



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 17, 2022

Christopher G. Conway, Clerk
Seventh Circuit Court of Appeals
219 South Dearborn Street
Chicago, Illinois 60604

Re: St. Anthony Hospital v. Eagleson (No. 21-2325)

Dear Mr. Conway:

I represent defendant-appellee in the above captioned case, which was argued on February 15, 2022. During the argument (at 17:18 to 20:19), the Court asked whether defendant-appellee would waive the defense of claim preclusion as to the additional claim alleged in plaintiff-appellant's proposed supplemental complaint (ECF 101-1), which the district court denied it leave to file (ECF 109, 110). The Court granted me permission to submit a letter on this point after I could consult with my client. This letter states defendant-appellee's position on this issue.

As I stated in the argument, this Court has held that claim preclusion "do[es] not apply when the 'court in the first action has expressly reserved the plaintiff's right to maintain the second action.'" *United States v. Outboard Marine Corp.*, 789 F.2d 497, 508 (7th Cir. 1986) (quoting Restatement (2d) Judgments, § 26(1)(b)); see *D & K Properties Crystal Lake v. Mut. Life Ins. Co. of New York*, 112 F.3d 257, 260 (7th Cir. 1997) ("If a court reserves for later resolution an issue that might otherwise have been adjudicated in the initial proceeding, res judicata will not operate to bar the subsequent suit.") (quoting *Matter of Energy Co-op., Inc.*, 814 F.2d 1226, 1233 (7th Cir. 1987)). The predicate for that principle is present here, where the district court, in denying plaintiff's Rule 15(d) motion to file its proposed supplemental complaint, stated: "Saint Anthony is free to build a new claim in a new case, but . . . it doesn't belong here." (ECF 110 at 5.) See *King v. Provident Life & Acc. Ins. Co.*, 23 F.3d 926, 928-29 (5th Cir. 1994) (holding that res judicata did not bar claim that district court denied plaintiff leave to add by amendment) (citing *Outboard Marine*; Restatement (2d) Judgments § 26(1)(b)); and 18 Chas. A. Wright *et al.*, Fed. Prac. & Proc. § 4413; *Venuto v. Witco Corp.*, 117 F.3d 754, 758-759 (3d Cir. 1997) (same).

Consistent with this principle, if the Court affirms the district court's orders denying plaintiff-appellant leave to file its proposed supplemental complaint (ECF 109, 110) and plaintiff-appellant seeks to assert that additional claim (ECF 101-1) in a separate action, defendant-appellee will not assert, and accordingly waives, the defense of claim preclusion as to the additional claim alleged in plaintiff-appellant's proposed supplemental complaint (ECF 101-1).

Very truly yours,

/s/ Richard S. Huszagh
Assistant Attorney General

cc: counsel of record

Certificate of Filing and Service

I hereby certify that on February 17, 2022, I electronically filed the foregoing letter with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system, which will effect service on other participants in the case, all of whom are registered CM/ECF users.

/s/ Richard S. Huszagh