IN THE COURT OF APPEALS OF IOWA

No. 0-648 / 10-0519
Filed November 24, 2010

LAWCHEK, LTD. and
ENLIGHTEN TECHNOLOGIES, INC.,
Plaintiffs-Appellants,

vs.

QWEST COMMUNICATIONS FEDERAL SERVICES, INC., f/k/a QWEST BUSINESS & GOVERNMENT SERVICES, INC., f/k/a U.S. WEST COMMUNICATIONS SERVICES, INC.,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas Koehler, Judge.

Plaintiffs appeal the district court's grant of summary judgment to defendant on the ground that plaintiffs' claims were barred by the doctrine of res judicata. **AFFIRMED.**

John Hines of Dutton, Braun, Staack & Hellman, Waterloo, for appellants.

Stephen J. Holtman and Jason M. Steffens of Simmons Perrine Moyer Bergman, P.L.C., Cedar Rapids, for appellee.

Heard by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

HUITINK, S.J.

I. Background Facts & Proceedings

In 2003 U.S. West Communications Services, Inc., now known as Qwest Communications Federal Services, Inc. (Qwest), obtained a judgment in Colorado against Lawchek, Ltd. (Lawchek), now known as enlighten technologies, inc., for about $2 million, plus interest. In 2008 Qwest registered the judgment, then worth more than $3 million, in Iowa.

In October 2008, Lawchek contacted Qwest in an effort to negotiate a settlement agreement for the debt. Lawchek, through its president Richard Pundt, believed the parties had reached an agreement with Heather Shull, in-house counsel for Qwest, to settle the matter for $500,000. Pundt instructed an Iowa attorney, Larry Thorson, and a Colorado attorney, Jeffrey Esses, to prepare settlement documents. Additionally, Lawchek gave Thorson a cashier's check for $500,000, and Thorson placed this in his attorney trust account. Shull received the settlement documents. She did not repudiate the documents, but neither she nor anyone else at Qwest signed the documents. Shull told Pundt she wanted updated financial reports. Lawchek declined to provide those reports.

In January 2009, Qwest filed a notice of garnishment of the $500,000 held in Thorson's trust account. On February 4, 2009, Lawchek filed a challenge to levy pursuant to Iowa Code section 642.15 (2009). Also, on February 9, 2009, Lawchek filed a petition at law. In both actions Lawchek claimed the parties had reached a settlement agreement.

A hearing on the garnishment action was held on February 18, 2009. Qwest objected to the consideration of any matters beyond the scope of section 642.15, which it asserted were specifically limited to whether or not the property held by the garnishee was exempt from execution. The district court stated it believed more than exemptions could be considered. Lawchek raised four issues: (1) the court had jurisdiction to consider other matters under section 642.15; (2) there was a settlement agreement; (3) the funds had been placed in a special deposit and could only be used for the settlement; and (4) Qwest never repudiated the settlement.

At the hearing, Lawchek presented the testimony of Thorson, Esses, and Pundt. Qwest presented the testimony of Shull, who stated she did not have authority to approve a settlement agreement involving this amount of money. Copies of e-mails between the parties on the issue of the settlement documents were admitted into evidence.

The district court issued an order on March 8, 2009, which found "the evidence to support a settlement agreement is inconclusive." The court found there was no evidence of a specific act of assent to a settlement agreement by a representative of Qwest. The court concluded there was insufficient evidence Qwest accepted Lawchek's proposed settlement of the debt. The court also found Lawchek had the ability to withdraw the funds from Thorson's trust account at any time to use for other purposes. The court concluded the $500,000 placed

in Thorson's trust account constituted unrestricted funds that were subject to levy of execution. The court denied the challenge to levy.[1]

The legal action filed on February 9, 2009, remained outstanding. On January 24, 2010, Qwest filed a motion for summary judgment, asserting Lawchek's claims were barred by both claim preclusion and issue preclusion. Lawchek resisted the motion for summary judgment, stating there had not been a full and fair adjudication of the issues at the garnishment proceeding, which it characterized as a "summary proceeding." Lawchek asserted it was raising separate claims in these proceedings to enforce the settlement agreement and for failure to negotiate in good faith.

