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DISTRICT IV

May 9, 2014

To:

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You are hereby notified that the Court has entered the following opinion and order:

2012AP2698 Greg Griswold v. Tana Lisa Tracey (L.C. # 2012CV2863)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Greg Griswold appeals an order granting summary judgment against him and in favor of respondent Tana Tracey, based on the doctrine of claim preclusion. On appeal, Griswold argues that his claims are not barred by claim preclusion, that the circuit court judge held a bias against him, and that the court improperly denied his motion for sanctions. Based upon our review of

the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[1] We summarily affirm.

This case arises from Tracey's attempted purchase of a boat named "Mai-Tai" from Griswold, with negotiations beginning in September 2006. The transaction fell through, and Tracey filed a lawsuit in Minnesota against Second Wind Boatworks, Inc., a dissolved business owned by Griswold.[2] A default money judgment was entered in that case in December 2008 against Griswold. Griswold then filed this action individually in July 2012. The Dane County circuit court ruled on summary judgment that Griswold's claims were barred by the doctrine of claim preclusion. Griswold now appeals.

We review a circuit court's ruling on summary judgment de novo. ***Chapman v. B.C. Ziegler & Co.***, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. Application of the doctrine of claim preclusion is also a question of law that we review de novo. ***Barber v. Weber***, 2006 WI App 88, ¶8, 292 Wis. 2d 426, 715 N.W.2d 683. The doctrine of claim preclusion has three elements that must be satisfied: "(1) identity between the parties or their privies in the prior and present suits; (2) prior litigation [that] resulted in a final judgment on the merits by a court with jurisdiction; and (3) identity of the causes of action in the two suits." ***Kruckenberg v. Harvey***, 2005 WI 43, ¶21, 279 Wis. 2d 520, 694 N.W.2d 879.

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[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] Griswold asserts in his brief, in a rather disjointed and confusing manner, that the name of the entity was Second Wind Boat Works, Inc., with a space between "Boat" and "Works." However, Griswold fails to explain why this difference in spelling matters, given the other facts of record. Griswold admitted in his answer filed in the Minnesota lawsuit that he was the sole shareholder and president of Second Wind Boat Works, a Wisconsin corporation, at the time it dissolved on June 3, 2008. He also asserted in the complaint filed in this case that he entered into a contract for the Mai-Tai boat with Tracey in September 2006.

There is no question that the Minnesota litigation resulted in a final judgment on the merits by a court with jurisdiction. On appeal, Griswold challenges the two remaining requirements for claim preclusion. He argues that claim preclusion is not appropriate because the parties and the causes of action are not the same in this case and the Minnesota case. Griswold asserts that, in this case, he is seeking compensation individually, and not on behalf of his dissolved entity, for work done repairing the boat. Griswold also asserts that this case involves new claims not addressed in the Minnesota action.

Griswold's argument about the identity of the parties fails under ***Great Lakes Trucking Co., Inc. v. Black***, 165 Wis. 2d 162, 477 N.W.2d 65 (Ct. App. 1991). There we stated, "There is an identity of parties when a party in the second proceeding is a privy of a party in the first proceeding." ***Id.*** at 170. That is the case here. Griswold admits that he was a participant in the transaction that gave rise to both the first and second action. Any potential liability of Second Wind Boatworks in the first action would have been derived wholly from Griswold, as its sole shareholder and president. *See* ***id.*** at 172. Thus, we are satisfied that the "identity between the parties" prong of the claim preclusion doctrine is satisfied. ***Kruckenberg***, 279 Wis. 2d 520, ¶21.

With respect to identity of the causes of action, Griswold fails to point to any new claim that was not already litigated or should have been raised as a compulsory counterclaim in the Minnesota action. *See* **Menard v. Liteway Lighting Prods.**, 2005 WI 98, ¶28, 282 Wis. 2d 582, 698 N.W.2d 738 (discussing the compulsory counterclaim rule). He argues at length why he believes the outcome of the Minnesota litigation was unjust, but doing so does not describe a new cause of action. We conclude, as did the circuit court, that Griswold's claims are barred by claim preclusion. It follows that Griswold's argument for sanctions also fails, given that he is not a prevailing party.

Finally, turning to Griswold's argument that the circuit court judge held a bias against him, we reject this argument because it is meritless. There is a presumption that a judge is free of bias and, to overcome this presumption, the party asserting bias must show by a preponderance of the evidence that the judge is biased or prejudiced. ***State v. Santana***, 220 Wis. 2d 674, 684, 584 N.W.2d 151 (Ct. App. 1998). Nothing cited in Griswold's brief shows even an arguable bias against him on the part of the judge.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals