Nos. 1-10-0231, 1-10-0232 (Consolidated)

SIXTH DIVISION
November 18, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PROTECT OUR PARKS, INC., an Illinois Not-For-Profit Corporation; and EURYDICE CHRONES, Plaintiffs-Appellants, v. LATIN SCHOOL OF CHICAGO, a Private Educational Institution; CHICAGO PARK DISTRICT, a Municipal Corporation; GERY J. CHICO, President, Board of Commissioners; ROBERT J. PICKENS, Vice-President, Board of Commissioners; DR. MARGARET T. BURROUGHS, Commissioner; M. LAIRD KOLDYKE, Commissioner; REVEREND DANIEL MATOS-REAL, Commissioner; ROUHY J. SHALABI, Commissioner; TIM MITCHELL, General Superintendent of Chicago Park District; CHICAGO PLAN COMMISSION, an Agency of the City of Chicago; the CITY OF CHICAGO, a Municipal Corporation; SUZANNE MALEC-McKENNA, Commissioner, Chicago Department of Environment; SADHU JOHNSON, Commissioner for Environmental Issues; and FIELDTURF USA, INC., a Florida Corporation, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 08 CH 38259 The Honorable Martin S. Agran, Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

O R D E R

¶ 1 *HELD*: Plaintiffs' nuisance claim was barred by the doctrine of *res judicata*. Because Latin was no longer attached to the construction project at issue via an assignment of its rights, the trial court properly dismissed Latin from the lawsuit and awarded Supreme Court Rule 137 sanctions to Latin against plaintiffs. The trial court did not err in denying plaintiffs' request for sanctions. The trial court properly dismissed plaintiffs' section 2-1401 petition for relief.

¶ 2 Plaintiffs, Protect Our Parks, Inc., (POP) and taxpayer Eurydice Chrones, appeal the order of the trial court denying plaintiffs' section 2-1401 petition for relief (735 ILCS 5/2-1401 (West 2008)) from a judgment in favor of defendants, Latin School of Chicago (Latin), Chicago Park District (CPD), Gery Chico, President, Board of Commissioners, Robert Pickens, Vice-President, Board of Commissioners, Dr. Margaret Burroughs, Commissioner, M. Laird Koldyke, Commissioner, Reverend Daniel Matos-Real, Commissioner, Rouhy Shalabi, Commissioner, Time Mitchell, General Superintendent of Chicago Park District, Chicago Plan Commission (Commission), City of Chicago (City), Suzanne Malec-McKenna, Commissioner for the Chicago Department of Environment, Sadhu Johnson, Commissioner for Environmental Issues, and FieldTurf USA, Inc. (FieldTurf). Plaintiffs' section 2-1401 petition for relief sought to vacate the trial court's order dismissing plaintiffs' nuisance complaint on the basis of *res judicata* and a settlement agreement and granting sanctions in favor of Latin while denying sanctions against defendants. On appeal, plaintiffs contend the trial court erred in dismissing their nuisance complaint where the elements of *res judicata* were not met and the settlement agreement did not bar the claim. Plaintiffs further contend the trial court erred in dismissing Latin from the cause of action as an improper party on the basis of an assignment to the CPD and awarding sanctions

to Latin as a result. Plaintiffs additionally contend the trial court erred in denying their motion for sanctions against defendants. Plaintiffs finally contend the trial court erred in denying their section 2-1401 petition for relief on the basis of lack of diligence. Based on the following, we affirm the judgment of the trial court.

¶ 3 FACTS

¶ 4 At issue is a tract of land within Lincoln Park in Chicago, Illinois, where Latin had entered into a private agreement with the CPD to fully fund construction of an athletic facility in the public park in exchange for priority use of that facility, namely, a soccer field. On April 16, 2008, POP and three individual taxpayers filed a verified complaint against Latin, the CPD, and the City seeking to enjoin the construction of the athletic facility and terminate the agreement between Latin and the CPD (*POP I*). Herbert Caplan, a board member of POP, acted as plaintiffs' co-counsel and verified the complaint. Plaintiffs were granted a temporary restraining order (TRO). During the hearing on the TRO, the arguments raised by Caplan referenced the fact that the soccer field at issue was to be constructed from artificial turf.

