

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DOLLIE’S PLAYHOUSE, INC.,	)	
	)	
DEBTOR.	)	
	)	Bk. No.: 02-33217
	)	Chapter 11
	)	
DOLLIE’S PLAYHOUSE, INC.,	)	Adv. No.: 04-03104
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
NABLE EXCAVATING, INC.,	)	
	)	
Defendant.	)	

ORDER AMENDING OPINION ENTERED FEBRUARY 10, 2005

This matter is before the Court *sua sponte*. Upon further review of the Opinion entered in this case on February 10, 2005, the Court finds it necessary to amend the wording on pages one and three to completely and accurately reflect the facts.<sup>1</sup> Accordingly, **IT IS ORDERED** that the second sentence of the second paragraph on pages 1-2 is amended to read as follows:

“In the complaint, Dollie’s asked the court to declare that the parties had entered into a valid contract for the sale of certain real estate located in Washington Park, Illinois, and to direct that title to the property be transferred to Dollie’s.”

**IT IS FURTHER ORDERED** that the first sentence of the second paragraph on page 3 is amended to read as follows:

“It is clear that Dollie’s claims in the instant case arose from the same transaction—the lease/sale of the Washington Park real estate—as the claims set forth in the state court proceeding.”

**SO ORDERED.**

ENTERED: February 24, 2005

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> The changes/additions are underlined.

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NABLE EXCAVATING, INC.,	)	
	)	
Defendant.	)	

**OPINION**

THIS MATTER came before the court for hearing on January 26, 2005, on defendant Nable Excavating, Inc.’s motion to dismiss plaintiff’s complaint and motion for summary judgment, and on plaintiff Dollie’s Playhouse Inc.’s cross motion for summary judgment. Attorney Steven Stanton appeared on behalf of Dollie’s Playhouse, Inc. Attorneys P.K. Johnson V, Stephen Clark, and Jennifer Barbieri appeared on behalf of Nable Excavating, Inc. The Court having considered the memoranda of law and exhibits filed by the parties, as well as the arguments presented by counsel, FINDS AS FOLLOWS:

On April 30, 1999, Plaintiff Dollie’s Playhouse, Inc. filed a Complaint for Declaratory Judgment in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois, in the case styled *Dollie’s Playhouse, Inc. v. Chicago Title and Trust Company, Trustee Under Land Trust No. 1101846 and Nable Excavating, Inc., 99-MR-144*. In the complaint, Dollie’s asked the court to declare that the parties had entered into a valid contract for the sale of certain real estate, and

to direct that title to the property be transferred to Dollie's. On July 2, 2002, the Circuit Court entered a final judgment denying the relief requested by Dollie's. That judgment was affirmed by the Fifth District Appellate Court of Illinois on August 27, 2004.

While the state court matter was pending, Dollie's Playhouse, Inc. filed a chapter 11 bankruptcy petition on September 4, 2002. Dollie's filed the instant adversary complaint against Nable Excavating, Inc. on April 1, 2004, alleging a breach of fiduciary duty and conversion of corporate assets. In response to the complaint, Nable Excavating, Inc. filed a motion to dismiss and a motion for summary judgment arguing, *inter alia*, that the causes of action set forth by Dollie's in the adversary complaint are barred by the doctrine of *res judicata*.

Under Illinois law, in order for *res judicata* to apply in this adversary proceeding, the Court must determine (1) whether there was a final judgment on the merits in the state court proceeding; (2) whether the state court action involved the same parties or their privies as the current case; and (3) whether the state court claim constituted the same cause of action as the current claims. *Garcia v. Village of Mount Prospect*, 360 F.3d 630, 635 (7<sup>th</sup> Cir. 2004) *citing River Park, Inc. v. City of Highland Park*, 703 N.E.2d 883, 889 (Ill. 1998). *Res judicata* precludes not only those issues that were actually raised in the earlier proceeding but also those that could have been raised. *Garcia* at 639.

In the instant adversary case, the first two elements are clearly met. The state court rendered a final judgment on the merits on July 2, 2002, and that decision was appealed and affirmed. In addition, this matter involves the same parties as those in the state court proceeding. The only remaining question is whether the instant case comprises the same cause of action as the state court case.

The Illinois Supreme Court has adopted the “transactional approach” in determining whether causes of action are the same for *res judicata* purposes. *Id.* at 637; *River Park, Inc.* at 893. Under this approach, “a valid final judgment bars further action by the plaintiff *regarding any part of a transaction or series of connected transactions from which the claim arose.*” *Altair Corp. v. Grand Premier Trust*, 742 N.E.2d 351, 355 (Ill. App. Ct. 2000) (emphasis added) (citations omitted). The transactional approach “views claims in factual terms, focusing only on the bounds of the transaction at issue, disregarding the number of substantive theories, the variant forms of relief flowing from those theories, and the variations in evidence needed to support the theories.” *River Park, Inc.* at 892 (citations omitted).

It is clear that Dollie’s claims in the instant case arose from the same transaction—the sale of real estate to Nable Excavating—as the claims set forth in the state court proceeding. Under the transactional test, it is irrelevant that the theories of relief Dollie’s now raises—breach of fiduciary duty and conversion of corporate assets—are different from those theories raised in state court. Dollie’s had an opportunity to litigate all theories of relief in state court, but failed to do so.

Accordingly, IT IS ORDERED that defendant’s motion for summary judgment is GRANTED.

SEE WRITTEN ORDER.

ENTERED: February 10, 2005

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons set forth in an Opinion entered this date, IT IS ORDERED that defendant's motion for summary judgment is GRANTED. Judgment is entered in favor of defendant and against plaintiff on the complaint.

ENTERED: February 10, 2005

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE