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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

KAREN JONES et al., Plaintiffs and Appellants, v. JOHN CRANE INC., Defendant and Respondent.	B238445 (Los Angeles County Super. Ct. No. BC446783)

APPEAL from a judgment of the Superior Court of Los Angeles County, Emilie H. Elias, Judge. Affirmed.

Simon Greenstone Panatier Bartlett and Brian P. Barrow for Plaintiffs and Appellants.

Hassard Bonnington and Philip S. Ward for Defendant and Respondent.

INTRODUCTION

Plaintiffs Karen Jones, Melanie Koskie, Lori Jones and John D. Jones appeal from a judgment entered in favor of defendant John Crane Inc. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Original Action—Jones I*

On August 23, 2010, John Lewis Jones (John Lewis) and his wife, plaintiff Karen Jones (Karen),[1] filed a personal injury suit against defendant John Crane Inc. (Crane) and other corporate defendants in *John Lewis Jones v. Air & Liquid Systems Corp.*, Los Angeles Superior Court case number BC444213 (*Jones I*). The lawsuit constituted complex asbestos litigation subject to certain orders by the court governing such lawsuits. John Lewis and Karen alleged that John Lewis "developed malignant mesothelioma as a result of exposure to asbestos from" Crane's and the other defendants' "asbestos, asbestos-containing products and/or products designed to be used in association with asbestos products." They also alleged the defendants failed to warn of the health hazard associated with asbestos or to provide, or inform him of, adequate protective gear and measures. Allegedly, John Lewis had been exposed to asbestos during a period of over 30 years at various locations in California and other states while he was employed by the United States Navy and other business entities. John Lewis and Karen alleged causes of action for negligence and strict liability. Karen also alleged a cause of action for loss of consortium.

On September 9, 2010, one of the other defendants removed *Jones I* to the United States District Court of the Central District of California, where it was assigned to the Honorable Manuel L. Real. Crane filed a motion to dismiss under Federal Rules of Civil

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[1] We refer to the parties by their first names to avoid confusion and mean no disrespect.

Procedure, rule 12(b)(6) (28 U.S.C.) on the ground the complaint failed "to state a claim upon which relief can be granted." John Lewis and Karen did not file any opposition to the motion. At the hearing on the motion on November 1, 2010, they did not appear; neither did defendant. Judge Real announced his decision and the reason for it on the record. He stated that John Lewis and Karen "merely recite the elements of their causes of action without identifying specific facts, such as what products were used, when, and where they were used, and how long the asbestos exposure occurred. [¶] As such [their] complaint does not raise a right to relief above a speculative level, and defendant's motion is granted. [¶] . . . [¶] The matter is dismissed as to [Crane]."[2]

On November 3, 2010, *Jones I* was transferred to the United States District Court for the Eastern District of Pennsylvania as part of multidistrict litigation 875, *In re: Asbestos*.[3]

The following day, November 4, 2010, John Lewis and Karen filed a motion for relief from Judge Real's dismissal order, under Federal Rules of Civil Procedure, rule 60(b)(1) (28 U.S.C.) (Rule 60(b) motion), or in the alternative, for permission to amend their complaint. The motion stated that they failed to answer defendant's dismissal motion and to appear at the scheduled hearing as a result of excusable neglect. On November 22, based on the fact that *Jones I* had been transferred to the Pennsylvania court, Judge Real entered a minute order stating that there was "'no longer . . . jurisdiction to hear [the] Rule 60(b) motion for relief from order.'"

On February 1, 2011, Crane filed a petition requesting that the Pennsylvania court enter a signed order granting its motion to dismiss. Crane stated that Judge Real's order

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[2] On November 1, the clerk of the court filed a civil minute sheet which stated the following: "'There are no appearances on behalf of [John Lewis and Karen], or [Crane] . . . . The Court GRANTS [Crane's] motion, for reasons stated on the record. Counsel for [Crane] shall submit a proposed order.'"

[3] According to a report prepared by the court in the United States District Court for the Eastern District of Pennsylvania, the parties state the date of transfer was November 8, but the court's docket reflects the date of transfer was November 3.

granting the motion to dismiss was recorded in the transcript of the November 1, 2010 hearing, but no signed order had been issued, in that *Jones I* was transferred to the Pennsylvania court before Judge Real had entered a signed order.

