Third District Court of Appeal

State of Florida

Opinion filed August 7, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-818
Lower Tribunal No. 17-19805

Juan Chavez,
Appellant,

vs.

Tower Hill Signature Insurance Company,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Miguel M. de la O, Judge.

David B. Pakula (Pembroke Pines); Michael A. Nuzzo, for appellant.

Link & Rockenbach, P.A., and Kara Berard Rockenbach and Daniel M. Schwarz (West Palm Beach); Stone, Glass & Connolly, LLP, and Hugh J. Connolly, IV, for appellee.

Before SALTER and MILLER, JJ., and LEBAN, Senior Judge.

LEBAN, Senior Judge.

Juan Chavez ("Chavez") appeals the trial court's order granting final summary judgment in favor of Tower Hill Signature Insurance Company ("Tower Hill"). After an initial first-party property action brought by Chavez against Tower Hill was resolved by summary judgment in favor of Tower Hill, and subsequently affirmed on appeal, Chavez filed a replica lawsuit seeking damages arising out of the same loss. While baseball sage Yogi Berra's famous malapropism, "it's like déjà vu all over again" is worth hearing once more, Chavez's second lawsuit, a clone of his first, is not. Concluding that the current claim was barred by the doctrine of res judicata, we once again affirm the summary judgment.

STATEMENT OF FACTS

On April 20, 2014, Chavez sustained damage to his residence as a result of water leakage from a broken drain line. Chavez submitted a claim to his homeowner's insurer, Tower Hill, and competing estimates were prepared for the loss. Chavez's public adjuster estimated damages to be $106,347.00, while Tower Hill's independent adjuster estimated damages to be $30,785.92. Tower Hill issued payment in the amount of $25,894.58 after application of the deductible and depreciation. Disagreeing with the payment amount, Chavez sued Tower Hill for breach of contract ("Chavez I"), for failing to make full payment for all of the damages sustained to Chavez's residence. In defense, Tower Hill affirmatively alleged that: (1) Chavez had already been paid for all of the damages associated with

the covered loss; (2) there was no evidence that Chavez incurred any actual replacement costs over and above the payments already made; and (3) there was no evidence of any additional damages.

The trial court granted Tower Hill's ensuing motion for summary judgment and entered an order expressly finding no breach by Tower Hill and providing that its order "does not preclude [Chavez] from submitting supplemental claims" pursuant to Slayton v. Universal Property & Casualty Insurance Co., 103 So. 3d 934 (Fla. 5th DCA 2013) (finding payment of an insurance claim did not constitute breach of contract as insured was allowed to submit a supplemental claim). Chavez's motion for rehearing was denied and this Court per curiam affirmed the trial court's order granting summary judgment.[1]

After this Court issued its affirmance in Chavez I, Chavez submitted to Tower Hill a conditional contract for the repair of the damage to Chavez's property resulting from the April 20, 2014 water leakage, proposing a total repair cost of $110,050.00. Chavez refers to this proposal as a "sworn proof of loss." An addendum to the proposal, signed by Chavez and the contractor, J & J Construction, provided that the proposal was contingent upon coverage being provided and that either party could cancel "prior to the commencement of any repairs." Both parties agree that prior to

[1] See Chavez v. Tower Hill Signature Ins. Co., 203 So. 3d 167 (Fla. 3d DCA 2016). We issued our mandate on October 14, 2016.

filing the instant lawsuit, Chavez undertook no repair, incurred no expense in furtherance of repairing his property, nor did he allege or submit any proof of latent or hidden damages discovered after the filing of the Chavez I lawsuit. Tower Hill obtained a competing estimate, and on August 17, 2017, issued an additional payment totaling $7,099.64. Disagreeing with the payment amount, Chavez sued Tower Hill for breach of the insurance policy ("Chavez II").

In Chavez's amended complaint, filed on August 14, 2017, Chavez alleged that Tower Hill's failure to pay the amount of Chavez's "supplemental claim"[2] constituted a breach of the insurance contract. Tower Hill moved for summary judgment, arguing that the doctrines of res judicata and collateral estoppel barred Chavez's lawsuit. A hearing was conducted, and on April 10, 2018, the trial court granted Tower Hill's motion for summary judgment, its written order stating in part:

> The Court reiterates, as did Judge Schlesinger in his Order granting summary judgment in Case No. 2014-14150-CA-01 on February 23, 2015, and as the Defendant argued in its Answer Brief to the Third DCA, that Plaintiff is [sic] precluded from filing supplemental claims.[3]

[2] In his written submission and at oral argument, Chavez referred to the contractor's repair proposal as a "sworn proof of loss." He asserts that it constitutes his "supplemental claim." We address this assertion, *infra*.

