

NOTICE
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2015 IL App (5th) 140024-U

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 5-14-0024

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

CHARLES MEANS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 13-AR-4
)	
THE CITY OF EAST ST. LOUIS, ILLINOIS,)	
ALVIN PARKS, JR., EMEKA JACKSON,)	
LOTOYA GREENWOOD, ROY MOSLEY, JR.,)	
DELBERT MARION, and DELETRA)	
HUDSON,)	Honorable
)	Heinz M. Rudolf,
Defendants-Appellees.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Welch and Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where section 13-217 of the Code of Civil Procedure barred the refileing of plaintiff's complaint, the judgment of the circuit court is affirmed.
- ¶ 2 Plaintiff, Dr. Charles Means, appeals the order of the circuit court of St. Clair County that dismissed his lawsuit for breach of contract brought against the City of East St. Louis, City of East St. Louis Mayor Alvin Parks, Jr., city council members Emeka

Jackson, Lotoya Greenwood, Roy Mosley, Jr., Delbert Marion, and city manager Deletra Hudson. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 9, 2005, the city council of East St. Louis passed a resolution to hire plaintiff as city manager. Plaintiff then entered into a written employment contract with the mayor of East St. Louis. The employment contract stated the following relevant provision: "The appointment of Employee as City Manager is for an indefinite term, however the provisions of this Agreement shall remain in effect for approximately two (2) years from the date of commencement of services, up to and including September 8, 2007. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs 1 and 2, of this Agreement."

¶ 5 In April 2006, the city council voted to terminate plaintiff's employment contract. Plaintiff then filed the three following lawsuits seeking to enforce his employment contract.

¶ 6 In the first lawsuit, filed on April 1, 2011 (2011 lawsuit), plaintiff listed only the City of East St. Louis as defendant. The complaint alleged that the city terminated his employment and breached his employment contract without cause on April 10, 2006. He sought damages in the amount still owed on the contract, which was \$88,338.25, as well as other costs, an injunction to keep defendant from further damaging plaintiff's reputation, and to be deemed eligible for rehire by the city. On August 17, 2011, plaintiff filed a motion to voluntarily dismiss his complaint without prejudice. The circuit court

entered an order allowing plaintiff to voluntarily dismiss his complaint, with leave granted "to refile pursuant to statute."

¶ 7 On May 23, 2012, plaintiff filed a lawsuit in the United States District Court for the Southern District of Illinois (2012 lawsuit). The complaint initially listed the City of East St. Louis as the sole defendant. Later, plaintiff amended the complaint to add the mayor of the City of East St. Louis, Alvin Parks, Jr., and city council members Emeka Jackson, Lotoya Greenwood, Roy Mosley, Jr., and Delbert Marion. Plaintiff again claimed that his employment contract was terminated by the city without cause. He further argued that his employment was ended due to political reasons and that the city violated his first and fifth amendment rights under the United States Constitution. He asked for a money damage award in the amount owed under the employment contract, an injunction against the city to prevent further damage to his reputation, and a declaration that he could be eligible to be rehired by the city. In June 2012, the city moved to dismiss the amended complaint. The United States District Court granted the city's motion to dismiss the constitutional claim as being barred by the statute of limitations. The court also dismissed plaintiff's state law breach of contract claim without prejudice for lack of jurisdiction.

¶ 8 Plaintiff filed his third lawsuit (2013 lawsuit) in the circuit court of St. Clair County on January 4, 2013. Plaintiff named the City of East St. Louis, the City of East St. Louis Mayor Alvin Parks, Jr., and city council members Emeka Jackson, Lotoya Greenwood, Roy Mosley, Jr., and Delbert Marion as the defendants. Plaintiff argued that he was terminated in violation of the terms of the written contract between the parties.

He argued that he was terminated without cause, and that he did not breach the contract. As a result of the termination, plaintiff argued, he lost in excess of \$88,338.25 in income. He again asked for a money damage award of the amount owed under the contract, \$88,338.25, an injunction against the city to prevent further damage to his reputation, and a declaration that he was eligible to be rehired by the city.

