2014 IL App (2d) 130826-U
No. 2-13-0826
Order filed April 21, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

YCB INTERNATIONAL, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-CH-5683
	)	
UCF COMPANY, LTD., UCF TRADING COMPANY, LTD, ROBERT GAGNON, ANAND MATHEW, ARTHUR HOWE, and SCHOPF & WEISS, LTD,	)	
	)	
Defendants-Appellees	)	
	)	Honorable
(Louise Gagnon and Catherine Gagnon, Defendants).	)	Bonnie M. Wheaton,
	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The attorney privilege protected defendants Mathew, Howe, and Schopf & Weiss from claims stemming from their defense of clients in a federal suit, so we affirmed the trial court's grant of these defendants' motion to dismiss YCB's claims against them. However, in granting the section 2-615 motion to dismiss of defendants Gagnon, UCF Company, and UCF Trading Company, the trial court improperly required YCB to first seek relief in the federal court. Therefore, we reversed the trial court's grant of the section 2-615 motion and remanded for further proceedings.

¶ 2 Plaintiff, YCB International, Inc. (YCB), appeals from the dismissal of its amended complaint against defendants, UCF Company, Ltd. (UCF Company), UCF Trading Company, Ltd. (UCF Trading), Robert Gagnon, Anand Mathew, Arthur Howe, and Schopf & Weiss, Ltd. (Schopf & Weiss). We affirm in part, reverse in part, and remand the cause.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed its initial complaint against defendants and Louise and Catherine Gagnon on December 3, 2012. It filed an amended complaint on March 14, 2013, alleging as follows. YCB was an Illinois corporation with its principal place of business in this state. It was in the business of buying and reselling bearings. UCF Trading was a Bahamas company with its principal places of business in the Bahamas and Canada. As part of UCF Trading's business, it purchased and resold bearings. As of at least April 2009, UCF Trading owed YCB over $1.1 million for bearings it bought from YCB. Robert Gagnon was UCF Trading's chief executive officer and sole shareholder; Louise Gagnon was Robert's wife and at some point an officer or director of UCF Trading; and Catherine Gagnon was the daughter of Robert and Louise. UCF Company was another corporation organized under the laws of the Bahamas. It had its principal places of business in the Bahamas, in Canada, and in Florida. The Gagnons were the shareholders, directors, and officers of UCF Company. UCF Company was a sham corporation intended to defraud YCB. Arthur Howe and Anand Mathew were Illinois residents and employed by the law firm Schopf & Weiss.

¶ 5 Each of the nine counts of the amended complaint incorporated the above-mentioned allegations as well as the allegations of each of the preceding counts. Count I, which sought to pierce the corporate veil of UCF Company, was directed at UCF Trading, UCF Company, and the Gagnons. Count I alleged the following. By 2008, UCF Trading had been purchasing

bearings from YCB for the purpose of resale in the United States for over one decade. In or before 2008, UCF Trading and Robert decided to become a competitor of YCB and unlawfully injure YCB to get a head start in competition. On April 27, 2009, Gagnon, as president of UCF Trading, sent YCB a letter acknowledging that it owed YCB $1,181,352.08. The letter promised that the debt would be paid in installments beginning in June 2009. However, no payments were made because Robert falsely made the promise in order to delay YCB in collecting the debt. Alternatively, Robert initially planned to make the payments but later agreed with Mathew, Howe, and Schopf & Weiss to prosecute false and frivolous defenses and claims in order to injure YCB. In November 2009, YCB filed suit against UCF Trading in Illinois. UCF Trading removed the action to federal court, and Howe and Mathew filed appearances as UCF Trading's attorneys. On November 13, 2012, judgment was entered against UCF Trading for $1,181,352.08. Judgment was also entered in YCB's favor on all but two counts of UCF Trading's counterclaims, "neither of which has any merit." Also, UCF Trading was found in default on January 8, 2013. In order to wrongfully hinder and defraud YCB, UCF Trading, through Robert, Catherine, and others, transferred UCF Trading's ongoing business and assets to UCF Company, leaving UCF Trading insolvent. UCF Company had the same ownership, employees, suppliers, customers, physical location, and phone numbers as UCF Trading. UCF Trading and UCF Company made representations to suppliers and customers implying that they were the same company, but for the purposes of YCB's attempt to collect its judgment, they claimed that they were separate corporate entities. YCB requested that the trial court pierce UCF Company's corporate veil and find that it was the same legal entity as UCF Trading so that YCB could collect its November 2012 judgment.

