

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-000231-MR

JAVIER STEEL CORPORATION

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A. C. MCKAY CHAUVIN, JUDGE  
ACTION NO. 05-CI-005714

CENTRAL BRIDGE COMPANY, LLC;  
CENTRAL ROCK MINERAL CO., LLC;  
AND L-M ASPHALT PARTNERS, LTD.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: STUMBO AND THOMPSON, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

THOMPSON, JUDGE: Javier Steel Corporation appeals from the Jefferson

Circuit Court's summary judgment in favor of Central Bridge Company, LLC., and

Central Rock Mineral Company, LLC.<sup>2</sup> The issue presented is whether the circuit

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> Central Rock Mineral Co., LLC is no longer a separate legal entity but is the assumed name for L-M Asphalt Partners, Ltd., which was made a party to this appeal based on the new d/b/a status

court properly found that Javier Steel's claim was barred by the doctrine of *res judicata*. We affirm.

From September 1999 through January 2002, Javier Steel and Central Bridge entered into a series of subcontracts for various road, highway, and bridge construction projects. Central Rock was the prime contractor on the projects and partially owns Central Bridge. Javier Steel is a steel contractor certified and prequalified under federal and state law as a Disadvantaged Business Enterprise (DBE). As a DBE, the contract with Javier partially satisfied the minority subcontractor participation requirements on highway construction contracts awarded by state and federal governments, including the requirement that a certain percentage of the total contract amount be issued to minority companies. 23 U.S.C.A. § 101; 49 CFR§ 26.1 et. seq.

Javier completed the contracts and Central Bridge made timely payments. Subsequently, Central Bridge discovered that it overpaid Javier for materials because of a computer software malfunction. After the parties were unable to resolve the dispute, on March 24, 2004, Central Bridge filed an action in the Jefferson Circuit Court (the Division One action) to recoup the overpayments.

Javier filed a counterclaim alleging that Central Bridge had wrongfully withheld approximately \$159,483 in payments owed on five subsequent contracts, including what the parties refer to as the "Paris Pike" contract. On February 17, 2005, less than two months prior to the scheduled trial

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of Central Rock.

date, Javier attempted to amend its counterclaim alleging that the Paris Pike contract was modified on October 10, 2001, and, consequently, the amount owed on the Paris Pike contract increased from \$964,429.28 to \$1,736,653.85. However, because it was untimely under the trial court's jury trial order, the motion to amend was denied. Although the trial date was continued until July 15, 2005, and the pretrial deadlines extended, Javier did not file a second motion to amend its counterclaim.

Two weeks prior to the trial on the Division One claim, Javier filed the present action (the Division Eight action) alleging the same contract modification to the Paris Pike contract as alleged in its tendered amended counterclaim. Central Bridge and Central Rock moved to dismiss the complaint on the basis of *res judicata*. On August 15, 2005, the then Division Eight Judge, Judge Thomas Wine, ruled that the Division Eight action was a "separate and unique action from the Counterclaim being heard in Division One" and denied the motion.

Prior to Judge Wine's ruling, a three-day bench trial commenced in the Division One action and concluded on August 19, 2005. For reasons not relevant to our present discussion and fully set forth in this Court's opinion in *Javier Steel Corp. v. Central Bridge Co., LLC*, \_\_S.W.3d \_\_, 2011 WL 117657 (2011), a judgment was not entered in the Division One action until March 17, 2008. The trial court found that Central Bridge had overpaid Javier \$547,606.54

but that it failed to pay Javier \$145,183.28 under the subcontracts, including the Paris Pike contract. Javier appealed and this Court affirmed.

Following the trial court's judgment, Central Bridge and Central Rock filed a motion for summary judgment in the Division Eight action again arguing that Javier's claim was barred by *res judicata*. Because Judge Wine had been appointed to this Court, a different judge heard the motion and ruled that the action was barred. This appeal followed.

Initially, we address whether Judge Wine's order denying the motion to dismiss on the basis of *res judicata* resolved the issue. Under similar circumstances presented, in *Davidson v. Castner-Knott Dry Goods Co., Inc.*, 202 S.W.3d 597 (Ky.App. 2006), the Court held that a judge has discretionary authority to reconsider a ruling.

Generally, a judge may reexamine an earlier ruling and rescind it if he has a reasonable conviction that it was wrong and it would not cause undue prejudice to the party that benefited from it. *Id.* Moreover, and of particular relevance here, [i]t is well established that a trial court may reconsider and grant summary judgment to a party subsequent to an earlier denial.

We review a decision to reconsider under an abuse of discretion standard. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

*Id.* at 602 (internal citations and quotations omitted).