¶ 5 Shortly after the TRO was granted, the parties drafted a settlement agreement. The settlement agreement provided that all parties release each other from liability for any and all claims:

> "known or unknown, direct or indirect, suspected or unsuspected, disclosed or undisclosed, arising under statute, regulation, ordinance, the United States or Illinois Constitutions, common law, or otherwise which either Plaintiffs or Defendants has previously had, now has or hereafter may have against the other arising out of or in

> connection with the Chicago Park District's December 1, 2006 agreement with Latin School of Chicago and the Latin Facility, as defined in the Plaintiffs' Complaint, and as alleged, or which should or could have been alleged in the lawsuit *Protect Our Parks, Inc. et al. v. The Latin School of Chicago, et al.*, Case No. 08 CH 4027, filed in the Circuit Court of Cook County, Illinois (the "Litigation")."

The settlement agreement, however, contained a reservation of rights such that:

> "Notwithstanding anything to the contrary herein this general release shall not be applicable and shall not release any claims, demands, causes of action, proceedings, suits, liabilities, obligations, promises, covenants, conditions, agreements, undertakings, duties, debts and damages, known or unknown, direct or indirect, suspected or unsuspected, disclosed or undisclosed, arising under statute, regulation, ordinance, the United States and Illinois Constitutions, common law or otherwise *** not arising out of or in connection with or related to the Litigation or the Chicago Park District's December 1, 2006 agreement with the Latin School of Chicago and the Latin Facility."

The settlement agreement additionally provided that the CPD would hold public hearings regarding the soccer field, submit a construction plan to the Commission, and pay plaintiffs' attorney fees. As a prerequisite to dismissing *POP I* with prejudice, the settlement agreement included a termination agreement between the CPD and Latin such that CPD would assume all remaining construction contracts for the artificial turf soccer field, thereby terminating Latin's involvement with the project.

¶ 6 The settlement and termination agreements were publicly disclosed and discussed at the CPD's Board of Commissioners meeting on May 14, 2008, which several POP members attended. At the meeting, the POP members raised their objections to the use of artificial turf to construct the soccer field based upon its alleged dangers. The meeting also contained a discussion regarding the assignment of the contracts from Latin to the CPD. On May 15, 2008, the parties executed the settlement agreement and the trial court entered an order dismissing *POP I* without prejudice until the CPD paid the agreed upon attorney fees and Latin and the CPD executed the termination agreement. On June 24, 2008, after the attorney fees were paid and the termination agreement was executed, the trial court dismissed *POP I* with prejudice. The trial court, however, retained jurisdiction "for the sole purpose of enforcing the settlement agreement" until October 1, 2008.

¶ 7 On August 21, 2008, the Commission held a public meeting and approved the CPD's application to construct the artificial turf soccer field. During the meeting, POP again raised concerns regarding the safety of the artificial turf through the testimony of several witnesses.

¶ 8 On August 29, 2008, Caplan filed an emergency motion in *POP I* to enforce the settlement agreement and for sanctions. The motion sought removal of a scoreboard from the soccer field; it made no mention of the artificial turf. The motion was denied.

¶ 9 On September 3, 2008, the CPD Board approved the construction of the artificial turf soccer field.

¶ 10 On September 22, 2008, Caplan filed a complaint on behalf of three different individual taxpayers (*POP II*) against the CPD and Latin alleging that the June 19, 2008, termination

agreement was "void or voidable" because it allowed the CPD to use public funds to reimburse Latin for the illegal construction of the soccer field and that the CPD's assumption of Latin's construction contracts violated bidding requirements. The trial court dismissed the complaint pursuant to section 2-619(a)(4) of the Code (735 ILCS 5/2-619(a)(4) (West 2008)) on the basis of *res judicata* and the settlement agreement. Plaintiffs appealed. This court affirmed. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 945 N.E.2d 634 (2011).

