No. 2—10—0638
Order filed May 10, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

RITZ OF CHICAGO, LTD.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 07—L—397
	)	08—L—94
KENDRA ESPINOSA, LYLE ESPINOSA, KRIS ESPINOSA, and BRENDEN SCHAFFER,	)	
	)	
	)	Honorable
	)	Ronald L. Pirrello,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: Plaintiff forfeited its contention by failing to support it with relevant authority; in any event, the premise of its argument was invalid, as causes of action may be deemed the same for purposes of *res judicata* even if they assert different theories of recovery.

Plaintiff, Ritz of Chicago, Ltd., filed an amended complaint against defendants, Kendra Espinosa, Kris Espinosa, Lyle Espinosa, and Brenden Schaffer, for conspiracy to commit fraud, conversion, and replevin (*Ritz II*). Defendants moved to dismiss on *res judicata* grounds (735 ILCS 5/2—619(a)(4) (West 2008)). The trial court granted the motion, and plaintiff timely appeals, arguing that defendants' motion to dismiss should have been denied. We affirm.

In resolving this appeal, we find it necessary to provide a chronology of what transpired among the parties.[1] In April 2007, plaintiff and Kendra entered into an agreement whereby plaintiff would purchase two horses and give them to Kendra to train and show. Plaintiff would pay for various expenses associated with keeping and showing the horses, and Kendra would sell one or both of the horses to cover those costs. Because Kendra did not comply with these terms, plaintiff sued Kendra for breach of contract and conversion.[2] See *Ritz of Chicago, Ltd. v. Espinosa*, Nos. 2—08—0816, 2—08—0882, 2—08—1141 cons. (2009) (unpublished order under Supreme Court Rule 23) (*Ritz I*).

In the midst of filing these claims in *Ritz I*, plaintiff sued Kendra on January 17, 2008, in Colorado for replevin, seeking the return of the horses (the Colorado case). In the complaint in the Colorado case, plaintiff alleged that Kendra was allowed temporary use and possession of the horses. Plaintiff subsequently withdrew this permission and demanded that Kendra give the horses back to plaintiff. Despite this demand, Kendra refused to return the horses to plaintiff.

---

[1]Before the briefs were filed in this case, plaintiff moved to limit the record on appeal, which consists of four volumes of common-law record, to matters that occurred or were filed on or after September 28, 2009. We granted that motion. Thus, although the record on appeal contains substantial information indicating what transpired among the parties before September 28, 2009, we will not consider those portions of the record. However, to the extent that documents filed on or after September 28, 2009, reference matters arising before that date, we mention the early facts only for background.

[2]The breach-of-contract action was filed on November 13, 2007, and the conversion action was filed on March 10, 2008.

On February 11, 2008, plaintiff and Kendra entered into a mutual release. Pursuant to that release, all pending disputes between plaintiff and Kendra were resolved, Kendra was released from liability, and plaintiff was required to dismiss with prejudice the Colorado case and the contract action in *Ritz I*. The contract action in *Ritz I* was voluntarily dismissed on May 29, 2008,[3] and the Colorado case was voluntarily dismissed on October 8, 2008. The conversion action in *Ritz I* was dismissed, pursuant to the mutual release, on August 5, 2008.[4]

In January 2009, plaintiff filed an amended federal complaint against defendants (federal action).[5] In the amended complaint in the federal action, plaintiff alleged that defendants engaged in a conspiracy to commit fraud against plaintiff. According to the amended complaint, plaintiff and Kendra made an agreement concerning the purchase, training, and sale of the horses. Pursuant to that agreement, plaintiff purchased two horses for Kendra, and Kendra kept the horses in Colorado at premises owned by Kris and Lyle. Thereafter, in February 2008, Kendra fraudulently induced plaintiff

---

[3]Although the contract action in *Ritz I* was dismissed with prejudice on February 14, 2008, that dismissal was vacated on March 14, 2008. However, the trial court dismissed the contract action on May 29, 2008, based on the mutual release.

[4]In the appeal in *Ritz I*, plaintiff argued that dismissal of his contract and conversion actions was improper, because the mutual release was fraudulently obtained. We determined that, because no evidence concerning the validity of the mutual release was presented to the trial court, dismissal of the contract and conversion claims was premature. Thus, we remanded the cause so that plaintiff could present evidence concerning its claim that the mutual release was fraudulently obtained.