¶ 6 Count II alleged abuse of process against UCF Trading, UCF Company, Robert (collectively UCF defendants), Howe, and Mathew. It alleged as follows. The UCF defendants had an intentional scheme to injure YCB by failing to pay for the bearings and by creating a sham corporation to escape the debt. Howe and Mathew joined this scheme and sought to injure YCB through frivolous litigation. These defendants further sought to injure YCB through discovery of YCB's compliance of anti-dumping laws of the United States, which was not relevant to the case, with the hopes of causing the federal government to impose punitive tariffs on YCB for its imported bearings. These defendants sought to injure YCB's reputation by falsely indicating that YCB was supplying bearings of dubious quality. They sought to increase the costs of litigation and prolong the proceedings by abusing discovery and alleging false counterclaims and defenses. They also intended to use the delay so that UCF Trading could fraudulently dispose of its assets to evade its debt to YCB and so that UFC Company could continue the unfair competition with YCB.

¶ 7 Count III, alleging malicious prosecution, was directed against the same defendants as count II. YCB alleged that these defendants intentionally filed false pleadings or maintained actions on pleadings they learned to be false, and they engaged in protracted bad faith discovery. YCB alleged that these defendants intended to injure YCB, hinder its competition with UCF Trading and UCF Company, and allow UCF Trading sufficient time to dispose of its assets.

¶ 8 Count IV, directed against UCF Trading, UCF Company, the Gagnons, and Schopf & Weiss, alleged violations of the Uniform Fraudulent Transfer Act (740 ILCS 160/1 et seq. (West 2008)). YCB alleged as follows. UCF Trading transferred assets to UCF Company and the Gagnons with the intent to delay and defraud YCB's collection of legitimate debt; the transfers took place after January 2009, after the debt to YCB arose. UCF Trading was either insolvent at

the time of the transfers or became insolvent as a result of the transfers. UCF further paid Schopf & Weiss money ostensibly for legal services in the federal litigation from 2009 through 2012. However, UCF did not receive the reasonably equivalent value in legal services as shown by the lack of merit in most if not all of the denials, affirmative defenses, and counterclaims asserted by Schopf & Weiss.

¶ 9 Count V, directed against the same defendants as count IV, alleged that the same actions also violated the "Fraudulent Dispositions Act" under the law of the Bahamas, if the law were to apply to the fraudulent transfers.

¶ 10 Count VI was directed against Howe and Mathew and alleged aiding and abetting fraudulent transfers, abuse of process, and malicious prosecution. We summarize the allegations of this count. Howe and Mathew made frivolous denials of the allegations of YCB's claim and initially made affirmative defenses and counterclaims that they knew had no basis in fact or law, or continued to prosecute the same after they learned they had no basis in fact or law. They further served burdensome and irrelevant discovery. In particular, they took discovery on the compliance of YCB and "Yantai CMC Bearing Company" with anti-dumping laws with the intent of causing the federal government to impose punitive anti-dumping tariffs on the company, in turn destroying their ability to compete in the United States, and with knowledge that the discovery was irrelevant to any legitimate issue in the litigation. Howe and Mathew also represented that certain bearings were exemplars of defective bearings allegedly sold to UCF Trading, without any belief that said bearings were actually defective, causing YCB to undergo expensive and time-consuming testing of the bearings. They made frivolous objections to the discovery YCB sought on its claims and UCF Trading's counterclaims. After the federal court ruled that YCB was entitled to over $1.1 million, Howe and Mathew sought to withdraw to delay

YCB's ability to collect the judgment. They took all of the aforementioned actions to delay adjudication on the merits and increase YCB's costs.

¶ 11 Count VII alleged that Schopf & Weiss was responsible for Howe's and Mathew's acts and omissions based on the doctrine of *respondeat superior*.

¶ 12 Count VIII, directed against UCF Trading and Robert, alleged that these parties were, for purposes of debt, the same legal entities. YCB requested that the court pierce the veil of UCF Trading and hold Robert jointly and severally liable for its debts.