John Lewis and Karen filed opposition to defendant's motion. They also requested permission to re-file their Rule 60(b) motion in the Pennsylvania court.

Chief United States Magistrate Judge Thomas J. Reuter reviewed the record, the motion to dismiss and the opposition. He issued a report and recommendation on April 5, 2011, recommending that the motion to dismiss be granted. He also noted that John Lewis and Karen could re-file their Rule 60(b) motion in the Pennsylvania court if they wanted the court to consider it. John Lewis and Karen re-filed their motion on April 6. They also filed objections to Judge Reuter's recommendation that Crane's motion for dismissal be granted.

The Honorable Eduardo C. Robreno of the Eastern District of Pennsylvania issued his written decision and order granting Crane's motion to dismiss on June 9, 2011. Judge Robreno wrote that "a multidistrict litigation transferor judge is bound by the 'law of the case' doctrine in its reconsideration of an action taken by the transferee judge. . . . [A] court should only revisit a transferor court's decisions under 'extraordinary circumstances such as where the initial decision was clearly erroneous and would make a manifest injustice.' [*Christianson v. Colt Industries Operating Corp.* (1988) 486 U.S. 800, 816 [108 S.Ct. 2166, 100 L.Ed.2d 811] . . . .]"

Judge Robreno ruled that John Lewis and Karen failed to make a showing of "'extraordinary circumstances'" necessary to modify Judge Real's order. The judge also granted Crane's motion to dismiss.

Regarding the Rule 60(b) motion, Judge Robreno explained that John Lewis and Karen failed to establish "'excusable neglect'" on three grounds: If the motion were granted, Crane would be considerably prejudiced "by the significant waste of resources that would occur if this court were to re-entertain its timely filed and substantively granted motion to dismiss." John Lewis and Karen waited five months after the case was transferred to file the Rule 60(b) motion in the court and only did so in response to

Crane's petition to confirm the motion to dismiss; this lack of diligence indicated that the neglect was not excusable. The reason for delay given to the court was that counsel for John Lewis and Karen received notice of Crane's motion to dismiss when it was filed in the Central District of California, but no one at counsel's office added the opposition due date or the hearing date to the office's master calendar. These circumstances were entirely and exclusively within counsel's control.

B. *The Instant Action—Jones II*

Meanwhile, in October 2010, John Lewis and Karen filed the instant lawsuit against Crane and other corporate defendants for personal injury and loss of consortium in *Karen Lee Jones v. Borg-Warner Morse Tec Inc.*, Los Angeles Superior Court case number BC446783 (*Jones II*). John Lewis passed away on May 18, 2011. Several weeks later, and after the Pennsylvania court entered judgment in Crane's favor, the operative first amended complaint (FAC) was filed. The FAC alleged causes of action for negligence and strict liability as in *Jones I*.[4]

Except as to the named defendants, the FAC in *Jones II* was identical to the *Jones I* complaint with regard to the language in the general allegations, the first cause of action for negligence, and the second cause of action for strict liability, as well as with regard to the relief sought, subject to relatively minor changes made in the *Jones II* FAC by virtue of the fact that John Lewis was deceased.[5] Among the changes were the additions of the Estate of John Lewis Jones (Estate) and the Jones adult children as

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[4] The third cause of action for conspiracy was added in *Jones II* FAC against only defendant Metropolitan Life Insurance Company and, therefore, is irrelevant to this appeal.

[5] The *Jones II* FAC did not include the *Jones I* general disclaimer of any claim that could give rise to federal jurisdiction under certain federal statutes. As plaintiff's counsel explained to the trial court, counsel's usual practice was to file one superior court complaint naming defendants expected to remove the action to federal court and then to file another complaint in superior court naming defendants expected to prefer to have the case heard in state court.

plaintiffs, with the designation of Karen not only as an individual plaintiff, but also as representative of the Estate, and the references to John Lewis not as plaintiff, but as decedent. The injuries alleged included not only the decedent's malignant mesothelioma but also his death.

