

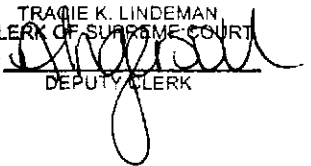
IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY CHARLES,
Appellant,
vs.
OLD REPUBLIC TITLE COMPANY,
Respondent.

No. 61624

FILED

FEB 13 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property contract action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The district court entered judgment in favor of respondent, determining, among other things, that claim preclusion applied to bar appellant's action.¹ Appellant challenges the district court's application of claim preclusion to his two contract-based causes of action.² Claim

¹The district court's order did not specifically address whether it was granting the motion to dismiss or the alternative motion for summary judgment. Because it appears that the district court considered matters outside of the pleadings, we review the order as if it were a summary judgment. See NRCP 12(b); *Coblentz v. Hotel Emps. & Rest. Emps. Union Welfare Fund*, 112 Nev. 1161, 1167, 925 P.2d 496, 499 (1996). We reject appellant's contention that reversal is automatically required because the district court improperly granted a motion to dismiss while it considered matters outside the pleadings. *Coblentz*, 112 Nev. at 1167, 925 P.2d at 499.

²Because we resolve this case based on claim preclusion, we need not address the parties' arguments concerning the application of issue preclusion.

preclusion applies when (1) the parties or their privies are the same, (2) there is a valid final judgment, and (3) the subsequent action involves the same claims that were or could have been brought in the prior action. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008).

On appeal, appellant raises several arguments seeking to attack the validity of the justice court's final judgment, which the district court relied on for claim preclusion. But appellant cannot collaterally challenge the validity of the prior justice court judgment in this subsequent proceeding. *Id.* at 1057 n.41, 194 P.3d at 714 n.41; *see also Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398-402 (1981).

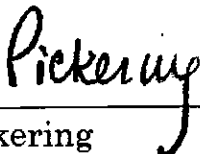
Appellant also argues that the claims in the underlying district court case are different from those in the earlier justice court action because he asserted contract-based claims in his district court complaint, while in the justice court he raised only tort-based claims. This argument fails, however, as claim preclusion applies to any claims that were or could have been brought in the prior action, *see Five Star*, 124 Nev. at 1054-56, 194 P.3d at 713-14, and appellant could have brought his contract claims in the justice court action.

Appellant further asserts that after he filed his justice court tort action, he filed a separate district court action that raised contract claims and that the district court action was later dismissed without prejudice, which cannot serve as a basis for claim preclusion. On this point appellant argues that it was improper to apply claim preclusion to his contract claims in this second district court action based on resolution of the justice court action. We reject this contention, as the justice court case was filed first and appellant could have raised his contract-based claims in that case; the fact that he improperly split his claims between

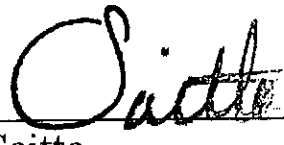
two different earlier court proceedings does not prevent application of claim preclusion in this later proceeding. *Id.*; see also *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977) (holding that a party is prohibited from splitting causes of action and maintaining separate actions on similar claims); *Fitzharris v. Phillips*, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958) (same), *disapproved on other grounds by Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000).

Having reviewed the briefs and appendices on appeal, we conclude that the district court properly applied claim preclusion in granting summary judgment in favor of respondent. Accordingly, we conclude that the district court properly applied claim preclusion and we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Michael Villani, District Judge
Dean J. Gould, Settlement Judge
David M. Korrey
Marquis Aurbach Coffing
Eighth District Court Clerk

³We conclude that appellant's remaining arguments lack merit and do not warrant reversal of the district court's summary judgment.