¶ 13 The last count, count IX, was directed against all defendants and alleged civil conspiracy. YCB alleged that sometime after 2008 and continuing until 2012, UCF Trading, UCF Company, and the Gagnons agreed to a common scheme to injure YCB, defraud UCF Trading's creditors, commit an abuse of process, and commit malicious prosecution. The Gagnons took actions in furtherance of this agreement through their positions as officers, directors, and shareholders of the companies. At some point beginning in 2009, Howe, Mathew, and Schopf & Weiss (collectively Schopf & Weiss defendants) agreed to the same common scheme with one or more of the other defendants. In furtherance of this agreement, the Schopf & Weiss defendants acted as the attorneys who executed the scheme constituting malicious prosecution, abuse of process, and the delays needed to complete fraudulent transfers.

¶ 14 On March 18, 2013, on YCB's motion, its claims against Louise and Catherine were dismissed without prejudice.

¶ 15 On April 12, 2013, the Schopf & Weiss defendants filed a motion to dismiss the claims against them pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)). They alleged as follows. All of the claims in which they were named were based on their representation of UCF Trading in the federal court case from November 2009 to

January 2013, when they withdrew. The record of the federal court case was readily verifiable and subject to judicial notice. In particular, the federal case remained pending, with UCF's counterclaims and a third-party complaint against YCB for unjust enrichment, common law fraud, and civil conspiracy left to be tried. Further, YCB never sought or obtained sanctions against the Schopf & Weiss defendants. Counts IV through VII were barred under section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) pursuant to the attorney privilege because the allegations were based on the conduct of lawyers in litigation. Counts II, III, IV, VI, and VII should be dismissed under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) for failure to plead sufficient facts to establish these claims.[1]

¶ 16 On April 12, 2013, the UCF defendants filed a motion to dismiss under section 2-615, similarly arguing that the counts against them must be dismissed because YCB had not provided facts sufficient to support its claims.

¶ 17 On June 25, 2013, the trial court granted the Schopf & Weiss defendants' motions to dismiss the claims against them, with prejudice. It orally stated that the case was still pending in federal court; the federal court judge was intimately familiar with what was happening in the case; and YCB's claims should be addressed by the federal court.

¶ 18 On July 11, 2013, the trial court granted the UCF defendants' motion to dismiss. The trial court's order stated that the motion to dismiss was "granted in its entirety without prejudice to [YCB] refiling once all matters in the federal case, 09-CV-7221[,] have been settled if there remain claims not within the jurisdiction of the federal court." Orally, the trial court stated that

[1] The motion to dismiss did not specifically reference count IX, which was also directed at the Schopf & Weiss defendants, though the arguments set forth in the motion would also apply to count IX.

the federal matters had not been fully adjudicated, making the claims not yet ripe, and that the claims should be in federal court as part of enforcing the federal court's judgment rather than a separate state cause of action.

¶ 19 YCB timely appealed.

¶ 20 II. ANALYSIS

¶ 21 A. Jurisdiction

¶ 22 We initially address the issue of jurisdiction, as the trial court granted the UCF defendants' motion to dismiss without prejudice, with permission to refile once the federal case was terminated if there were any claims remaining that were not within the federal court's jurisdiction. Defendants do not contest jurisdiction in this case, but we have an independent duty to confirm our jurisdiction and dismiss an appeal if jurisdiction is lacking. *Uesco Industries, Inc. v. Poolman of Wisconsin, Inc.*, 2013 IL App (1st) 112566, ¶ 73.

¶ 23 YCB argues that we have jurisdiction under Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. May 30, 2008), which allow for the appeal of a final judgment of the circuit court in civil cases. An order is final and appealable if it disposes of the parties' rights on either the entire controversy or a separate part of the controversy. *A.G. Smith Federal Savings Bank v. Sabuco*, 2013 IL App (3d) 120578, ¶ 14. However, without a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), an order disposing of fewer than all claims is not appealable. *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 34. A judgment is final for purposes of appeal if it terminates the litigation on the merits such that if the judgment is affirmed, all that is left is to proceed with the judgment's execution. *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 34.

