is entitled to a declaratory judgment, the issues of breach of contract would have to be re-litigated in Texas when Rugged litigates its damage claims. A judgment in the Texas

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court would decide all the issues raised in both cases by both parties. The Texas case is the broader and more comprehensive case.

¶ 34 Finally, we consider the *res judicata* effect of the foreign judgment in the local forum. SRAM argues the circuit court did not correctly articulate this standard. However, the appellate court may affirm a correct dismissal based upon any reason appearing in the record. *Aida v. Time Warner*, 332 Ill. App. 3d 154, 158 (2002).

¶ 35 In this case, a judgment for either Rugged or SRAM in the Texas case would completely resolve the issues raised in SRAM's declaratory judgment action. In the course of deciding Rugged's claims for damages, the Texas court would of necessity determine SRAM's declaratory judgment issues - whether there was a contract and whether SRAM owed money to Rugged. A judgment in the Texas case would have a *res judicata* effect on SRAM's declaratory judgment case, therefore, this issue weighs in favor of dismissal.

¶ 36 The issue here is not whether we would have dismissed or stayed the Illinois action, but rather whether the trial court abused its discretion when it dismissed the case. *Golden Rule Insurance Co. v. Robeza*, 151 Ill. App. 3d 801, 806 (1986). We cannot say no reasonable person would have ruled the same as the

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trial court. Therefore, we find no abuse of discretion in the circuit court's dismissal and affirm the judgment of the circuit court.

¶ 37 In the appellee's brief, Rugged raised a new argument for the first time on appeal. Rugged argues SRAM's lawsuit for declaratory judgment is an improper use of the declaratory judgment statute because it is in essence a suit for a declaration of nonliability for past conduct, citing *Howlett v. Scott*, 69 Ill. 2d 135 (1977). "Normally, a declaration of nonliability for past conduct is not a function of the declaratory judgment statute." *Howlett*, 69 Ill. 2d at 143. "A sound exercise of judicial discretion would appear to us to necessitate dismissal of a complaint seeking a declaration of nonliability for past conduct." *Chicago & Eastern Illinois Railroad Co. v. Reserve Insurance Co.*, 99 Ill. App. 3d 433 (1981).

¶ 38 SRAM responds that its complaint is seeking a declaration as to the parties' present rights and obligations, not past conduct. SRAM's declaratory judgment complaint requests a declaration that: "Plaintiff does not have any contractual obligations (ongoing or otherwise) to defendant ***; Plaintiff is not engaging in any misrepresentations or fraud (ongoing or otherwise) ***; Plaintiff is not breaching any warranties ***;

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[and] Plaintiff does not owe defendant any money and has no obligation to pay defendant money now or in the future."

¶ 39 "Normally, a declaration of nonliability for past conduct is not a function of the declaratory judgment statute. Defendant's institution of a declaratory action deprives the potential plaintiff of his right to determine whether he will file, and, if so, when and where." *Howlett*, 69 Ill. 2d at 143.

¶ 40 The primary purpose of declaratory judgment is to permit a plaintiff to obtain a declaration of its rights and liabilities before proceeding with a course of conduct for which it might later be held liable to the defendant. *Chicago & Eastern Illinois Railroad Co.*, 99 Ill. App. 3d at 437. "C&E did not seek a declaration that it would not incur liability for a future course of conduct; it sought a declaration that its past conduct did not breach certain insurance policies. And, it is relevant that when the railroad found out that the insurers were preparing an action for reimbursement, it rushed to file first (and obtained the injunction which was vacated in the first appeal). Such conduct 'deprives the [potential] plaintiff of his traditional choice of forum and timing, and it provokes a disorderly race to the courthouse.' " *Id.* (quoting *Hanes Corp.*

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v. Millard, 531 F.2d 585, 593 (D.C. Cir. 1976).

¶ 41 SRAM's declaratory judgment here is not being used to guide its future conduct, there is no future conduct contemplated by the alleged contract. Instead, SRAM seeks to obtain a declaration that it is not liable for past conduct. Rugged's complaint alleges it examined sample hubs provided by SRAM and Rugged selected a model suitable for use in its bicycles. Rugged alleges it ordered 500 hubs from SRAM that were sent to J&B. The transaction between the parties was completed when the 500 hubs were delivered and paid for. Although SRAM uses the present tense to allege it is seeking a declaration, it is not presently committing wrongdoing with respect to the defendant, no present wrongdoing is alleged - it is for the past conduct of shipping the 500 alleged defective hubs that Rugged is seeking damages. The appellate court may affirm a correct dismissal based upon any reason appearing in the record. *Aida*, 332 Ill. App 3d at 158. SRAM's use of the declaratory judgment statute to seek a declaration of nonliability for past conduct provides another basis to dismiss SRAM's complaint.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 44 Affirmed.