2025 IL App (2d) 240685-U
No. 2-24-0685
Order filed September 30, 2025



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

| | | |
|---|---|---|
| KIMBERLY LAYDEN, | ) | Appeal from the Circuit Court |
| | ) | of Lake County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 24-LA-358 |
| | ) | |
| O'DONNELL CALLAGHAN, LLC and | ) | |
| ROBERT T. O'DONNELL, | ) | Honorable |
| | ) | Luis A. Berrones |
| Defendants-Appellees. | ) | Judge, Presiding. |

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Kennedy and Justice McLaren concurred in the judgment.

**ORDER**

¶ 1 *Held*: The circuit court did not err in dismissing plaintiff's complaint for professional negligence, where the doctrine of collateral estoppel barred the action. Affirmed.

¶ 1 Plaintiff, Kimberly Layden, appeals from the circuit court's order granting defendants', O'Donnell Callaghan, LLC (Law Firm) and Robert O'Donnell, motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2024)) on the ground that plaintiff's professional-negligence claim was barred by collateral estoppel. Plaintiff contends that the court erred in finding that the doctrine of collateral estoppel barred the action

because the elements of collateral estoppel were not satisfied, the claim of professional negligence had not accrued, and it would be fundamentally unfair to impose the equitable doctrine.

¶ 2 I. BACKGROUND

¶ 3 On May 21, 2024, plaintiff filed a professional-negligence action against defendants, stemming from a land dispute with her neighbors. See *Layden v. Chicago Title Land Trust Co.*, 2024 IL App (2d) 230007, ¶¶ 3-27. Plaintiff alleged that defendants failed to ensure plaintiff's knowledge and understanding of the proposed settlement agreement and failed to obtain plaintiff's informed consent to enter into the settlement agreement, which resulted in the payment of significant and unnecessary attorney's fees (to try and unwind the agreement) and the sale of her home for approximately half a million dollars below market value.

¶ 4 A. Settlement Agreement and Motion to Enforce

¶ 5 On May 20, 2022, in case No. 18-CH-928, the circuit court conducted a settlement conference between plaintiff, her neighbors, and the parties' attorneys. The conference resulted in an agreement that included the following terms: (1) the neighbors would pay plaintiff $600,000; (2) the neighbors would purchase plaintiff's home as-is, using an appraiser who is a member of the Appraisal Institute ("MAI"); (3) the neighbors would repair the shared driveway and be able to park on the private driveway; (4) plaintiff would move to vacate any judgment regarding a private easement, and the case would be dismissed with prejudice; and (5) each party would pay their own fees. Importantly, however, plaintiff believed that she could accept or reject the proposed purchase offer on her home. She also asserted that she was never shown the proposed order, which O'Donnell ultimately signed on her behalf at the settlement conference, despite being present during the conference.

¶ 6 Thereafter, plaintiff received a copy of the settlement order and became upset because it

did not accurately memorialize the terms of the settlement, as those terms were explained to her. After attempts failed to create a revised comprehensive written settlement agreement between her neighbors, the Law Firm, and herself, the neighbors filed a motion to enforce the settlement agreement. That same day, July 15, 2022, plaintiff terminated her engagement with the Law Firm.

¶ 7 On August 24, 2022, the Law Firm petitioned to adjudicate an attorney's lien for the total hourly fees and costs of representation. Six days later, the circuit court held a hearing on the neighbors' motion to enforce the settlement agreement. The testimony was limited to whether an enforceable settlement agreement was created. At the close of the hearing, the parties were instructed to submit written closing arguments.

¶ 8 At the hearing, O'Donnell was called as a witness for the neighbors, and plaintiff testified as to her understanding of the settlement agreement. According to the court's order, O'Donnell testified that he believed plaintiff remained at the courthouse for the duration of the settlement conference, as he discussed the settlement order with her several times. O'Donnell recalled meeting with plaintiff both in the hallway and the courtroom to discuss the proposed terms of the agreement. He did not recall that she was incapacitated or that anything was influencing her ability to make a decision. Furthermore, his understanding going into the settlement conference was that plaintiff would accept the highest offer made that day, as she did not have any independent monetary claims. Eventually, the neighbors offered to pay plaintiff $600,000 and purchase her home as-is. O'Donnell indicated that he encouraged plaintiff to accept the offer, she indicated she wanted to accept the offer, and she called someone to discuss the offer. O'Donnell did not recall participating in that conversation. O'Donnell stated that he reviewed with plaintiff the terms for the sale of her home, the settlement order, and explained the practical implications of the agreement. Overall, he testified that plaintiff understood all the terms of the settlement agreement.