¶ 24 Our supreme court has stated that the inclusion of language in an order stating that a dismissal is without prejudice, such as occurred here, "clearly manifests the intent of the court that the order not be considered final and appealable." *Flores v. Dugan*, 91 Ill. 2d 108, 114 (1982). At the same time, whether a court's dismissal order is final is ultimately determined by its substance and effect rather than simply its inclusion of the words "with prejudice" or "without prejudice." *Schal Bovis, Inc. v. Casualty Insurance Co.*, 314 Ill. App. 3d 562, 568 (1999). As relevant here, "[a]n order preventing a litigant from refiling for an indefinite period is, in a typical case, prejudicial, and so is always final." *People v. Walker*, 395 Ill. App. 3d 860, 866 (2009), *appeal allowed* (Ill. Mar. 24, 2010); see also *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 508 (1997) (contingent nature of appeal generally does not make orders any less final). This is especially true here, as a refiled action is considered a new and separate action rather than a reinstatement of an old action (*Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 504 (1997)), and YCB was given permission to refile only certain claims. Therefore, if the trial court's current order were not considered final, YCB would lose the ability to challenge the dismissal with prejudice of its counts against the Schopf & Weiss defendants, as well as the conditions imposed on the dismissal of its claims against the UCF defendants. Accordingly, we conclude that we have jurisdiction in this case.

¶ 25 B. Standard of Review

¶ 26 We next turn to the applicable standard of review. The Schopf & Weiss defendants brought their motion to dismiss pursuant to section 2-619.1 of the Code, which allows combined motions under section 2-615, 2-619, and 2-1005 (735 ILCS 5/2-1005 (West 2012)). 735 ILCS 5/2-619.1 (West 2012). The Schopf & Weiss defendants asserted arguments under sections 2-

615 and 2-619. The UCF defendants moved to dismiss the claims against them under section 2-615.

¶ 27 A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint. *DeHart v. DeHart*, 2013 IL 114147, ¶ 18. In ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint as well as all reasonable inferences. *Id.* A cause of action should not be dismissed under section 2-615 unless no set of facts can be proved entitling the plaintiff to recover. *Id.* The central inquiry is whether the allegations, when construed in the light most favorable to the plaintiff, sufficiently state a cause of action upon which relief can be granted. *Id.* We review *de novo* an order granting a section 2-615 motion to dismiss.

¶ 28 A section 2-619 motion to dismiss admits a complaint's legal sufficiency but asserts an affirmative matter outside the complaint that defeats the claim. *Patrick Engineering, Inc., v. City of Naperville*, 2012 IL 113148, ¶ 31. A section 2-619 dismissal resembles the grant of a motion for summary judgment; we must determine whether a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether the dismissal was proper as a matter of law. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 254 (2004). In reviewing the grant of a section 2-619 motion, we must interpret the pleadings and supporting documents in the light most favorable to the nonmoving party. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. We review *de novo* the grant of a motion to dismiss under section 2-619. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 23.

¶ 29 C. Claims Against Schopf & Weiss Defendants

¶ 30 On appeal, YCB first argues that its claims against the Schopf & Weiss defendants should not have been dismissed under section 2-619, because the attorney privilege was overcome by its allegations of malice. YCB argues that the claims should also not have been

dismissed under section 2-615, because it alleged facts sufficient to withstand the motion to dismiss. The Schopf & Weiss defendants argue that plaintiffs' claims against them are legally insufficient under section 2-615. They alternatively argue that judgment was properly entered in their favor based on attorney privilege under section 2-619. [2]

¶ 31 We begin by looking at attorney privilege. In *Schott v. Glover*, 109 Ill. App. 3d 230, 234 (1982), the appellate court stated that the fiduciary duty owed by an attorney to his client creates a privileged relationship, such that incorrect legal advice does not make an attorney liable to a third party. It reasoned that if such a liability were created, it would have the undesirable effect of creating a duty to third parties that would trump an attorney's fiduciary duty to his client. *Id.* at 235. The court stated, "Public policy requires that an attorney, when acting in his professional capacity, be free to advise his client without fear of personal liability to third persons if the advice later proves to be incorrect." *Id.*