We conclude that the trial court did not abuse its discretion when it reconsidered Judge Wine's earlier ruling. The trial court thoroughly reviewed the

record, including events subsequent to Judge Wine's order, and, exercising its discretion, found the action barred by *res judicata*. Furthermore, Javier has not presented "substantive evidence of undue prejudice" to merit reversal. *Id.* We turn to Javier's remaining contentions.

Javier contends that the trial court erred when it held its claim was barred by the doctrine of *res judicata*. *Res judicata* is a doctrine that serves the purpose of ensuring the finality of a judgment by preventing relitigation of issues or causes of action. "The doctrine of *res judicata* is that a final judgment rendered upon the merits of the case, by a court having jurisdiction of the subject-matter and the parties, is conclusive of the rights of the parties and their privies in another suit on the points and matters in issue in the first suit." *Prewitt v. Wilborn*, 184 Ky. 638, 212 S.W. 442, 449 (1919). It involves two subparts: "Claim preclusion" and "issue preclusion." *Yeoman v. Commonwealth, Health Policy Board*, 983 S.W.2d 459, 464–65 (Ky. 1998). "Claim preclusion bars a party from relitigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action. Issue preclusion bars the parties from relitigating any issue actually litigated and finally decided in an earlier action." *Id.* at 465. (internal citations omitted). In *Newman v. Newman*, 451 S.W.2d 417, 419 (Ky. 1970), the Court concisely set forth the conditions under which the doctrine is applied:

First, there must be identity of parties. Second, there must be identity of the two causes of action. Third, the action must be decided upon its merits. In short, the rule of *res adjudicata* does not act as a bar if there are different issues or the questions of law presented are

different. Likewise, it has long been recognized that a party may not split his cause of action, therefore, if a cause of action should have been presented and the party failed to do so and the matter should again arise in another action, it will be held that the first action was *res adjudicata* as to all causes that should have properly been presented.

There is an identity of parties in the Division One action and the Division Eight action. The Division One action was commenced by Central Bridge against Javier and although Central Rock was not a party to the prior litigation, it was in privity with Central Bridge as the prime contractor on the Paris Pike project that had a first-tier subcontract with Central Bridge and as partial owner of Central Bridge. The rule that *res judicata* extends to privies of the parties to the original action is “essentially one of justice and fairness and recognizes that a question once litigated should not be relitigated.” *State Farm Mut. Auto. Ins. Co. v. Shelton*, 368 S.W.2d 734, 737 (Ky. 1963). Thus, there is an identity of interests in relation to Javier’s claims and, if *res judicata* precludes Javier’s claim against Central Bridge, its claim against Central Rock is likewise barred.

In the Division One action, Javier asserted a counterclaim against Central Bridge alleging that Central Bridge withheld payment on the Paris Pike contract. Although Javier’s present claim asserts modifications of the contract rather than payments withheld, its claim nevertheless arises from the Paris Pike contract, the precise subcontract at issue when Javier filed its counterclaim.

Javier argues that *res judicata* cannot apply because its motion to amend its counterclaim to assert the modification of the Paris Pike subcontract was

denied as untimely. A closer reading of the law proves that Javier is mistaken. A subsidiary rule to *res judicata* is “that a cause of action may not be split and tried piecemeal.” *Egbert v. Curtis*, 695 S.W.2d 123, 124 (Ky.App. 1985). “Stated another way the subsidiary rule makes *res judicata* applicable not only to the issues disposed of in the first action, but to every point which properly belonged to the subject of the litigation in the first action and which in the exercise of reasonable diligence might have been brought forward at the time.” *Id.*

Javier’s detailed discussion of its status as a DBE and the laws and regulations applicable to DBE contracts does not persuade this Court that it can be exempted from established legal doctrine. The *res judicata* doctrine encompasses the basic legal premise that a party cannot present its claim in a piecemeal fashion. *Arnold v. K-Mart Corp.*, 747 S.W.2d 130, 132 (Ky.App. 1988). Thus, Javier’s attempt to split its cause of action against Central Bridge and Central Rock must fail. When “one cause of action arises from the breach of an entire and indivisible contract, and if in the action to enforce that cause of action the plaintiff does not demand the entire relief to which he is entitled, he cannot afterward sue for the balance.” *Overstreet v. Greenwell*, 441 S.W.2d 443, 445 (Ky. 1969) (quoting 1 Am.Jur.2d 652-653, *Actions*, § 135-136). Javier was required to assert any claims arising from the Paris Pike contract in its counterclaim filed in Division One. Thus, the trial court properly found that the doctrine of *res judicata* barred Javier’s claim.

The judgment of the Jefferson Circuit Court is affirmed.

SHAKE, SENIOR JUDGE, CONCURS.

STUMBO, JUDGE, CONCURS IN RESULT ONLY.

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