O'Donnell believed that they reviewed the terms of the agreement in the hallway and, after getting her approval of those terms, he returned to the courtroom to draft the agreement. Thereafter, he believed that he returned to the hallway with the proposed order and rereviewed the order with plaintiff before it was submitted to the court.

¶ 9 Thereafter, on May 26, 2022, O'Donnell and plaintiff had an emergency meeting to discuss the terms of the settlement agreement. Plaintiff indicated that she wanted to have a final say regarding the sale of her home, as she was advised by a real estate broker that she could receive $3.5 million for the house and she did not want to sell for less than that amount. O'Donnell recalled reexplaining the benefits of the agreement and that plaintiff left the meeting accepting all the terms of the agreement.

¶ 10 On the other hand, plaintiff testified that, on the day of the settlement conference, she was sick. Nonetheless, she recalled that O'Donnell conveyed to her in the courthouse hallway that her neighbors would pay her $600,000 and would purchase her home as-is; however, she retained the right to accept or reject the final purchase price. Plaintiff stated the deal was "all or nothing," that is, if she rejected the neighbors purchasing price, the $600,000 would be off the table. Plaintiff indicated she wanted to discuss the offer with her mother and sister, so O'Donnell remained near her and explained parts of the agreement over the phone. Plaintiff recalled O'Donnell stating that there was no downside to the agreement because she could either accept or reject the final offer and, if she rejected the offer, everything was off the table and they would go to trial. Plaintiff remained at the courthouse until 6:30 p.m. the night of the settlement conference but did not see the completed agreement until May 23, 2022.

¶ 11 After receiving the written agreement, plaintiff was upset because the agreement contained terms that differed from what O'Donnell conveyed to her. Plaintiff requested an emergency

meeting with O'Donnell. On May 26, 2022, plaintiff and her sister met with O'Donnell to discuss the discrepancies in the written settlement agreement and her recollection of the agreed upon terms.

¶ 12 Following the emergency meeting, plaintiff requested O'Donnell contact an MAI appraiser to determine the fair market value of her home, for peace of mind. Plaintiff also proposed written changes to the settlement agreement—*i.e.*, that she would not agree to the settlement if the purchase price of her home dipped below $2.5 million. O'Donnell advised plaintiff that this could not be added as a condition to the settlement agreement because it fundamentally changed the agreement. Thereafter, plaintiff made no further changes to the settlement agreement regarding the sale of her home.

¶ 13 On October 21, 2022, plaintiff motioned to reopen the proofs to allow admission of courthouse security footage from the night of the settlement conference. Plaintiff asserted that the video contradicted O'Donnell's testimony because (1) it showed him participating in a phone call with her mother and sister, and (2) it showed he did not present the settlement order to her outside of the courtroom.

¶ 14 On October 28, 2022, a hearing was held on the petition for an attorney's lien. Plaintiff alleged that the hearing focused on O'Donnell's billing practices and the accuracy of his final bill to plaintiff.[1] Ultimately, the court found that an equitable lien existed and entered judgment in defendants' favor.

¶ 15 On December 5, 2022, the court entered an order simultaneously deciding the lien petition,

[1]There are no transcripts from the October 28 hearing. The circuit court's order from December 5, 2022, summarizes the evidence introduced at the hearings to enforce the settlement agreement, re-open the proofs, and petition for an attorney's lien; however, it does not delineate at which hearing the information was adduced.

the motion to enforce the settlement agreement, and the motion to reopen the proofs. As to the adjudication of an equitable attorney's lien, the court found that defendants were entitled to be paid a reasonable fee based on a *quantum meruit* basis. Regarding the motion to enforce the settlement agreement, the court noted that plaintiff did not seem impaired and "her apparent willingness to perpetuate a false narrative that she was too ill to understand the terms of the settlement negotiation has a negative impact on her credibility." Accordingly, among the two witnesses, the court found O'Donnell more credible. In line with this assessment, the court found that O'Donnell did not assert undue influence over plaintiff. Accordingly, the court determined that plaintiff knew, understood, and agreed that, as a part of the settlement agreement, her house would be sold for its fair market value to her neighbors. Moreover, the court found that plaintiff ratified the agreement in her emails to O'Donnell after the settlement conference. Thus, it granted the motion to enforce the settlement agreement.