In the *Jones II* FAC, the initial general paragraph was changed to specify that the named plaintiffs were bringing the action for wrongful death pursuant to Code of Civil Procedure section 377.60, and Karen, as the personal representative of the Estate, was bringing the action as a survival action pursuant to Code of Civil Procedure section 377.30. The related additional allegations appeared in the negligence cause of action in paragraph 17, alleging the defendants' conduct proximately caused loss of income and other pecuniary losses. "Funeral and burial expenses" were added to the list of types of pecuniary losses. The following allegation also was added: "As a further direct and proximate result of the said conduct of the Defendants, their 'alternate entities,' Plaintiffs have been, and in the future will be, deprived of the support, society, solace, care, comfort, companionship, affection, advice, services and guidance of Decedent, JOHN LEWIS JONES, the full nature and extent of which are not yet known to Plaintiffs and leave is requested to amend this complaint to conform to proof at the time of trial." Paragraph 16 alleged that "Plaintiffs continue to incur" liability for medical costs incurred by decedent.

Corresponding additions were made in the prayer for relief in *Jones II*. The FAC sought damages for plaintiffs' loss of decedent's financial support and financial contributions, for their own loss of income and income potential caused by decedent's death, for their "loss of love, companionship, comfort, affection, solace, moral support and/or society" caused by his death,[6] and for funeral and burial expenses. Otherwise the relief requested mirrored the prayer in *Jones I*, including damages for Husband's medical

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[6] In *Jones I*, Karen sought similar damages, but for loss of consortium rather than wrongful death. The common elements of relief were for loss of love, companionship, comfort, and affection.

and related expenses, his loss of income and income potential, exemplary or punitive damages, and legal costs.

On July 20, 2011, Crane demurred to the FAC on the ground the doctrine of res judicata barred plaintiffs' claims, in that they involved the same facts, injuries, theories of liability, parties and prayer for damages as *Jones I*, which had been dismissed with prejudice weeks earlier. Crane argued, alternatively, that the FAC was "uncertain, ambiguous and unintelligible" because it did not contain sufficient allegations identifying the products to which John Lewis was exposed, the location of his exposure, the "length, frequency, proximity and intensity" of any alleged exposure, and how Crane's products allegedly injured John Lewis. Plaintiffs filed opposition to the demurrer.

After argument, the trial court sustained the demurrer without leave to amend. The court found that the *Jones I* judgment based upon the dismissal order was final and on the merits as required for preclusion by res judicata; Judge Real's order dismissing the case was effective when made on the record, and the *Jones I* dismissal was with prejudice.[7] The court also found that John Lewis's children were in privity with the parties to the federal action, and the children would not have a cause of action except insofar as it derived from John Lewis's death. The court entered final judgment in favor of Crane on December 12, 2011.

DISCUSSION

Plaintiffs take the position that the issues decided by the federal court in *Jones I* (i.e., the sufficiency of a personal injury complaint under federal pleading standards) were not identical to the issues presented to the trial court in the instant action, *Jones II*

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[7] The trial court stated that the "federal court dismissed it. They don't say it's without prejudice. [¶] You go to another federal court, the [c]ourt affirms it." The plaintiffs "went all the way up the process [they] could in federal court, and [they] weren't successful. So [the federal court] order has to stand."

(i.e., sufficiency of the survival and wrongful death complaint under state standards) and, therefore, collateral estoppel did not bar plaintiffs' wrongful death complaint. Accordingly, plaintiffs contend, the trial court erred in sustaining the demurrer and, even if not, abused its discretion in not allowing them to amend the complaint.

Crane maintains that the federal court's dismissal with prejudice of the *Jones I* action for personal injury and loss of consortium is res judicata as to those matters necessary for the surviving spouse and the children to state causes of action for wrongful death. Thus, the trial court properly sustained the demurrer without leave to amend and entered judgment in favor of Crane.

A. *Standard of Review*

A demurrer should be sustained when the "pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).) "On appeal from an order dismissing a complaint after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory." (*Davaloo v. State Farm Ins. Co.* (2005) 135 Cal.App.4th 409, 414; see also *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1374.) "'We accept as true the properly pleaded material facts but do not assume the truth of contentions, deductions or conclusions of fact or law. [Citations.] We examine the complaint's factual allegations to determine whether they state a cause of action on any available legal theory.' [Citation.]" (*Klein*, *supra*, at p. 1374.)

When a demurrer is sustained "'without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.'" (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 999, quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) We may affirm the trial court's judgment on any basis supported by the record, whether

or not relied upon by the trial court. (*State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 412.)