¶ 9 On February 7, 2013, the City of East St. Louis as well as the other named defendants filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619(a)(2), (9) (West 2012)). In that motion, defendants argued that plaintiff was barred from refiling his lawsuit by section 13-217 of the Code (735 ILCS 5/13-217 (West 2012)). Plaintiff then filed a motion for leave to file a first amended complaint to add a claim against the City of East St. Louis city manager Deletra Hudson. The circuit court granted that motion.

¶ 10 On April 11, 2013, plaintiff filed an amended complaint against the City of East St. Louis, City of East St. Louis Mayor Alvin Parks, Jr., city manager Deletra Hudson, and city council members Emeka Jackson, Lotoya Greenwood, Roy Mosely, Jr., and Delbert Marion. Count I alleged the same breach of contract claim as the previous lawsuits. Count II alleged a breach of contract claim against the mayor, the city manager, and the members of the city council in both their official and individual capacities for "illegally terminating" his employment contract. The prayer for relief was again for a money damage amount of \$88,338.25, an injunction against the city to prevent further damages to plaintiff's reputation, and a declaration that plaintiff was eligible for rehire by the city.

¶ 11 Defendants filed a motion to dismiss pursuant to sections 2-619(a)(2) and (9) of the Code (735 ILCS 5/2-619(a)(2), (9) (West 2012)) and a motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). The section 2-619 motion argued that section 13-217 barred plaintiff from bringing his breach of contract claim in the 2013 lawsuit.

¶ 12 Plaintiff filed a response to defendants' motion to dismiss on May 1, 2013. In plaintiff's response, he argued that though his earlier lawsuits involved the breach of the same contract and arose out of the same transaction, they were not the same cause of action because they involved different defendants, and thus section 13-217 did not apply.

¶ 13 On May 2, 2013, the court dismissed with prejudice plaintiff's claims against Mayor Alvin Parks, Jr., and the city council members. The court dismissed plaintiff's claim against city manager Deletra Hudson without prejudice and granted plaintiff leave to replead against her. On June 4, 2013, plaintiff filed a second amended complaint against the city manager. The second amended complaint alleged the same breach of contract claims as in the 2011 lawsuit and the 2012 lawsuit. The prayer for relief was also the same.

¶ 14 On August 21, 2013, defendant Hudson filed a motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), arguing that plaintiff failed to show that Hudson owed any contractual duty to plaintiff, and therefore failed to plead a breach of contract claim against her. Plaintiff filed a response to the motion to dismiss. The circuit court granted Hudson's motion to dismiss on September 12, 2013.

¶ 15 On October 28, 2013, plaintiff filed a complaint for *mandamus* relief against Hudson in her official capacity as city manager. The *mandamus* complaint alleged the same breach of contracts claim as in the 2011 lawsuit, the 2012 lawsuit, and the first amended and second amended complaint in the 2013 lawsuit. The requested relief asked that Hudson honor the employment contract by having the city pay plaintiff what he was owed under the contract.

¶ 16 In response, Hudson filed a motion to dismiss pursuant to sections 2-619(a)(5) and (9) as well as a motion for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Hudson also filed a motion to dismiss pursuant to section 2-615 of the Code. In her section 2-619 motion, Hudson argued that plaintiff's *mandamus* action was the same breach of contract claim against the city labeled as a *mandamus* complaint in order to avoid the bar of section 13-217 of the Code.

¶ 17 On December 18, 2013, plaintiff filed a response to Hudson's motion. He argued that section 13-217 did not apply to the *mandamus* complaint.

¶ 18 On December 19, 2013, the court granted the defendant Hudson's motion under section 2-619 of the Code, finding that *Timberlake v. Illini Hospital*, 175 Ill. 2d 159 (1997), was on point and controlled the decision of the court. The court dismissed with prejudice the complaint against Hudson. The court denied the motion for sanctions.

¶ 19 Plaintiff appeals the court's May 2, 2013, dismissal order and the court's December 19, 2013, dismissal order.