¶ 16 Concerning the motion to reopen the proofs, the court denied the motion because the video footage did not have sound; the supposed contradictions noted by plaintiff were not material, especially without audio; and plaintiff's attempts to secure and present the footage were tardy. Overall, the court was unwilling to assume that because plaintiff was not shown the settlement order outside the courtroom, she was *never* shown the final agreement. As such, the circuit court did not consider the surveillance footage of the courthouse hallway.

¶ 17 B. Appellate Court Proceedings

¶ 18 On January 4, 2023, plaintiff appealed the circuit court's ruling regarding the petition for an attorney's lien. The enforceability of the settlement agreement was never addressed on appeal. On May 28, 2024, we issued an opinion affirming the creation of an equitable lien on a *quantum-meruit* basis but remanded the cause to reassess the amount of recovery where the award was

capped at the prior contingency rate. *Layden*, 2024 IL App (2d) 230007, ¶¶ 44-47.

¶ 19 C. Professional- Negligence Proceedings

¶ 20 On May 21, 2024, in case No. 24-LA-358, plaintiff filed a complaint for professional negligence, asserting defendants failed to ensure her knowledge and understanding of the settlement agreement entered on May 20, 2022, and failed to obtain her informed consent to enter the settlement agreement, which resulted in the forced sale of her home and substantial attorney's fees in an attempt to unwind the settlement agreement.

¶ 21 Thereafter, defendants moved to dismiss the complaint pursuant to section 2-619 of the Code. Defendants alleged that plaintiff's claim was barred by collateral estoppel, as she litigated the issue underlying the complaint in case No. 18-CH-928. Defendants asserted that, by alleging professional negligence, plaintiff was attempting to relitigate the motion to enforce the settlement agreement to show that she did not knowingly agree to settle the case. However, defendants noted that the circuit court already found that plaintiff knowingly agreed to the terms of the settlement agreement, she ratified the agreement, and the court found plaintiff to be not credible.

¶ 22 On September 13, 2024, plaintiff responded that the findings made in the circuit court's December 5, 2022, order did not bar her action because (1) the claim had not accrued at the time of the evidentiary hearing for the motion to enforce or the lien petition; (2) the elements of collateral estoppel had not been met; and (3) it would be substantially unfair to apply collateral estoppel. Overall, plaintiff focused on the fact that professional negligence was not the central issue addressed in the December 5, 2022, order so it would be unfair to bar this claim, as she has not had a full and fair opportunity to address the quality of her legal representation. Additionally, plaintiff asserted that defendants failed to attach the required affidavit to their motion.

¶ 23 Thereafter, defendants replied that an affidavit was not necessary because section 2-619

allowed for a challenge based on the face of the complaint and because any additional facts could be judicially noticed. Defendants alleged that their motion was supported by plaintiff's complaint and the December 5, 2022, order. Defendants asserted that plaintiff gave O'Donnell informed consent to enter the settlement agreement, and, even if there was no informed consent, the circuit court found that plaintiff ratified the agreement. Additionally, defendants asserted that the "accrual" of plaintiff's claim was not relevant to collateral estoppel. Accordingly, plaintiff had a full and fair opportunity to challenge the enforcement of the settlement agreement.

¶ 24 On October 9, 2024, a hearing was held on defendants' motion to dismiss. O'Donnell reiterated that the issue underlying the complaint was fully and fairly litigated and decided against plaintiff. Because the court found that plaintiff provided informed consent to enter the settlement agreement and she ratified the agreement, the complaint was frivolous, as the basis of the complaint had been decided previously. In response, plaintiff asserted that the claims raised previously and the one now presented were not identical, as plaintiff's new claim was based on a lack of communication and informed consent, and plaintiff's ratification of an unauthorized act did not invalidate her claim of professional negligence. Moreover, plaintiff asserted that the court was not required to apply collateral estoppel, even where the elements were met, because public policy encouraged the full investigation and litigation of legal malpractice.

¶ 25 After the hearing, the circuit court found that (1) the December 5, 2022, order rendered a final judgment on the merits; (2) plaintiff was a party to that litigation; (3) the issues litigated in the December 5, 2022, order were the same presently at issue; and (4) in the prior litigation, there was an opportunity for plaintiff to litigate the issue that was the basis for collateral estoppel. In sum, the court concluded that collateral estoppel applied and granted defendants' motion to dismiss.