[5]Plaintiff filed its original complaint in the federal action on September 15, 2008. The original and amended complaints filed in the federal action are nearly identical.

to enter into a mutual release that, among other things, required plaintiff to dismiss the Colorado case. When the mutual release was executed, plaintiff did not know that Kendra, with the help of the other defendants, tried to transfer ownership of one of the horses to Schaffer or herself, misrepresented to plaintiff that one of the horses was injured and could no longer be ridden, and attempted to switch one of plaintiff's expensive horses with an inexpensive horse that she owned. Plaintiff learned of these fraudulent acts in August 2008. Plaintiff subsequently moved to voluntarily dismiss the federal action, and the federal court granted the motion on December 30, 2009.

On October 9, 2009, plaintiff filed the amended complaint at issue here (*Ritz II*). According to plaintiff's amended complaint in *Ritz II*, Kendra and plaintiff had an agreement whereby Kendra would train two of plaintiff's horses and then sell them. Instead of complying with that agreement, Kendra, with the help of the other defendants, assumed ownership of the two horses, transferred ownership of one of the horses to Schaffer, falsely represented to plaintiff that one of the horses was injured and could no longer be ridden, and switched an inexpensive horse that Kendra owned with one of plaintiff's expensive horses. Then, Kendra fraudulently induced plaintiff to enter into the mutual release. Plaintiff also alleged that, when plaintiff demanded that Kendra return the two horses to plaintiff, she refused to surrender them.

Soon thereafter, defendants moved to dismiss plaintiff's amended complaint in *Ritz II*. In their motion, defendants claimed that, pursuant to Federal Rule of Civil Procedure 41(a)(1)(B) (Fed. R. Civ. P. 41(a)(1)(B)), plaintiff's complaint was barred by a prior judgment. See 735 ILCS 5/2—619(a)(4) (West 2008). Rule 41(a)(1)(B) states:

> "Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal-or state-court action based on or including the

> same claim, a notice of dismissal operates as an adjudication on the merits." Fed. R. Civ. P. 41(a)(1)(B).

Based on that rule, defendants asserted that, where plaintiff had already taken a voluntary dismissal of a state-court action (the Colorado case), the voluntary dismissal of the federal action operates as an adjudication on the merits, invoking *res judicata* to bar plaintiff's present claims in *Ritz II*.

Plaintiff responded to defendants' motion, arguing, among other things, that the Colorado case did not involve the same claim as the federal action, and, thus, the voluntary dismissal of the federal action was not an adjudication on the merits that precluded plaintiff from filing the amended complaint in *Ritz II*. In making this argument, plaintiff noted that the Colorado action sought the return of the horses while the federal action sought damages arising from the fraudulent concealment of the horses.

The trial court granted the motion to dismiss, finding that plaintiff's amended complaint in *Ritz II* was barred by the voluntary dismissals entered in the Colorado case and the federal action. Plaintiff moved the trial court to reconsider, and the court denied the motion. This timely appeal followed.

We found it necessary to outline above the long and harried history between plaintiff and defendants, because, given that background, we expected more from plaintiff's brief than what we received. At issue in this appeal is whether the dismissal of plaintiff's amended complaint in *Ritz II* was proper. Resolving that issue requires wading through the numerous lawsuits that plaintiff filed against Kendra and the other defendants and determining whether the Colorado case involved the "same claim" as the federal action for purposes of Rule 41(a)(1)(B). Instead of referring this court to relevant authority that would aid us in deciding whether the Colorado case and the federal action involved the "same claim," plaintiff has merely cited, and quoted, Rule 41(a)(1)(B) and stated,

repeatedly, in its six-page argument, that the Colorado case and the federal action did not involve the same claim because the federal action concerned conspiracy to commit fraud and the Colorado case concerned a replevin action. This certainly does not aid this court in deciding how to interpret Rule 41(a)(1)(B) or how that rule should, or should not, be applied in this case.

Plaintiff's failure to support its argument with relevant authority is fatal to its appeal. It is "well settled that '[a] reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented ([Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006)]), and it is not a repository into which an appellant may foist the burden of argument and research.' " *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1098-99 (2007) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). An appellant who fails to present cogent arguments *supported by authority* forfeits those contentions on appeal. *People v. Ward*, 215 Ill. 2d 317, 332 (2005); *People v. Larson*, 379 Ill. App. 3d 642, 655 (2008). As plaintiff has failed to support its argument with relevant authority, its claim is forfeited.

That said, we briefly note that we find unfounded plaintiff's claim that the Colorado case and the federal action did not involve the "same claim" for purposes of Rule 41(a)(1)(B) because plaintiff filed a replevin action in the Colorado case and a conspiracy-to-commit-fraud action in the federal action. The mere fact that plaintiff brought a different cause of action in each case is immaterial. Causes of action may be deemed the same even if different theories of recovery are asserted. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). Thus, the premise of plaintiff's main argument is invalid.

Based on the foregoing, we affirm the judgment of the circuit court of Winnebago County.

Affirmed.