¶ 32 As YCB points out in its brief, the privilege given to an attorney when advising a client is not absolute, but rather can be overcome by allegations of actual malice. *Id.* "Such allegations, however, would necessarily include a desire to harm, which is independent of and unrelated to the attorney's desire to protect his client." *Id.* YCB argues that it pleaded sufficient facts to show malice through its allegations that the Schopf & Weiss defendants knowingly filed frivolous pleadings, served oppressive discovery, and abused litigation. YCB alleged that the

[2] The trial court did not specifically state under which section it was granting the Schopf & Weiss defendants' motion to dismiss, instead generally stating that the claims at issue should be addressed by the federal court. However, we may affirm the trial court's judgment on any basis provided by the record, regardless of the trial court's reasoning. *Geisler v. Everest National Insurance Co.*, 2012 IL App (1st) 103834, ¶ 62.

Schopf & Weiss defendants did so with the purpose of injuring YCB, hindering YCB's competition with UCF Trading and UCF Company, and allowing time for UCF Trading to dispose of its assets so that YCB could not collect the money it was owed.

¶ 33 All of YCB's allegations against the Schopf & Weiss defendants relate to their actions in the federal case while representing UCF Trading, which would give rise to the attorney privilege. While YCB alleged that the Schopf & Weiss defendants intended to injure it, we conclude that YCB failed to sufficiently allege the malice necessary to defeat the attorney privilege. See *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1053 (1998) (conclusory allegations that attorney and law firm acted intentionally, maliciously, and without cause or justification are insufficient to negate the protection of the privilege that arises from the attorney-client relationship); *Salaymeh v. InterQual, Inc.*, 155 Ill. App. 3d 1040, 1046 (1987) ("A legally sufficient complaint must set forth factual allegations from which actual malice may reasonably be said to exist as opposed to the bare assertion of actual malice."). YCB's allegations all involve the Schopf & Weiss defendants' actions in court which sought to benefit their client, rather than an interest independent of and unrelated to protecting their client, as required to defeat the privilege under *Schott*. Therefore, the attorney privilege justifies the dismissal of all counts against the Schopf & Weiss defendants. *Cf. Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 23 (no allegations substantiated or led to an inference that attorney independently maintained a desire to harm the plaintiff by filing a petition for guardianship); *Salaymeh*, 155 Ill. App. 3d at 1046 (the plaintiff failed to allege facts showing that the attorneys and law firm had any interest in or relationship with the plaintiff independent of serving their client).

¶ 34 Based on our determination that YCB's claims against the Schopf & Weiss defendants were subject to dismissal under section 2-619 based on the attorney privilege, we do not address whether the claims could also properly be dismissed under section 2-615 for failure to state legally sufficient causes of action.

¶ 35 D. Claims against the UCF Defendants

¶ 36 As stated, the UCF defendants moved to dismiss the claims against them under section 2-615. The trial court's order stated that the motion to dismiss was "granted in its entirety without prejudice to [YCB] refiling once all matters in the federal case, 09-CV-7221[,] have been settled if there remain claims not within the jurisdiction of the federal court."

¶ 37 The parties devote substantial portions of their briefs to the discussion of whether YCB alleged facts constituting legally sufficient claims, as required to withstand a section 2-615 motion. However, the trial court did not rule that YCB failed to sufficiently state claims upon which relief can be granted, but rather determined that YCB should first attempt to obtain relief in the federal court, with permission for YCB to return to state court should there be any claims remaining outside of the federal court's jurisdiction.

¶ 38 The UCF defendants do argue, in reference to the claim of malicious prosecution (count III), that at the time of the dismissal federal litigation was still pending, making the claim premature and subject to dismissal. The UCF defendants cite *Lyddon v. Shaw*, 56 Ill. App. 3d 815, 820-21 (1978), where the court stated that one element of malicious prosecution is the termination of the prior cause in the plaintiff's favor, and it held that the plaintiff could not raise such a cause of action before the termination of the malpractice action against him. The UCF defendants argue that similarly in this case, at the time of the dismissal the federal litigation was

pending.[3] They further argue that the trial court preemptively addressed jurisdictional concerns by not foreclosing any opportunity to plaintiff but merely postponing YCB's ability to refile until the federal case had run its course.