¶ 21 A motion to dismiss pursuant to section 2-615 of the Code admits all well-pleaded facts and tests the legal sufficiency of the complaint, while a motion filed pursuant to section 2-619 of the Code admits the legal sufficiency of the complaint but raises a defect or defense that defeats the action. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). We review a dismissal under either section of the Code *de novo*. *Id.*

¶ 22 Section 13-217 of the Code provides for only one refiling of a claim after a voluntary dismissal by a plaintiff, including if that claim is refiled in federal court. *Flesner v. Youngs Development Co.*, 145 Ill. 2d 252, 254 (1991). If the federal court dismisses the action for lack of jurisdiction, a plaintiff may not refile a second time even if the statute of limitations has not yet expired. *Id.*

¶ 23 We agree with the circuit court that *Timberlake v. Illini Hospital*, 175 Ill. 2d 159 (1997), is on point with the present case. In *Timberlake*, the plaintiff filed a breach of contract complaint against her former employer in the circuit court of Rock Island County. *Id.* at 160. She then voluntarily dismissed the complaint. *Id.* at 161. Thereafter, the plaintiff filed a complaint in the federal district court. *Id.* The federal court declined to extend its jurisdiction to the claim and granted the defendant's motion for summary judgment. *Id.* The plaintiff then refiled her claim in the circuit court of Rock Island County. *Id.* at 162. The court dismissed the plaintiff's case, finding that section 13-217 prevented the second refiling of her claim after she had already refiled her claim in the federal court. *Id.* at 163-64. The appellate court affirmed the circuit court's decision, and the supreme court affirmed as well. *Id.* at 165.

¶ 24 In this case, plaintiff filed an original complaint, the 2011 lawsuit, in the circuit court of St. Clair County, voluntarily dismissed that complaint, and then filed another complaint, the 2012 lawsuit, in the federal district court. When the 2012 lawsuit was dismissed for lack of jurisdiction, plaintiff filed the 2013 lawsuit in the circuit court of St. Clair County. Under *Timberlake*, section 13-217 barred the second refiling of plaintiff's 2013 complaint against the City of East St. Louis as well as the *mandamus* complaint against Hudson after he had already refiled the complaint in the 2012 lawsuit.

¶ 25 Plaintiff argues that his 2013 lawsuit is not barred by section 13-217 because he listed different defendants in each lawsuit. We disagree. For purposes of section 13-217, a complaint is deemed to be a refiling of a previously filed complaint if it constitutes the same cause of action under principles of *res judicata*. *D'Last Corp. v. Ugent*, 288 Ill. App. 3d 216, 220 (1997). Section 13-217 provides for a limited extension to prevent injustice; it does not authorize an endless recycling of litigation. *Gendek v. Jehangir*, 119 Ill. 2d 338, 343 (1988).

¶ 26 Here, the parties that plaintiff had listed in each suit represented the same legal interests. See *People ex rel. Burriss v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296 (1992) (lawsuit was barred by *res judicata* even after plaintiff listed different defendants in separate suits because the defendants had the same legal interests). Plaintiff requests essentially the same remedy in the three lawsuits as well as the *mandamus* complaint against defendant Hudson—the balance of his employment contract plus costs, an injunction, and to be eligible for rehire. The constant defendant throughout the three lawsuits has been the City of East St. Louis, and any suit brought against the

city council, mayor, or manager is essentially a suit brought against the city. See *City of Elmhurst v. Kegerreis*, 392 Ill. 195 (1945). Also, the circuit court properly dismissed plaintiff's 2013 lawsuit as well as the *mandamus* complaint against defendant Hudson because the *mandamus* complaint was the exact same complaint as the previous lawsuits but was couched in terms typically used for *mandamus* relief. The circuit court properly determined that plaintiff's *mandamus* complaint against defendant Hudson was an attempt to usurp section 13-217 of the Code, and was thus barred per the holding in *Timberlake*.

¶ 27

CONCLUSION

¶ 28 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 29 Affirmed.