¶ 26 On November 7, 2024, a civil notice requesting an appeal was filed, with the notice of appeal filed on November 20, 2024.

¶ 27 II. ANALYSIS

¶ 28 On appeal, plaintiff contends that the circuit court erred in finding that collateral estoppel barred her professional-negligence claim. Specifically, plaintiff argues that (1) collateral estoppel does not apply because her claim of professional negligence had not accrued, (2) the circuit court erred in finding that the elements of collateral estoppel were met, (3) she would suffer unfair prejudice if collateral estoppel was applied, and (4) the court erred in failing to address the procedural shortcomings of defendants' motion to dismiss. In response, defendants argue that the circuit court's December 5, 2022, order fully and finally litigated the issue of plaintiff's informed consent to enter into and later ratify the settlement agreement—the same issues now underlying the professional-negligence claim. Thus, defendants argue that barring plaintiff's claim via the doctrine of collateral estoppel was proper. We agree with defendants.

¶ 29 The circuit court granted defendants' section 2-619 motion to dismiss based on the doctrine of collateral estoppel. Under section 2-619 of the Code, a party may file a motion for involuntary dismissal based on defects or defenses enumerated in the statute. 735 ILCS 5/2-619 (West 2024). If the ground for dismissal is not evident from the face of the pleading, the motion may be supported by affidavit. *Id*. In considering the motion, the court accepts all well-pleaded facts in the complaint as true and draws all reasonable inferences from those facts in favor of the nonmoving party. *Adler v. Bayview Loan Servicing, LLC*, 2020 IL App (2d) 191019, ¶ 16. Further, the court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* Once a motion to dismiss is granted, the question on appeal becomes whether a genuine issue of fact exists and whether the defendant is entitled to a judgment as a matter of

law. *LaSalle Bank National Association v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635 (2005). We review *de novo* the circuit court's dismissal of a complaint under section 2-619. *Adler*, 2020 IL App (2d) 191019, ¶ 16.

¶ 30 A. Section 2-619 Affidavit

¶ 31 First, plaintiff alleges that defendants' motion to dismiss was procedurally deficient because defendants failed to attach a supporting affidavit. In response, defendants assert that a supporting affidavit was not required because the grounds for dismissal are plain from the face of the pleading and any necessary outside information was judicially noticed. In the complaint, plaintiff referenced the prior proceedings and the December 5, 2022, order detailing the settlement conference and the motion to enforce the settlement agreement. Moreover, attached to the motion to dismiss, defendants appended the court's December 5, 2022, order and asked the court to take judicial notice of the document. See Ill. R. Evid. 201 (eff. Jan. 1, 2011). In support of a section 2-619 motion, case law provides that materials of an evidentiary nature other than affidavits may be considered. *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Also, it is proper for the circuit court to "take judicial notice of facts contained in public records where such notice will aid in the efficient disposition of the case." *Advocate Health and Hospitals Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). Accordingly, the circuit court did not err in failing to address the lack of an affidavit here. An affidavit was not necessary because the grounds for dismissal (pursuant to collateral estoppel) appeared on the face of the pleadings and in judicially noticed materials.

¶ 32 B. Collateral Estoppel

¶ 33 Next, plaintiff argues that the circuit court erred in granting defendants' motion to dismiss because the elements of collateral estoppel were not established. Namely, plaintiff contends that

the circuit court improperly found that an issue present in case No. 18-CH-928 is identical to an issue present in case No. 24-LA-358. We disagree.

¶ 34 Here, the circuit court granted defendants' motion to dismiss on the grounds that plaintiff's issue was barred by the doctrine of collateral estoppel. See 735 ILCS 5/2-619(a)(4) (West 2024). Collateral estoppel bars relitigation of "controlling facts or questions material to the determination of both causes." *Anderson v. Financial Matters, Inc.*, 285 Ill. App. 3d 123, 131 (1996). To invoke the doctrine of collateral estoppel, three requirements must be met: (1) the issue previously adjudicated is identical to the question presented in the subsequent action; (2) a final judgment on the merits exists in the prior case; and (3) the party against whom estoppel is directed was a party to the prior litigation. *Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010). Where every element is met, "the adjudication of the fact or question in the first cause will be conclusive of the same question in the later suit," however, the preclusive nature of the first cause operates as an estoppel only as to the points *actually* litigated, rather than matters that could have been litigated. *LaSalle*, 355 Ill. App. 3d at 635; *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001). Moreover, collateral estoppel is an equitable doctrine and need not be imposed if an injustice would result—*i.e.*, where the party against whom estoppel is asserted did not have a full and fair opportunity to litigate the issue in the prior proceeding. *Id.* at 643.