¶ 11 On October 14, 2008, plaintiffs filed a verified complaint seeking declaratory, injunctive, and other equitable relief for the construction of the artificial turf soccer field (*POP III*). Plaintiffs additionally filed a petition for a TRO and a motion for expedited discovery. Defendants responded by filing a motion to dismiss the complaint pursuant to section 2-619(a)(4) of the Code on the basis of *res judicata* and the settlement agreement. Latin also requested Supreme Court Rule 137 sanctions, arguing that plaintiffs had no basis in law or fact to reintroduce Latin into the lawsuit after the entry of the termination agreement. On January 12, 2009, the trial court dismissed *POP III* on the basis of *res judicata* and the settlement agreement, dismissed Latin as a named defendant, and granted sanctions in favor of Latin.

¶ 12 Plaintiffs then filed a motion claiming they were not given adequate time to respond to Latin's request for sanctions. The trial court granted plaintiffs motion to vacate the sanction order, setting a briefing schedule. In combination therewith, the trial court provided a briefing schedule for all parties, including plaintiffs themselves, on their Rule 137 requests for sanctions. On July 2, 2009, after filing and withdrawing inappropriate pleadings, plaintiffs filed a section 2-1401 petition for relief from the January 12, 2009, judgment dismissing their complaint. On July

22, 2009, following oral argument, the trial court granted Latin's request for sanctions and denied all other requests for sanctions. On December 23, 2009, following oral argument, the trial court dismissed plaintiff's section 2-1401 petition with prejudice.

¶ 13 DECISION

¶ 14 A section 2-619 motion to dismiss admits the legal sufficiency of the pleading, but asserts that certain defenses and defects outside of the pleading defeat the plaintiff's claim. *Solaia Technology, LLC v. Speciality Publishing Co.*, 221 Ill. 2d 558, 579, 852 N.E.2d 825 (2006). We review the dismissal of a pleading based on section 2-619 *de novo*. *Id*.

¶ 15 I. Res Judicata

¶ 16 Plaintiffs contend the trial court erred in dismissing their complaint based on the doctrine of *res judicata* because there was no final adjudication on the merits where the settlement agreement did not release defendants from future claims, and there was no identity of claims or parties between the instant lawsuit and *POP I*.

> " 'The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action.' [Citation]. *Res judicata* bars not only what was actually decided in the first action but also whatever could have been decided. [Citation.] Three requirements must be satisfied for *res judicata* to apply: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions. [Citation.]" *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d

210 (2008).

We review this legal question *de novo*. *Nelson*, 408 Ill. App. 3d at 60.

¶ 17 Plaintiffs argue that there could be no final adjudication on the merits where the tortious act underlying their nuisance claim had not yet occurred at the time of the May 15, 2008, settlement agreement. According to plaintiffs, the nuisance claim was not ripe until, at the earliest, the Commission and the CPD voted to approve the installation of the artificial turf, which was September 3, 2008. Defendants respond that the approval of the settlement agreement and dismissal of *POP I* was a final judgment on the merits barring the current lawsuit because the evidence demonstrated the basis of plaintiffs' claim was known and could have been raised while the trial court retained jurisdiction in the *POP I* case.

¶ 18 In finding that the first element of *res judicata* had been established, the trial court relied on *Keim v. Kalbfleish*, 57 Ill. App. 3d 621, 373 N.E.2d 565 (1978), which, parenthetically, continues to be cited positively--most recently in *Nelson*, 408 Ill. App. 3d at 63. "If a court approves a settlement, it merges all included claims and causes of action and is a bar to further proceedings. [Citation.] Furthermore, a dismissal 'with prejudice' is as conclusive of the rights of the parties as if the suit had been prosecuted to a final adjudication adverse to the plaintiff. [Citation.]" *Keim*, 57 Ill. App. 3d at 624.