B. *Res Judicata*

The doctrine of res judicata operates to give "'"certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy." [Citation.]'" (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) The primary aspect of res judicata, claim preclusion, bars a second suit between the same parties on the same cause of action. (*Ibid.*) The secondary aspect of res judicata, collateral estoppel, operates as conclusive adjudication as to issues in a second lawsuit which are identical to issues actually litigated and necessarily decided in a prior lawsuit. (*Ibid.*; *Johnson v. GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1507-1508.)

Additionally, "'"[t]he prerequisite elements for applying the doctrine [of res judicata] to either an entire cause of action [as claim preclusion] or one or more issues [as collateral estoppel] are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]"' [Citation.]" (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 797.) The party asserting res judicata, either as claim preclusion or collateral estoppel, bears the burden of establishing the elements. (*Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943.)

"To determine whether two proceedings involve identical causes of action for purposes of claim preclusion [under the doctrine of res judicata], California courts have 'consistently applied the "primary rights" theory.' [Citation.]" (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 797.) That is, the elements of a cause of action are a primary right of the plaintiff, a corresponding duty of the defendant and a wrongful act constituting a breach of that duty by the defendant. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 904.) "The cause of action is the right to obtain redress for a harm

suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced." (*Boeken, supra*, at p. 798.) "[U]nder the primary rights theory, the determinative factor is the harm suffered." (*Ibid*.)

C. *Application Here*

1. Identity of Issues

As to the element of identity of causes of action and/or issues, except for the few additions due to the death of John Lewis, the text of the causes of action for negligence and for strict liability in *Jones I* and *Jones II* was identical, as were the issues presented in each cause of action. (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 797.) They involved the same primary right: the right of John Lewis to have a safe workplace, that is, to be free from the harm he suffered from asbestos exposure in his workplace. (*Id.* at pp. 797-798.) They involved the same alleged harm: John Lewis suffered malignant mesothelioma and a significant contributing factor in the development of his malignant mesothelioma was asbestos exposure from Crane's products due to Crane's negligence and/or conduct for which Crane is strictly liable. (*Ibid.*) The slight difference between the theories of recovery in *Jones I* and *Jones II* are irrelevant to the determination that the causes of action are identical. (*Ibid*.)

Plaintiffs claim that the differences between federal pleading standards which were applied in *Jones I* and state pleading standards should preclude the application of collateral estoppel in *Jones II*. Plaintiffs cite our opinion in *Johnson v. GlaxoSmithKline, Inc.*, *supra,* 166 Cal.App.4th 1497 in which we stated that an element required for application of collateral estoppel is that "'the issue decided previously be "identical" with the one sought to be precluded. [Citations.] [¶] Accordingly, where the previous decision rests on a "different factual and legal foundation" than the issue sought to be adjudicated in the case at bar, collateral estoppel effect should be denied.' [Citations.]" (*Id.* at p. 1513.) In *Johnson*, the same California statute was applied by both the federal and state courts but underwent significant substantive amendments during the time between the two actions. We determined that collateral estoppel did not apply, in that the

factual issues decided by the federal court under the former version of the statute were different from the factual issues presented to the state court due to the significant relevant substantive changes in the statute relating to the factual requirements for standing. (*Id.* at pp. 1514-1515.) As we noted, the "'"identical issue" requirement addresses whether "identical factual allegations" are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same.'" (*Id*. at p. 1515, quoting from *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342.)

If, as in the instant case, "'"an action is filed in a California state court and the defendant claims the suit is barred by a final federal judgment, California will determine the res judicata effect of the prior federal court judgment on the basis of whether the federal and state actions involve the same primary right. [Citation.]" [Citation.]' [Citation.]" (*City of Simi Valley v. Superior Court* (2003) 111 Cal.App.4th 1077, 1082-1083 [prior federal court summary judgment on federal-law employment discrimination claim was res judicata to California-law employment discrimination claim in state court]; accord, *Lumpkin v. Jordan* (1996) 49 Cal.App.4th 1223, 1225-1226.) Under the primary right theory, "'[t]he most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.] . . . [¶] . . . [T]he primary right is simply the plaintiff's right to be free from the particular injury suffered. . . . [¶] . . . [W]hen a plaintiff attempts to divide a primary right and enforce it in two suits[,] . . . if the first suit has terminated in a judgment on the merits adverse to the plaintiff, the defendant in the second suit may set up that judgment as a bar under the principles of res judicata.'" (*Mycogen Corp. v. Monsanto Co.*, *supra*, 28 Cal.4th at p. 904.) As we previously concluded, the same primary right was the basis for the causes of action in *Jones I* and here in *Jones II*.

