IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL KAPETAN,
Appellant,
vs.
JACK CHEN AND JUDY CHEN, HUSBAND AND WIFE, D/B/A MASTER GRADE DIVISION OF SIDE TOWN INC.; AND OCEDA CORP.,
Respondents.

No. 45294

FILED

JUL 2 3 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY A. Alvarado
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in a wrongful termination action and a post-judgment order awarding attorney fees. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Daniel Kapetan contends that the district court erred when it granted summary judgment because the doctrine of res judicata did not apply to the action he initiated in district court. More specifically, Kapetan argues that the claims he raised in small claims court are not identical to the claims he raised in district court. Additionally, Kapetan challenges the district court's award of attorney fees pursuant to NRS 18.010(b)(2). The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

"This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court."[1]

[1]Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).



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"Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law."[2]

"'[T]he doctrine of res judicata precludes parties . . . from relitigating a cause of action or an issue which has been finally determined by a court . . . .'"[3] There are two sub-categories of res judicata, issue preclusion and claim preclusion.[4] While issue preclusion only prevents a party from relitigating a particular issue, the modern view of claim preclusion, which this court recognized in University of Nevada v. Tarkanian, precludes litigation of "all grounds of recovery that were asserted in a suit, as well as those that could have been asserted."[5] Claim preclusion applies only when a party brings a second suit against the same party and raises the same claim—and when the parties had a full and fair opportunity to litigate the claim in the first suit.[6] In addition, the doctrine

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[2]Id. at 731, 121 P.3d at 1031.

[3]Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998) (alterations in original) (quoting University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)).

[4]Id.

[5]110 Nev. 581, 599-600, 879 P.2d 1180, 1191-92. See also Ticor Title, 114 Nev. at 834, 963 P.2d at 473.

[6]See Ticor Title, 114 Nev. at 835, 963 P.2d at 473; see also Kremer v. Chemical Construction Corp., 456 U.S. 461, 480-81 (1982).

of claim preclusion is recognized as applying to small claims court judgments.[7]

Both parties concede that the same parties litigated, or were in privity with those that litigated, the prior small claims proceedings and the proceedings before the district court. Thus, the issue in this case is whether Kapetan raised, or could have raised, the same claims in small claims court as he raised in the district court.

All of the counterclaims that Kapetan raised in small claims court arose from Kapetan's employment with and termination from respondent Side Town Inc. Similarly, all of the claims Kapetan raised in district court related to his Side Town Inc. employment contract, employment, and termination. Thus, all of the claims that Kapetan raised in district court were or could have been fully and fairly litigated in the prior small claims court action, and consequently, Kapetan was barred by the doctrine of res judicata from litigating them again in district court.

However, Kapetan argues that the issue concerning his unpaid commissions could not have been determined in small claims court because it exceeded the court's jurisdictional limit.[8] Kapetan has the right

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[7]Allstate Ins. Co. v. Mel Rapton, Inc., 92 Cal. Rptr. 2d 151, 155-56 (Ct. App. 2000). See also Restatement (Second) of Judgments § 24 cmt. g (1982).

[8]Kapetan also asserts that he did not raise the issue of unpaid commissions in small claims court because most of the amounts due had not yet been determined. However, the record in this case belies Kapetan's assertion. In his counterclaim, Kapetan clearly requested the small claims court to order Side Town Inc. to pay him "all current and future account commissions."

to choose the forum in which to bring a claim, but he is then bound to that forum for relief. In this case, Kapetan chose the small claims court as the forum to bring his counterclaims. As the Restatement (Second) of Judgments states, "[t]he [appellant], having voluntarily brought [an] action in a court which can grant . . . only limited relief, cannot insist upon maintaining another action on the claim."[9] Accordingly, we determine that although some of the claims Kapetan raised in district court may have exceeded the small claims court's jurisdictional limit, Kapetan chose the small claims court forum to assert his claims and cannot now relitigate those claims in district court.

Additionally, Kapetan challenges the district court's award of attorney fees and argues that his action in district court was neither frivolous nor brought with intent to harass. This court has determined that "[t]he decision to award attorney fees is within the sound discretion of the district court and will not be overturned absent a 'manifest abuse of discretion.'"[10] We perceive no abuse of discretion in the district court's award of sanctions because, in this case, Kapetan attempted to litigate not only claims that could have been litigated in small claims court, but also claims that were clearly raised and litigated in small claims court.[11]

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[9]Restatement (Second) of Judgments § 24 cmt. g (1982).

[10]Kahn v. Morse & Mowbray, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005) (quoting County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982)).

[11]See NRS 18.010(2)(b) (allowing attorney fees when a claim is brought without reasonable ground or to harass the prevailing party, and directing the court to "liberally construe" the statute to award fees "in all appropriate situations to punish for and deter frivolous or vexatious

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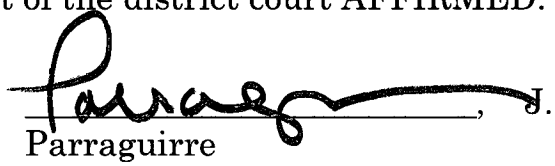
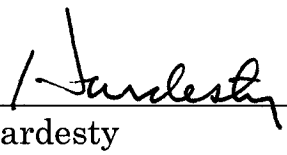
Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Parraguirre



_____, J.
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cc: Hon. Janet J. Berry, District Judge
Carolyn Worrell, Settlement Judge
Henry Egghart
Walther Key Maupin Oats Cox & LeGoy
Washoe District Court Clerk

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claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public").