¶ 19 We find there was a final adjudication on the merits where the trial court entered an order dismissing *POP I* with prejudice on June 24, 2008, and the nuisance claim *could have been* raised prior to that date or at least while the court retained jurisdiction. The evidence clearly demonstrates that it was the original and consistent intention for the soccer field to be

constructed from artificial turf. Moreover, plaintiffs' concerns regarding the safety of the artificial turf were repeatedly raised prior to the court losing jurisdiction in *POP I* on October 1, 2008, specifically, at the Commission meeting on May 14, 2008, prior to entering the settlement agreement, and at the August 21, 2008, Commission meeting to approve the CPD's application to construct the artificial turf soccer field. The fact that the CPD did not expressly approve the plans to construct the field until September 3, 2008, does not relieve plaintiffs from the responsibility to raise the claim earlier. The actual construction of the soccer field was not a prerequisite to plaintiff's knowledge that the artificial turf was to be used for the field, and the assignment of the contracts from Latin to the CPD pursuant to the termination agreement did not relieve plaintiffs from raising the claim where the use of the artificial turf was consistently contemplated. Nuisance claims may be reserved prospectively. See *Village of Wilsonville v. SCA Services, Inc.*, 86 Ill. 2d 1, 25, 426 N.E.2d 824 (1981) ("a *prospective* nuisance is a fit candidate for injunctive relief" (emphasis in original)); *Nickels v. Burnett*, 343 Ill. App. 3d 654, 663, 798 N.E.2d 817 (2003) (construction of a hog confinement facility was properly enjoined prior to breaking ground where extensive evidence was presented regarding the potential health harms). Furthermore, the trial court retained jurisdiction over *POP I* until October 1, 2008, which was after the date which plaintiffs admit knowledge of the artificial turf, *i.e.*, September 3, 2008. Plaintiffs, however, waited until October 14, 2008, to file the underlying complaint. "*Res judicata* promotes judicial economy by preventing repetitive litigation and also protects parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia v. Madigan*, 209 Ill. 2d 520, 533, 809 N.E.2d 88 (2004). We, therefore, conclude the nuisance

claim *could have* been raised during the pendency of *POP I.* The dismissal of *POP I* following the settlement agreement was a final adjudication on the merits.

¶ 20 Plaintiffs next argue the second element of *res judicata*, namely, identity of the causes of action, was not met because there was not a single group of operative facts between *POP I* and this case. According to plaintiffs, *POP I* focused on invalidating the secret deal between Latin and the CPD to construct the soccer field while this case focuses on prohibiting the construction of an artificial turf soccer field, the fact of which had not accrued until after the dismissal of *POP I.*

¶ 21 We use the "transactional test" to assess whether an identity of the causes of action exists. "[P]ursuant to the transactional analysis, separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. [Citation.] ***. [T]he transactional test permits claims to be considered part of the same cause of action even if there is not a substantial overlap of evidence, so long as they arise from the same transaction. [Citation.]" *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311, 703 N.E.2d 883 (1998).

¶ 22 We conclude that the claim alleged in *POP I* and the claim before us on appeal arose from the same set of operative facts, namely, halting the construction of a soccer field in Lincoln Park. The nuisance claim arose from the intended use of artificial turf to construct the soccer field and the original agreement between Latin and the CPD included details demonstrating that intent. The use of artificial turf was repeatedly raised and objected to by POP during the course of the *POP I* litigation. Therefore, the second element of *res judicata* was established.

¶ 23 Turning to the third element of *res judicata*, plaintiffs argue there was no privity between themselves and the plaintiffs in *POP I*.

> "For purposes of *res judicata*, the parties need not be identical to be considered the same. [Citation.] Litigants are considered the same when their interests are sufficiently similar, even if they differ in name or number. [Citation.] Litigants are privies when 'a person is so identified in interest with another that he represents the same legal right.' [Citation.]" *Langone v. Schad, Diamond & Shedden, P.C.*, 406 Ill. App. 3d 820, 832, 943 N.E.2d 673 (2010).

¶ 24 We conclude plaintiffs' interests were sufficiently represented in the prior litigation. As stated, the objective in both lawsuits was to halt the construction of the soccer field on public land. Privity existed between plaintiff Chrones and the taxpayers in *POP I* where the relief sought in both cases was the prevention of an injury to the public land in Lincoln Park. See *Nelson*, 408 Ill. App. 3d at 61-62 (taxpayer actions are brought by the individuals on behalf of themselves and others similarly situated on issues common to all members to seek relief from injury resulting from illegal acts by a public body or official). Moreover, POP was a plaintiff in both lawsuits, each brought by attorney and POP member Caplan. The fact that FieldTurf is a defendant in the instant lawsuit and was not named in *POP I* does not eliminate the identity of interests where FieldTurf had the same legal interest as the defendants in *POP I*, namely, as with the CPD, to insure the installation of the artificial turf for the soccer field.