The district court issued its decision on March 11, 2010, granting the motion for summary judgment. The court found Lawchek's action was barred under theories of claim preclusion and issue preclusion. The court stated, "Plaintiffs should not be afforded a second bite at the apple merely because they failed to present all relevant evidence (including whether Defendant failed to negotiate in good faith) at the time" of the garnishment proceedings. Lawchek appeals the district court's decision granting summary judgment to Qwest.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. *See* Iowa R. App. P. 6.907 (2009). Under Iowa Rule of Civil Procedure 1.981(3) summary judgment is proper only when the

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[1] Lawchek appealed the district court's decision. On February 24, 2010, this court affirmed the district court's decision on the challenge to levy. *See Qwest Bus. & Gov't Servs. v. Lawchek, Ltd.*, No. 09-0579 (Iowa Ct. App. Feb. 24, 2010).

record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008). The court views the record in the light most favorable to the nonmoving party. *Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2000).

III. Claim Preclusion

Lawchek contends claim preclusion does not apply in this case because the issues raised in the present action were not fully and fairly adjudicated in the garnishment hearing. Lawchek states it is raising different claims in this case—enforcement of the settlement agreement and failure to negotiate in good faith. It asserts it is prepared to present additional evidence at a trial on the present action, including Pundt's personal notes from telephone conversations regarding the settlement agreement. Lawchek states it was previously raising a statutory remedy to prevent wrongful garnishment, and is now seeking to enforce a contract.

In general, the doctrine of claim preclusion bars further litigation of a claim or cause of action. *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992). Claim preclusion involves the following elements: (1) the parties in the two actions were the same; (2) the claim in the second action could have been fully and fairly adjudicated in the prior case; and (3) there was a final judgment on the merits in the prior action. *George v. D.W. Zinser Co.*, 762 N.W.2d 865, 868 (Iowa 2009). Claim preclusion "applies only when a party has had a 'full and fair opportunity' to litigate in the first trial." *Id.* (citation omitted). An adjudication in a prior action between the same parties on the same claim is final as to all matters that could

have been presented in that prior action. *B & B Asphalt Co. v. T.S. McShane Co.*, 242 N.W.2d 279, 286 (Iowa 1976).

A court must consider whether two causes of action present the same claim. *Huffey*, 491 N.W.2d at 521. A second claim may be considered the same as a prior claim "if the acts complained of, and the recovery demanded, are the same, or when the same evidence will support both actions." *Leuchtenmacher v. Farm Bureau Mut. Ins. Co.*, 460 N.W.2d 858, 860 (Iowa 1990). It is not sufficient to raise a new theory of recovery if the acts complained of and the demand for recovery are the same. *B & B Asphalt*, 242 N.W.2d at 286. Generally, "identity of cause of action is established when the same evidence will maintain both actions." *Id.*

A review of the challenge to levy filed on February 4, 2009, and the petition at law filed on February 9, 2009, show they are not just similar, but are essentially identical in large part. The challenge to levy requested a cessation of any attempted levy on the funds held in Thorson's trust account and for enforcement of the settlement agreement. The petition at law seeks to prevent the levy and to require Qwest to comply with the settlement agreement. The two actions raise the same claims and seek the same relief.

Concerning Lawchek's claim that it had additional evidence, we note that at the garnishment proceeding, Lawchek indicated it was prepared to proceed with presenting evidence on the settlement. The court did not in any way prevent or inhibit Lawchek from presenting evidence at the hearing. After presenting the testimony of Thorson, Esses, and Pundt, and copies of relevant e-mails,

Lawchek rested. Pundt's telephone notes from discussions about the settlement would have been in existence at the time of the garnishment hearing, and Lawchek could have offered those notes at that time. Lawchek's decision not to offer certain evidence should not be the determining factor in a consideration of whether Lawchek's legal action is barred by claim preclusion.

We conclude the claims in the present case are the same as those raised in the garnishment proceeding. We determine the district court did not err in granting summary judgment to Qwest based on claim preclusion.