Moreover, the federal-state issue in *Johnson* did not involve the question presented here: whether the federal pleading standards were sufficiently different from California pleading standards to render res judicata inapplicable, although the claims in the federal and state actions were essentially identical and based upon the same facts. In *Graphic Arts Internat. Union v. Oakland Nat. Engraving Co.* (1986) 185 Cal.App.3d 775, the

court compared the pleading requirement set forth in Federal Rules of Civil Procedure, rule 8(a)(2) (28 U.S.C.) that "a pleading setting forth a claim for relief must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief,'" with the requirement in Code of Civil Procedure section 425.10, subdivision (a), that "a complaint in a civil action contain '[a] statement of the facts constituting the cause of action, in ordinary and concise language.'" (*Graphic Arts Internat. Union*, *supra*, at pp. 781-782.) The court stated that "[u]nder the federal standard, mere conclusory allegations are insufficient to demonstrate entitlement to relief. [Citations.]" (*Id.* at p. 782.) The court concluded that "a statement of claim which would not pass muster under Federal Rules of Civil Procedure 8(a)(2) (28 U.S.C.) would . . . not pass muster under Code of Civil Procedure section 425.10, subdivision (a)." (*Graphic Arts Internat. Union*, *supra*, at p. 782.)

Likewise, in the instant case, the comparison between the federal law and state law shows the similarity in standards. The federal court applied Federal Rules of Civil Procedure rule 12(b)(6) (28 U.S.C.), which authorizes the grant of a motion for dismissal when the complaint fails "to state a claim upon which relief can be granted." The rule has been interpreted to mean that dismissal is appropriate where the complaint lacks sufficient facts to support a cognizable legal theory. (*Balistreri v. Pacifica Police Dept.* (9th Cir. 1990) 901 F.2d 696, 699.) The standard applied by the state court is similar: a demurrer to a complaint may be sustained when the "pleading does not state facts sufficient to constitute a cause of action." (Code Civ. Proc., § 430.10, subd. (e).)

2. Final Judgment on the Merits

The element of a final judgment on the merits is also present. Dismissal, with prejudice, of the causes of action against Crane in *Jones I* was the equivalent of a final judgment on the merits after being litigated. (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 804; *Erganian v. Brightman* (1936) 13 Cal.App.2d 696, 699-700.) "The statutory term 'with prejudice' clearly means the plaintiff's right of action is terminated and may not be revived. . . . [A] dismissal with prejudice . . . bars any future action on

the same subject matter." (*Roybal v. University Ford* (1989) 207 Cal.App.3d 1080, 1086-1087.) Judge Real granted Crane's motion to dismiss based on his examination of the allegations of the complaint and determination that the complaint did not state a claim upon which relief could be granted. He found the allegations were only speculative and merely recited elements of the causes of action, without identifying corresponding specific facts, such as which of Crane's products were used, and when and where they were used. (*Balistreri v. Pacifica Police Dept.*, *supra*, 901 F.2d at p. 699 [under Federal Rules of Civil Procedure rule 12(b)(6) (28 U.S.C.), dismissal is appropriate where complaint lacks sufficient facts to support a cognizable legal theory].) Two other federal judges, Judge Reuter and Judge Robreno, later reviewed Judge Real's decision to determine whether change was warranted, in that, inter alia, the decision was "'clearly erroneous and would work a manifest injustice.'" (*Christianson v. Colt Industries Operating Corp.*, *supra*, 486 U.S. at p. 817.) They concluded that the decision should stand.

3. Party or Privity to a Party

The final element of res judicata is that the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. We consider this element with respect to the applicability of res judicata to the claims asserted in *Jones II* by the Estate, Karen, and the Jones adult children.

The Estate's survival claim is barred by res judicata. The claim is deemed to have belonged to John Lewis but, by statute, survives his death. (Code Civ. Proc., § 377.30.) Unlike a cause of action for wrongful death, a survival action is not a new cause of action that vests in the heirs upon the death of the decedent. (*Grant v. McAuliffe* (1953) 41 Cal.2d 859, 864.) The estate may not litigate in *Jones II* the same primary right of John Lewis which gave rise to the negligence and strict liability causes of action dismissed with prejudice in *Jones I*. (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 804.) "'[T]here is but one cause of action for one personal injury [which is incurred]

by reason of one wrongful act.' [Citations.]" (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795.)