¶ 25 Consequently, we find the claim at issue was barred by the doctrine of *res judicata*. We, therefore, need not address whether the trial court erred in finding the instant claim was barred

by the release terms of the settlement agreement.

¶ 26 II. Assignment

¶ 27 Plaintiffs contend Latin did not and cannot assign away its liability for its role in creating the nuisance of the artificial turf soccer field. According to plaintiffs, the termination agreement failed to assign all liabilities arising from the construction of the soccer field to the CPD and, therefore, Latin is liable for its participation in creating the nuisance where it designed, chose, and purchased the artificial turf, and began construction on the project. Latin responds that the installation of the soccer field did not begin until October 2008, well after the effective date of the termination agreement; therefore, Latin is not liable for any claims resulting from the construction of the artificial turf soccer field.

¶ 28 The termination agreement provided:

> "As of the Effective Date [June 19, 2008], Latin does hereby sell, assign, transfer, and set over to the Park District, (I) all of Latin's right, title and interest in and to those contracts, agreements, warranties and indemnities affecting the design and construction of the Project ***. ***. *** the Park District hereby accepts the foregoing assignment and *hereby assumes the performance of and obligations under all the terms, covenants and conditions of the Project Contracts *** with respect to the period from and after the Effective Date*." (Emphasis added.)

¶ 29 We find the trial court properly dismissed Latin as a party to the instant lawsuit because the construction did not commence until after the effective date of the termination agreement and plaintiffs did not raise the claim until Latin was no longer attached to the project pursuant to the

termination agreement. In their *res judicata* argument, plaintiffs repeatedly contend the nuisance claim could not be *res judicata* because it was not ripe until October 2008, when the artificial turf was installed, or at the very earliest September 2008, when the construction plans were approved. Despite recognizing that construction of the artificial turf soccer field did not commence until well after the June 19, 2008, effective date of the termination agreement, plaintiffs argue Latin is liable for contributing to the alleged nuisance as the "main participant of the pre-finalizing phases" of the project and as having "maintained a role in the construction." Plaintiffs cite to *Cook v. City of DuQuoin*, 256 Ill. App. 452 (1930), to support the proposition that Latin is jointly and severally liable.

¶ 30 We note, first, that *Cook* has no precedential authority. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 95, 672 N.E.2d 1207 (1996) (appellate court decisions filed prior to 1935 have no binding authority). Notwithstanding, *Cook* is distinguishable where that defendant was not only involved in the creation of the nuisance, but also actively contributed to the nuisance at the time when the damages were sustained. *Cook*, 256 Ill. App. at 457. Although Latin was merely a licensee and never a property owner of Lincoln Park, the law applicable to the transfer of real property applies to this situation. "As a general rule, in Illinois, the liability of a landowner for injuries occurring in connection with the property ends with the cessation of ownership, possession, and control of the property." *Maisenbach v. Buckner*, 133 Ill. App. 2d 53, 56, 272 N.E.2d 851 (1971). Latin's "control" over the project ceased on June 19, 2008, when the termination agreement assigned all of the contracts for the artificial turf soccer field to the CPD. Accordingly, Latin could not be liable for the alleged injury occurring in October 2008.

We find it disingenuous that plaintiffs repeatedly stated in their briefs that Latin commenced "construction" of the project. Plaintiffs fail to elaborate on what "construction" was begun by Latin prior to the entry of the termination agreement. We conclude that any construction that began prior to the October 2008 date is irrelevant; however, as the construction was not of the alleged nuisance.