¶ 35 It is undisputed that the parties here were the same as those in case No. 18-CH-928. Moreover, there was a final disposition in the prior case. Accordingly, the only issues on appeal are whether the issue previously adjudicated is identical to the question presented in the subsequent action, whether the claim of professional negligence had accrued and was actually litigated, and whether it would be unfair to impose the doctrine of collateral estoppel.

¶ 36 Regarding the identity-of-issues analysis, for an issue to be identical, "the party sought to be bound must actually have litigated the issue in the first suit and a decision on the issue must have been necessary to the judgment in the first litigation." *American Family Mutual Insurance Co. v. Savickas*, 193 Ill. 2d 378, 387 (2023). The application of estoppel "must be narrowly tailored to fit the precise facts and issues that were clearly determined in the prior judgment." *Kessinger v. Grefco, Inc.*, 173 Ill. 2d 447, 467 (1996).

¶ 37 Here, defendants identify one issue that they allege was raised and conclusively decided in case No. 18-CH-928: plaintiff gave informed consent and ratified the May 20, 2022, settlement agreement. In that case, plaintiff alleged that defendants did not have the authority to execute the settlement agreement on her behalf. Specifically, she stated that she did not understand and agree to all the terms ultimately revealed in the written settlement agreement. This discrepancy in her understanding prompted her termination of defendants and the filing of the motion to enforce the settlement agreement by her neighbors. Thereafter, the circuit court issued its December 5, 2022, order determining that plaintiff gave her informed consent to enter and ratified the settlement agreement. The circuit court made an express finding that plaintiff was not incapacitated at the time of the settlement agreement, plaintiff presented several "false narrative[s]" that negatively impacted her credibility, and O'Donnell credibly testified that he explained the terms of the settlement agreement to plaintiff. In total, the court concluded that "Mr. O'Donnell testified credibility [*sic*] that he reviewed all aspects of the order with [plaintiff] and that she understood and that she agreed to those terms." Moreover, the court found that plaintiff's email communications with defendants confirmed that she understood and accepted the terms of the settlement agreement.

¶ 38 In the present case, plaintiff alleges that defendants failed to "ensure [her] knowledge and understanding of the settlement agreement and, also failed to obtain her informed consent to enter into the settlement agreement." This was the exact issue decided in the December 5, 2022, order on the motion to enforce the settlement agreement. Moreover, the court's finding in case No. 18-CH-928 (that plaintiff ratified the agreement and gave defendants informed consent to enter the settlement agreement) was material and controlling to the enforcement of the settlement agreement. Similarly, whether plaintiff ratified or gave informed consent for defendants to enter the settlement agreement is material and controlling as to the issue of professional negligence here. *Kessinger*, 173 Ill. 2d at 462 (for collateral estoppel to apply, a finding of fact must be both material and controlling in the prior case and material and controlling in the pending case). Accordingly, we find the issue to be identical.

¶ 39 Plaintiff alternatively argues that the claims are not identical because they operate in distinct areas of law—contract law versus malpractice law. We find this distinction unpersuasive because the question of whether plaintiff's attorney was negligent rests upon the ultimate issue from both cases—whether plaintiff ratified or gave her informed consent to her attorney to enter into the settlement agreement. See *Betts v. Manville Personal Injury Settlement Trust*, 225 Ill. App. 3d 882, 895 (1992) (finding that party could not relitigate a material fact, where she previously had a full and fair opportunity to litigate the common fact in the initial suit). Plaintiff was a party to both actions, she had a full opportunity to litigate the issue in the earlier action, and the circuit court made a final determination of the fact question. There is no question that this issue was definitively decided in case No. 18-CH-928. Therefore, we conclude that the issue from case Nos. 18-CH-928 and 24-LA-358 are the same.

¶ 40 C. Accrual of Professional Negligence

¶ 41 Next, plaintiff argues that the professional-negligence claim was not available to plaintiff at the time of the motion to enforce the settlement agreement or the petition for an attorney's lien, thus, collateral estoppel cannot be applied because the doctrine applies only to issues that have been completely resolved in a prior proceeding. Defendants respond twofold: (1) plaintiff conflates collateral estoppel with *res judicata,* and (2) collateral estoppel does not require a claim to accrue at the time of the initial litigation because it is a bar to relitigation of a specific legal or factual issue, not an entire claim. We agree with defendants.