Karen was a party to *Jones I* and alleged a cause of action for loss of consortium, which was dismissed with prejudice. In *Jones II*, she alleged a statutory cause of action for wrongful death. (Code Civ. Proc., § 377.60.) Loss of consortium is a common law cause of action allowing a person whose spouse was wrongfully injured to sue for loss of consortium damages and punitive damages. (*Boeken v. Philip Morris USA, Inc.*, *supra*, 48 Cal.4th at p. 796.) As the Supreme Court explained in *Boeken*, wrongful death is a statutory cause of action allowing a plaintiff whose spouse was wrongfully killed to sue for damages, including loss of consortium damages, but excluding punitive damages. (*Ibid.*) The primary right involved is the same in both: the plaintiff's primary right not to be wrongfully deprived of spousal companionship and affection. (*Id.* at p. 798.) The breach is the wrongful harm the defendant caused to the spouse. Dismissal with prejudice of a cause of action for loss of consortium constitutes adjudication of the primary right and the breach of duty in defendant's favor. (*Ibid.*) The plaintiff is precluded from alleging the same primary right and the same breach of duty in a second lawsuit against the defendant based on a new theory—statutory wrongful death. (*Ibid.*) Thus, Karen is precluded from suing for wrongful death in *Jones II*, in that her primary right and Crane's breach of duty were adjudicated in Crane's favor in *Jones II*.

As the heirs of John Lewis, the Jones adult children seek to bring a statutory wrongful death action. (Code Civ. Proc., § 377.60.) The Jones children had the requisite privity with their father in the prior proceeding to justify application of the doctrine of collateral estoppel. (*Garcia v. Rehrig Internat., Inc.* (2002) 99 Cal.App.4th 869, 878; *Brown v. Rahman* (1991) 231 Cal.App.3d 1458, 1462-1463; see Rest.2d Judgments, § 46 ["When a person has been injured by an act which later causes his death and during his lifetime brought an action based on that act: [¶] (1) If the action resulted in judgment against the injured person, it precludes a wrongful death action by his beneficiaries to the same extent that the person himself would have been precluded from bringing another

action based on the act . . . ."].)[8] In *Brown*, the court stated, "The 'life' of the wrongful death action is dependent upon the outcome of the original personal injury suit. If the injured party prevailed, the heirs are not precluded from seeking their own damages. Where the judgment was *adverse* to the decedent, however, the contemporary view, and the one to which we subscribe, is that the heirs are collaterally estopped from relitigating the issue." (*Brown v. Rahman*, *supra*, at p. 1461.) As explained in *Evans v. Celotex Corp.* (1987) 194 Cal.App.3d 741, "Plaintiffs' interests in the wrongful death action are inextricably linked to the determination of the deceased's rights in the prior action. The loss they suffer arises by virtue of the injury caused to the deceased. . . . It would be anomalous to deny recovery to the deceased but to award damages to his heirs based on the same set of facts and legal issues." (*Id.* at p. 746.) The Jones adult children are collaterally estopped from alleging a statutory cause of action for wrongful death.

In our view, the foregoing conclusions promote the purposes of the res judicata doctrine to preserve the integrity of the judicial system, promote judicial economy and protect litigants from harassment by vexatious litigation. (*Lucido v. Superior Court*, *supra*, 51 Cal.3d at p. 343.) Applying the doctrine of res judicata, including its collateral estoppel aspect, plaintiffs have not, and cannot, "state facts sufficient to constitute a cause of action," (Code Civ. Proc., § 430.10, subd. (e).) Thus, the trial court properly sustained Crane's demurrer and did not abuse its discretion in denying leave to amend. (*Blumhorst v. Jewish Family Services of Los Angeles*, *supra*, 126 Cal.App.4th at p. 999.)

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8 As did the appellate courts in *Garcia v. Rehrig Internat. Inc.*, *supra*, 99 Cal.App.4th at page 878 and *Brown v. Rahman*, *supra*, 231 Cal.App.3d at page 1463, we decline to follow the contrary conclusion in *Kaiser Foundation Hospitals v. Superior Court* (1967) 254 Cal.App.2d 327, which "'"reflects outdated notions of privity"'" (*Garcia*, *supra*, at p. 878).

DISPOSITION

The judgment is affirmed. Crane is awarded its costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J. ZELON, J.