¶ 31 Plaintiffs briefly allege, without analysis, that Latin maintained a role in the construction of the artificial turf soccer field after June 19, 2008. Pursuant to Supreme Court Rule 341(h)(7), plaintiffs forfeited review of this argument. "Consistent with the plain language of the rule, this court has repeatedly held that the failure to argue a point in the appellant's opening brief results in forfeiture of the issue. [Citations.] Moreover, an argument that is [not] developed beyond mere list or vague allegation may be insufficient if it does not include citations to authority. [Citation.]" *Vancura v. Katris*, 238 Ill. 2d 352, 369-70, 939 N.E.2d 328 (2010).

¶ 32 Because the alleged harm occurred after Latin was no longer attached to the construction of the artificial turf soccer field, we conclude the trial court properly dismissed Latin from the instant lawsuit. We, therefore, need not address whether the termination agreement improperly contained an exculpatory clause allowing the alleged liability to transfer from Latin to the CPD.

¶ 33 III. Sanctions

¶ 34 Plaintiffs contend the trial court erred in granting Supreme Court Rule 137 sanctions in favor of Latin. Latin responds that the sanction award was proper where plaintiffs had no basis in law or fact for naming Latin as a defendant in the underlying lawsuit.

¶ 35 Rule 137 provides, in relevant part:

> "Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record ***. ***. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase to the cost of litigation. ***. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction." Ill. S. Ct. R. 137.

¶ 36 "The purpose of Rule 137 sanctions is to prevent the abuse of the judicial process by punishing a party who brings vexatious or harassing litigation based upon unfounded statements of fact or law; it is not intended merely to penalize claimants for lack of success." *Doe v. Roe*, 289 Ill. App. 3d 116, 131, 681 N.E.2d 640 (1997). The decision whether to impose sanctions is within the trial court's discretion. *Id.* We will not overturn that decision unless the court has abused its discretion. *Id.* An abuse of discretion will be found where no reasonable person could have ruled in the same manner. *Nelson*, 408 Ill. App. 3d at 67-68.

¶ 37 Here, in imposing sanctions against plaintiffs, the trial court noted that plaintiffs were required to make prefiling inquiries into the validity of the purported claim and plaintiffs'

attorney had a continuing duty to investigate all of the information and to promptly dismiss a baseless lawsuit. The court concluded that plaintiffs' investigation did not establish a good-faith basis to include Latin as a defendant. After dismissing plaintiffs' factual allegations, the trial court found:

> "Protect Our Parks' complaint, at Paragraph 39 ["Upon information and belief, construction of the Turf field is occurring under the direction and supervision of Defendants CPD and Latin School], is based on information and belief. They were filed without any basis in law.
>
> Protect Our Parks' attorneys had an obligation to investigate based on the Termination Agreement. There was simply no basis in law or fact to name Latin School as a defendant in the instant action."

¶ 38 We conclude the trial court did not abuse its discretion in imposing sanctions. As discussed, there was no basis in law for Latin to be named as a defendant where the termination agreement assigned all of Latin's rights and obligations under the artificial turf soccer field contracts to the CPD. A cursory review of the termination agreement, which was imposed as a corollary to the settlement agreement resulting from the *POP I* litigation commenced by Caplan as a representative of POP, would have revealed that Latin could not be held liable for alleged damages resulting from the construction of the artificial turf soccer field after June 19, 2008.

¶ 39 Moreover, we find the "facts" asserted by plaintiffs in support of their claim and dismissed by the trial court do not demonstrate an abuse of the court's discretion. It is reasonable that the trial court found the "facts," *i.e.*, the presence of Latin's alleged agent at the construction

site after entry of the termination agreement, the presence of a vehicle with a Latin parking sticker at the construction site after entry of the termination agreement, and markings on the artificial turf delivered by FieldTurf bearing Latin's name, did not provide sufficient grounds to include Latin as a defendant. Latin's refusal to cooperate with plaintiffs' discovery requests and failure to indulge plaintiffs' settlement offers does not eliminate plaintiffs' obligations under Rule 137.

¶ 40 Plaintiffs additionally argue, in a brief and conclusory manner, that the trial court's sanction award should have been nominal. Plaintiffs do not cite to any authority demonstrating that sanctions against nonprofit organizations should be nominal. *Vancura*, 238 Ill. 2d at 369-70 (insufficient arguments in violation of Rule 341(h)(7) may result in forfeiture). Plaintiffs' citation to a string of federal decisions awarding nominal sanctions does not render the trial court's decision an unreasonable abuse of discretion, especially where the record demonstrates the trial court carefully reviewed the attorney fee petition and made adjustments prior to computing the final amount of attorney fees to be awarded as a sanction.

