

IN THE UTAH COURT OF APPEALS

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K & T, Inc., a Utah)	MEMORANDUM DECISION
corporation, dba Budget Rent-)	(Not For Official Publication)
A-Car,)	
)	Case No. 20070624-CA
Plaintiff and Appellant,)	
)	
v.)	F I L E D
)	(May 30, 2008)
)	
Todd L. Vowell,)	2008 UT App 211
)	
Defendant and Appellee.)	

Third District, Salt Lake Department, 050901114
The Honorable Robert P. Faust

Attorneys: Lance F. Sorenson and Donald J. Winder, Salt Lake City, for Appellant
Curtis M. Jensen and N. Adam Caldwell, St. George, for Appellee

Before Judges Thorne, Bench, and Davis.

BENCH, Judge:

Plaintiff K & T, Inc., a Utah corporation doing business as Budget Rent-A-Car (Budget), appeals the trial court's dismissal of its claims against Todd L. Vowell for breach of contract and unjust enrichment. We affirm the dismissal because Budget's claims are barred by the principle of collateral estoppel.

Collateral estoppel, or issue preclusion, "'prevents parties or their privies from relitigating facts and issues in [a] second suit that were fully litigated in [a previous] suit.'" Buckner v. Kennard, 2004 UT 78, ¶ 12, 99 P.3d 842 (quoting Macris & Assocs. v. Neways, Inc., 2000 UT 93, ¶ 19, 16 P.3d 1214).

A party seeking to invoke collateral estoppel must establish that: (1) the issue decided in the prior adjudication is identical to the one presented in the instant action; (2) the party against whom issue preclusion is asserted was a party, or in privity with a party, to the prior adjudication; (3) the

issue in the first action was completely, fully, and fairly litigated; and (4) the first suit resulted in a final judgment on the merits.

Id., ¶ 13; see also Snyder v. Murray City Corp., 2003 UT 13, ¶ 35, 73 P.3d 325.

Here, Budget was the plaintiff in the original breach of contract action against DLSS Transportation Inc. (DLSS). The original action eventually led to a judgment on the merits in favor of Budget that DLSS was the owner of the credit card and therefore liable on the breached rental agreements. Once DLSS became judgment-proof through bankruptcy, Budget brought the instant suit against Vowell and attempted to establish that the credit card was actually his.

In its reply brief, Budget concedes that this case is all about ownership of the credit card. In the original suit against DLSS, Budget established, and the trial court found, that the credit card belonged to DLSS. Now in this suit against Vowell, Budget has claimed that the credit card in question is actually owned by Vowell and not by DLSS.¹ Despite Budget's protestations, this issue of ownership is the same issue that Budget litigated in the previous action. Budget provides us with no viable reason why the issue of ownership of the credit card was not "completely, fully, and fairly litigated" in the original suit. Buckner, 2004 UT 78, ¶ 13. In fact, we cannot seriously consider Budget's claims that it did not fully litigate ownership of the credit card because ownership was of the utmost importance in holding DLSS liable in that first suit.

The record demonstrates that all four elements of collateral estoppel have been met. It was therefore not error for the trial court to preclude any relitigation on the issue of ownership of the credit card. That issue was previously litigated by Budget in a case decided on the merits, in Budget's favor, and in reliance on the determination of the issue Budget now seeks to relitigate. The trial court's dismissal was appropriate because Budget is precluded from claiming that the credit card belongs to Vowell. Without such a threshold determination, Budget cannot

1. Budget's view of the litigation demonstrates that this is not a co-obligor situation as suggested by the dissent. Budget asks us to allow it to relitigate the issue of who is liable for the previously adjudicated debt without granting Vowell an opportunity to contest other aspects of the debt, such as any inherent problems in seeking to hold Vowell personally liable for DLSS's corporate debt, or even the amount actually owed.

prevail on its breach of contract or unjust enrichment causes of action as stated in its Complaint.

Because we affirm the trial court's decision based on the principle of collateral estoppel, we need not address Budget's arguments concerning other alleged errors in the trial court's decision.²

Affirmed.

Russell W. Bench, Judge

I CONCUR:

James Z. Davis, Judge

THORNE, Judge (dissenting):

I respectfully dissent. I do not agree with the majority that Budget's claims are barred by the principle of collateral estoppel. In particular, I disagree with the majority's determination that the issue decided in the prior adjudication is identical to the one presented in the instant action.

The issue actually litigated and decided in the prior adjudication pertained only to the liability for the rental car debt and did not directly address the issue of Vowell's alleged ownership of the credit card used to incur the charges. The majority correctly notes that the trial court, in determining that the liability for the rental car debt rests with DLSS, also

2. Budget raises an argument based on Utah Code section 15-4-2. See Utah Code Ann. § 15-4-2 (2005). Because this argument was raised for the first time on appeal in the reply brief, we do not consider it. See Utah R. App. P. 24(c) (stating that appellate courts will not consider matters addressed for the first time in the reply brief); State v. Holgate, 2000 UT 74, ¶ 11, 10 P.3d 346 ("As a general rule, claims not raised before the trial court may not be raised on appeal.").

found that the credit card used to incur the charges belonged to DLSS. This finding does not, however, mean that the ownership issue was fully litigated, nor does it preclude Budget from arguing that Vowell also had an ownership interest in the credit card.

Although the court found that the credit card belonged to DLSS, it did not find that DLSS was the exclusive owner of the credit card, nor did it consider whether Vowell also had an ownership interest in the credit card. Indeed, the record is devoid of any mention of Vowell. As a result, the issue of Vowell's ownership of the credit card was neither contested nor litigated below. Thus, the issue decided in the prior adjudication establishing liability for the rental car debt is different than the one presented in the instant action regarding Vowell's ownership interest in the credit card.

Because the issue of Vowell's ownership was not fully litigated by the affected parties below, Budget's claims against Vowell should not be barred by the principle of collateral estoppel. Budget should have the opportunity to pursue its claim against Vowell in the trial court in the instant action.¹

William A. Thorne Jr.,
Associate Presiding Judge

1. It should also be noted, that Utah Code section 15-4-2 does not prohibit Budget from litigating Vowell's ownership in the credit card debt after first pursuing its claim against DLSS. See Utah Code Ann. § 15-4-2 (2005). Indeed, the language in section 15-4-2 supports an inference that a plaintiff need not bring all suits in the same action. See id. ("A judgment against one or more of several obligors, or against one or more of joint or of joint and several obligors, shall not discharge a co-obligor who was not a party to the proceeding wherein the judgment was rendered."). Therefore, it would be improper to conclude that Budget was required to sue Vowell in the first action.