IV. Issue Preclusion

We also address Lawchek's alternative argument that its claims are not barred by issue preclusion because the issue of whether the settlement agreement was enforceable was not necessary or essential to the issue of whether Qwest could garnish the $500,000 in Thorson's trust account.

Issue preclusion prevents a party to a prior action from relitigating in a subsequent action issues raised and resolved in the earlier action. *Heidemann v. Sweitzer*, 375 N.W.2d 665, 667 (Iowa 1985). A party asserting issue preclusion must show: (1) the issue concluded is identical; (2) the issue was raised and litigated in the prior action; (3) the issue was material and relevant to the disposition of the prior action; and (4) the determination of the issue was necessary and essential to the resulting judgment. *George*, 762 N.W.2d at 868. Issue preclusion "serves two important goals of providing fairness to the successful party in the first case and promoting efficient use of court resources

by prohibiting repeated litigation over the same issue." *Hunter v. City of Des Moines Mun. Housing Auth.*, 742 N.W.2d 578, 584 (Iowa 2007).

As noted above, one of the four issues raised by Lawchek at the garnishment proceeding was whether there had been a settlement agreement. The district court's ruling of March 8, 2009, on the challenge to levy addressed the issue of whether a settlement agreement precluded execution on the judgment. The court noted there needed to be evidence of a specific act of assent by a representative of Qwest to the proposed settlement, and there was no evidence of acceptance by Qwest. Then, as now, Lawchek's defense was based on its claim that Qwest should abide by the settlement agreement. We conclude the court necessarily addressed this issue, and it was material and relevant to the court's determination of the rights of the parties at the time of the garnishment. Therefore, this issue is barred from further consideration in the present suit due to issue preclusion.

Additionally, Lawchek asserts that due to differences in the scope and extensiveness of garnishment proceedings compared to regular proceedings, issue preclusion should not apply. There are exceptions to the doctrine of issue preclusion. *Grant v. Iowa Dep't of Human Servs.*, 722 N.W.2d 169, 174 (Iowa 2006). One of these exceptions is when "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures in the two courts or by factors relating to the allocation of jurisdiction between them." *Heidemann*, 375 N.W.2d at 668 (quoting Restatement (Second) of Judgments § 28(3), at 273-74 (1982)). Based on this exception, the Iowa Supreme Court

has determined issue preclusion does not apply to small claims adjudications. *Village Supply Co. v. Iowa Fund, Inc.*, 312 N.W.2d 551, 554 (Iowa 1981).

Small claims actions are governed by Iowa Code chapter 631. A court sitting in small claims has limited jurisdiction, and must abide by the statutes and rules of that chapter. *See* Iowa Code §631.2. Small claims actions are held "without regard to technicalities of procedure." *Id.* § 631.11(1). Lawchek has made no showing that a garnishment procedure under chapter 642 is similar to a small claims action. There are no special rules regarding garnishment proceedings, and instead such actions "shall be tried in the usual manner . . . ." *Id.* § 642.11. We conclude Lawchek has not shown the exception based on the quality or extensiveness of the proceedings applies in this case.

V. Failure to Negotiate in Good Faith

Finally, Lawchek contends that even if its claim regarding the settlement agreement is barred due to claim preclusion and/or issue preclusion, the prior garnishment proceedings did not address its claim of failure to negotiate in good faith and this claim has not been barred. Lawchek asserts it should be permitted to proceed with its lawsuit on this issue.

This issue was addressed previously. In the appeal of the ruling in the garnishment proceeding we stated:

> Lawchek also contends Qwest's actions are contrary to a party's duty of good faith and fair dealing. However, this contractual duty only applies to the performance and enforcement of a contract, not negotiations. *Engstrom v. State*, 461 N.W.2d 309, 314 (Iowa 1990). Although sanctions and tort remedies may be available, without evidentiary support for the existence of a contract, this claim has no application here. *Id.*

Qwest Bus. & Gov't Servs. v. Lawchek, Ltd., No. 09-0579 (Iowa Ct. App. Feb. 24, 2010) (footnote omitted). We conclude Lawchek may not relitigate the issue of whether there was a failure to negotiate in good faith.

We affirm the decision of the district court granting Qwest's motion for summary judgment.

AFFIRMED.