¶ 41 Plaintiffs next contend the trial court erred in denying their sanctions' requests against defendants. Because we found plaintiffs nuisance claim was barred by the doctrine of *res judicata*, we conclude that defendants' motions to dismiss were not actionable under Rule 137. Moreover, this court recently concluded that the Citizen Participation Act (Act) (735 ILCS 110/5 *et seq*. (West 2008)) does not act as a bar to Rule 137 sanctions, as argued by plaintiffs in support of their contention that Latin, the CPD, and FieldTurf should have been sanctioned. The Act was drafted to address "strategic lawsuits against public participation" that interfere with the

"valid exercise of constitutional rights to petition, speak freely, associate freely and otherwise participate in and communicate with government." 735 ILCS 110/5 (West 2008). In *Nelson*, this court held that the Act was not intended to be used as a defensive measure in response to a Rule 137 motion for sanctions. *Nelson*, 408 Ill. App. 3d at 66. This court further held that the Act cannot apply under these circumstances because a violation of the separation of powers would result where "the Act would allow the legislature to encroach upon the inherent powers of the judiciary to create its own rules to deal with matters within the court's authority." *Id*. We, therefore, conclude that plaintiffs' requests for sanctions were not warranted and the trial court did not abuse its discretion in denying the requests.

¶ 42 IV. Section 2-1401 Petition For Relief

¶ 43 Plaintiffs finally contend that the trial court erred in denying their section 2-1401 petition for relief from the court's January 12, 2009, judgment because they were diligent in bringing the petition.

¶ 44 A section 2-1401 petition for relief from judgment requires the movant to demonstrate, by a preponderance of evidence, the existence of a (1) meritorious defense; (2) due diligence in presenting the defense in the original action; and (3) due diligence in filing the section 2-1401 petition. *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699, 932 N.E.2d 50 (2010). We review the dismissal of plaintiff's section 2-1401 petition *de novo*. *People v. Vincent*, 226 Ill. 2d 1, 18, 871 N.E.2d 17 (2007).

¶ 45 According to plaintiffs, in April 2009, they obtained a transcript from the May 14, 2008, *POP I* hearing on the settlement agreement and "immediately presented it to the trial court" in

connection with the cross-motions for sanctions and then filed the section 2-1401 petition on July 2, 2009. Plaintiffs argue that the transcript provides the operation and intent of the settlement agreement's release provisions such that *res judicata* should not have barred the underlying lawsuit. Even assuming, *arguendo*, the defense is meritorious, we agree with the trial court that plaintiffs have not demonstrated an exercise of due diligence in presenting the defense or in filing the section 2-1401 petition. The transcript containing the evidence of the defense was from May 14, 2008, a hearing at which POP was in attendance. Consequently, there is no question that plaintiffs were aware the transcript containing the defense existed. Notwithstanding, plaintiffs did not obtain the transcript nor raise the defense in the underlying suit at any time prior to its dismissal in January 2009. Prior to that date, plaintiffs only generally raised the release provision of the settlement agreement as a defense, not admissions by defendants at the fairness hearing regarding the intent of that provision. Rather, according to plaintiffs, they first raised the defense in April 2009 in subsequently withdrawn pleadings while briefing the petitions for sanctions. However, by plaintiffs' own admission, it was not until July 2, 2009, that they filed their section 2-1401 petition for relief. We, therefore, cannot say the trial court erred in concluding plaintiffs failed to exercise diligence.

¶ 46 CONCLUSION

¶ 47 We find plaintiffs' complaint was barred by the doctrine of *res judicata*. We further find Latin was properly dismissed from the lawsuit and Rule 137 sanctions were appropriately awarded in favor of Latin. We finally find the trial court did not err in dismissing plaintiffs' section 2-1401 petition for relief. We affirm the judgment of the trial court.

¶ 48 Affirmed.