¶ 39 YCB argues that there is no statute, rule, or case law allowing for dismissal because the federal court may be able to provide the relief requested. YCB maintains that its claims are either valid under state law, or they are not. YCB argues that federal jurisdiction over supplemental proceedings does not mean that there is no jurisdiction in an Illinois court, as Illinois courts presume concurrent jurisdiction. See *Armstrong v. Resolution Trust Corp.*, 157 Ill. 2d 49, 58-59 (1993). YCB notes that no party moved for dismissal under section 2-619(a)(3) of the Code, which allows for a stay or dismissal of a cause of action if "there is another action pending between the same parties for the same cause" (735 ILCS 5/2-619(a)(3) (West 2012)), and it argues that, therefore, the trial court did not have the power to refuse a cause simply because relief might be available in a different forum. YCB also notes that no party moved for dismissal under *forum non conveniens*, and it argues that even otherwise, they would not have been successful, because it would require the ability to bring each one of its claims in a supplemental proceeding in the federal case. YCB argues that unlike supplemental enforcement of judgments, it is entitled to have a jury hear factual disputes in original state court actions, and here defendants were also able to drag out the federal case for three years and "successfully impose costs on YCB."

[3] At the hearing on the motion to dismiss, counsel for the UCF defendants stated that they still had counterclaims to be heard in the federal action, which were set for trial for September 2013.

¶ 40 Citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 507 (2006), YCB further argues that federal subject matter jurisdiction is limited and complex, and a litigant will usually avoid bringing an action in federal court if its subject matter is in question, particularly since a finding of a lack of subject matter jurisdiction will void all proceedings, even on appeal. YCB argues that because the trial court chose a reason for dismissal that none of the defendants "will endorse" on appeal, the UCF defendants will still remain free to contest the federal court's powers without fear of a ruling of judicial estoppel or sanctions for false pleadings. YCB contends that the ironic result is that it will be in federal court asserting subject matter jurisdiction that it finds problematic, with the UCF defendants arguing that the matters belong in state court in a refiled action.

¶ 41 We note that none of the defendants argued, either in the trial court or on appeal, that the trial court lacked jurisdiction to hear YCB's claims, nor is a jurisdictional defect facially apparent here. See *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 67 n.3 (a party may raise a lack of subject matter at any time in any court, either directly or collaterally). Moreover, there is a strong presumption of concurrent state and federal jurisdiction. *Magnetek Inc. v. Kirkland & Ellis, LLP*, 2011 IL App (1st) 101067, ¶ 23. As YCB points out, defendants also did not seek dismissal under section 2-619(a)(3).[4]

¶ 42 Here, the arguable lack of termination of the federal case may serve to justify dismissal of YCB's malicious prosecution claim, but even the UCF defendants do not present any argument in their brief of how the ongoing litigation on the counterclaims in the federal court

[4] The purpose of section 2-619(a)(3) is to avoid duplicative litigation, but even then a circuit court is not automatically required to dismiss or stay an action when the same cause and same parties requirements are met. *In re Marriage of Murugesh & Kasilingam*, 2013 IL App (3d) 110228, ¶ 19.

justifies dismissal of the remaining claims. Moreover, as pertains to all of the claims dismissed pursuant to their section 2-615 motion, the UCF defendants do not explain why the trial court was justified in requiring YCB to first litigate its claims in the federal court given the procedural posture of this case, nor can we find such a justification in the record. That is, there is apparently no jurisdictional bar to YCB's claims, and defendants did not move to transfer or even stay this action pending resolution of the federal case. Therefore, we conclude that the trial court erred in ruling, on a 2-615 motion purportedly attacking the legal sufficiency of the complaint, that YCB was required to first litigate its claims in the federal case before refiling any remaining claims in state court.

¶ 43 Accordingly, we reverse the trial court's ruling on the UCF defendants' motion and remand for further proceedings. YCB states in its reply brief that the federal court entered a final judgment disposing of all claims between all parties, with no appeal taken, and YCB may present such evidence to the trial court upon remand. Our decision in this case does not preclude the UCF defendants from again asserting that YCB claims are legally insufficient under section 2-615.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the judgment of the circuit court of Du Page County granting the motion to dismiss the claims against the Schopf & Weiss defendants. However, we reverse the circuit court's judgment granting the UCF defendants' motion to dismiss, and we remand the cause for further proceedings.

¶ 1 Affirmed in part and reversed in part; cause remanded.