

IN THE SUPREME COURT OF THE STATE OF NEVADA

ORBIT AMERICAN CORPORATION, A
DELAWARE CORPORATION,
Appellant,
vs.
JEAN PEARSON,
Respondent.

No. 36751

FILED

MAR 08 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting summary judgment in favor of Jean Pearson. The district court held that claim preclusion and issue preclusion bar all of Orbit American Corporation's claims, as the parties have already litigated the right to possession of the premises in a California unlawful detainer action.

1. Delay in asserting defenses.

Orbit initially argues that Pearson did not timely assert these defenses. We have previously held that district courts should liberally allow amendment of the pleadings to assert claim preclusion, unless the plaintiff will be unfairly prejudiced.¹ Here, supplemental pleadings rather than amended pleadings are in issue, as Pearson could not assert these defenses at the time of her answer. However, we review the district court's exercise of discretion over amended pleadings and supplemental pleadings under the same deferential standard.²

¹Schwartz v. Schwartz, 95 Nev. 202, 205, 591 P.2d 1137, 1139 (1979).

²See Diversified Capital v. City N. Las Vegas, 95 Nev. 15, 22, 590 P.2d 146, 150 (1979) ("We have consistently sustained the action of our trial courts in allowing or refusing amended or supplemental pleadings.").

Orbit argued before the district court that it would suffer prejudice from untimely assertion of claim preclusion and issue preclusion solely because it could not depose the California municipal court judge in time to oppose Pearson's motion. This argument has several flaws. First, a deposition of the municipal court judge would have little or no relevance to the motion.³ Second, under NRCP 56(c), Orbit would have ten days to oppose Pearson's motion regardless of when she filed it. Third, Orbit could have moved under NRCP 56(f) for an extension of time to complete discovery. We therefore rule that the district court permissibly exercised its discretion in finding no prejudice, and allowing supplemental pleading of the claim preclusion and issue preclusion defenses.

2. Claim preclusion.

Under the doctrine of claim preclusion, a valid final judgment on a claim prevents re-litigation of that claim or any part thereof.⁴ Claim preclusion bars not only claims actually litigated by the parties, but all claims that could have been asserted in the prior action.⁵ Orbit asserts three claims: (1) for a declaration that Orbit has a right to possession of the property, (2) for an injunction barring Pearson from evicting Orbit, and (3) for damages based on breach of the contractual covenant of good faith and fair dealing.

³Cf. Grant v. Shalala, 989 F.2d 1332, 1344 (3d Cir. 1993) (“[Q]uestioning a judge or administrator about the process by which a decision had been reached would undermine the judicial or administrative process.”) (citing United States v. Morgan, 313 U.S. 409, 422 (1941)).

⁴See Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 835, 963 P.2d 465, 473 (1998).

⁵Id.

An unlawful detainer action in a California municipal court is generally limited to determining right of possession to the disputed property.⁶ Orbit's first two claims seek to litigate right of possession, which was the sole basis of the unlawful detainer action. The California municipal court entered a valid final judgment on these claims, and claim preclusion accordingly bars their re-litigation. Orbit's claim for breach of the covenant of good faith and fair dealing, however, could not be litigated within the municipal court's limited jurisdiction. Therefore, claim preclusion does not bar that claim. We turn, therefore, to issue preclusion.

3. Issue preclusion.

Issue preclusion applies where: (1) the issue litigated in the previous action is identical to the present issue, (2) the previous litigation ended in a final judgment on the merits, and (3) the party against whom issue preclusion is asserted was a party or in privity with a party to the previous litigation.⁷ Further, issue preclusion only applies if the issue was necessary to the previous litigation.⁸

⁶See Pelletier v. Alameda Yacht Harbor, 230 Cal. Rptr. 253, 256 (Ct. App. 1986); Gonzales v. Gem Properties, Inc., 112 Cal. Rptr. 884, 888 (Ct. App. 1974). The municipal court may, however, award damages incidental to reacquiring possession of the property. See Rossetto v. Barross, 110 Cal. Rptr. 2d 255, 259 (Cal. App. Dep't Super. Ct. 2001).

⁷See LaForge v. State, University System, 116 Nev. 415, 419, 997 P.2d 130, 133 (2000) (quoting Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 834, 963 P.2d 465, 473 (1998)).

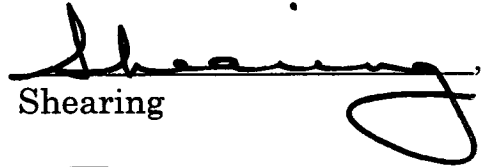
⁸See id.; University of Nevada v. Tarkanian, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994).

A claim for breach of the contractual covenant of good faith and fair dealing necessarily requires the existence of a contract.⁹ Here, the municipal court determined that the contract between Orbit and Pearson had expired without renewal and hence no longer existed. This was a final judgment on the merits between the same parties. The issue was also necessary to the municipal court's decision, as the court could not have awarded possession to Pearson but for a finding that Orbit no longer had a lease. Orbit is thereby precluded from arguing the existence of a contract, and thus cannot assert a cause of action for breach of the covenant of good faith and fair dealing.

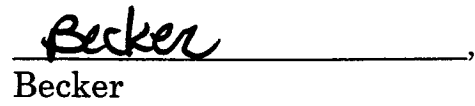
We have considered Pearson's arguments for imposition of sanctions, and rule that sanctions are not warranted here.

⁹See Kim v. Regents of the University of California, 95 Cal. Rptr. 2d 10, 12 (Ct. App. 2000) (citing Smith v. City and County of San Francisco, 275 Cal. Rptr. 17, 24 (Ct. App. 1990)).

Having considered all of Orbit's arguments, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Brent T. Adams, District Judge
Robert E. Dickey Jr.
Curtis B. Coulter
Washoe District Court Clerk