¶ 42 Collateral estoppel, while similar to *res judicata*, is a distinct theory and does not bar the entire claim for professional negligence. Rather, to bar an entire claim would be the function of *res judicata*. *In re Estate of Brown*, 2014 IL App (1st) 122857, ¶ 19. Instead, collateral estoppel precludes plaintiff from relitigating the material fact decided in the December 5, 2022, order—that she gave informed consent to defendants to enter, and ratified, the settlement agreement. *Id.* ¶ 20. Because plaintiff already fully and fairly litigated this issue in the prior litigation, she will not be afforded a second bite at the apple. It matters not that the claim of professional negligence had not accrued at the time of the initial litigation because the *claim* of professional negligence is not barred here. Rather, the *material fact* as alleged that underlies plaintiff's professional-negligence claim cannot be relitigated. The court's dismissal on this basis was not in error.

¶ 43 D. Unfair Prejudice

¶ 44 Finally, plaintiff asserts that collateral estoppel should not be utilized here because it would result in unfair prejudice to her because she never had a full and fair opportunity to litigate defendants' professional negligence. Defendants contend that the record shows plaintiff had ample opportunity and incentive to litigate the prior issue; thus, any prejudice to her in applying collateral estoppel would not be unfair or undue. We, again, agree with defendants.

¶ 45 Collateral estoppel is an equitable doctrine, and even if the elements of collateral estoppel have been met, a court should not apply the doctrine if the result would be unfair. *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 25. Accordingly, we must balance "the harm of giving a previously unsuccessful party a second bite at the apple and the need for judicial economy against the right to a fair adversary proceeding in which both parties have the opportunity to fully present their cases." *Id*. (citing *Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997). Generally, unfairness results where the litigation previously took place in an improper forum or where the party opposing collateral estoppel did not have motivation to vigorously litigate the issue in the earlier proceeding. *Id*.

¶ 46 Here, neither of these factors are present. Plaintiff does not contend that the forum of the prior proceeding was inadequate. Moreover, we reject plaintiff's argument that she had no reason to present evidence regarding professional negligence at the prior proceeding because her claims of malpractice had not yet accrued. As we have previously discussed, the fact that plaintiff's professional-negligence claim had not accrued is a red herring. The issue is whether plaintiff was motivated and had a full and fair opportunity to litigate whether she ratified, or gave informed consent to defendants to enter, the settlement agreement. We believe she has.

¶ 47 Plaintiff had ample incentive to contest the motion to enforce the settlement agreement because it determined whether she would be bound to the terms of the settlement agreement; specifically, the provision that plaintiff disputes, that she would have to sell her home for the fair market value. Our supreme court has stated that "[i]ncentive to litigate might be absent *** where the amount at stake in the first litigation was insignificant ***." *Talarico v. Dunlap*, 177 Ill. 2d 185, 192 (1997). In this case, the litigation surrounding the motion to enforce the settlement agreement and whether plaintiff ratified, or gave defendants informed consent to enter, the

settlement agreement was a "struggle to the finish," and not a "side show." See *id*. at 196 (noting that to be successful in the incentive-to-litigate formula a party must show that "the original litigation was a side show rather than a struggle to the finish."). Here, the settlement dealt with the sale of plaintiff's home and a financial award of $600,000. This was no insignificant amount. That plaintiff would have "sought exhaustive discovery" if the initial proceeding pertained to malpractice does not diminish the fact that she sought discovery, presented evidence, and contentiously argued against the issue disputed here—that she was fully advised and authorized defendants to enter into the settlement agreement.

¶ 48 The circuit court's refusal to reopen the proofs does not change the outcome here. The court did not err when it found that plaintiff's surveillance video, which did not include audio, was irrelevant, as the video did not impact O'Donnell's credibility because it did not rebut defendants' claim that O'Donnell showed and explained the final settlement order to plaintiff. That O'Donnell may have misremembered where he discussed the settlement order with plaintiff and that she was on speaker phone in the courthouse hallway was not material to the case. Accordingly, plaintiff had incentive to litigate and, in fact, contentiously litigated whether she authorized defendants to enter into the settlement agreement on her behalf. Thus, she cannot now relitigate this issue.

¶ 49 III. CONCLUSION

¶ 50 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 51 Affirmed.