[3] Reading the pertinent orders in Chavez I, and the case at bar *in pari materia*, enables us to safely conclude that the above quoted order contains a scrivener's error by omitting the word "not," so that the order should read "Plaintiff is not precluded from filing supplemental claims." Neither party contends otherwise.

Chavez filed a motion for rehearing during which Chavez responded to the court's inquiry that he had not undertaken repairs, nor did he intend to do so. When discussing whether Chavez had filed a supplemental claim as expressly authorized in the Chavez I summary judgment order, the court stated:

> There is no res judicata if it's a supplemental claim. *If it's not a supplemental claim, there is res judicata. * * * I don't see how [Chavez II is] not barred by res judicata at this point until your client starts making repairs* . . . I don't see anything that tells me I'm supposed to rule differently.

(Emphasis added). Although the trial court orally relied on res judicata during the rehearing motion, in its written order denying rehearing, the court relied on the law of the case doctrine, observing that "a per curiam decision of the appellate court is the law of the case between the same parties on the same issues and facts, and determines all issues necessarily involved in the appeal." The court's written order further stated that:

> Plaintiff's claim that "Defendant prevailed in Chavez I by wrongly persuading both the trial court and the appellate court that under the controlling case law of Slayton" the Plaintiff is obligated to complete repairs and make a supplemental claim as a condition precedent to filing suit against the Defendant to challenge is of no moment. This Court is bound by these prior decisions.

This appeal followed.

STANDARD OF REVIEW

This Court reviews summary judgment orders de novo, and summary judgment is only appropriate if there are no issues of material fact and the moving

party is entitled to judgment as a matter of law. Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000).

ANALYSIS

The Doctrine Dilemma

The trial court's vacillation between law of the case and res judicata is neither unique nor material to our resolution of this case. Both doctrines were raised and elements of each find support in the record. While the trial court's written order denying rehearing appears to rest on law of the case, its oral ruling at that hearing finds that, absent a "supplemental claim" to distinguish Chavez I from the instant case, "I don't see how [the case is] not barred by res judicata . . ."

We hold that, based upon the Florida Supreme Court's analysis in Florida Department of Transportation v. Juliano, 801 So. 2d 101 (Fla. 2001), this case is governed by the res judicata doctrine.[4] In Juliano, the Court acknowledged the confusion between these similar doctrines and clarified their application as follows:

> [T]he doctrines of the law of the case and res judicata differ in two important ways. First, law of the case applies only to proceedings within the same case, while res judicata applies to proceedings in different cases. Second, the law of the case doctrine is narrower in application in that it bars consideration only of those legal issues that were actually considered and decided in a former appeal, while res

[4] Employing the Juliano test, it is clear that Chavez I, circuit court case number 14-14150 and our case number 3D15-2483 (mandate issued October 14, 2016), is a "different case" than Chavez II, complaint filed August 14, 2017, circuit court case number 17-19805 and our case number 3D18-818.

> judicata bars relitigation in a subsequent cause of action not only of claims raised, but also claims that could have been raised.

801 So. 2d at 107 (internal citations omitted); see also McGregor v. Provident Tr. Co., 119 Fla. 718, 729 (Fla. 1935) (holding that "a judgment rendered by a court of competent jurisdiction, on the merits, is a bar to any future suit between the same parties or their privies upon the same cause of action, so long as it remains unreversed").

Although the trial court may have conflated the doctrines, we reach the same conclusion under the principles of res judicata, as the doctrine was fully addressed by the parties, its elements established on the record, and expressly relied upon by the court at the proceedings on Chavez's motion for rehearing following the summary judgment ruling in Chavez II.

Under res judicata, a party is barred from re-litigating all matters previously raised and determined as well as all other matters that could have been raised. Four elements must be met for a lawsuit to be barred: "(1) identity of thing sued for, (2) identity of the cause of action, (3) identity of the persons and parties to the actions, and (4) identity of the quality or capacity of the person for or against whom the claim is made." ICC Chem. Corp. v. Freeman, 640 So. 2d 92, 93 (Fla. 3d DCA 1994) (noting res judicata's "bar to a subsequent action or suit involving the same cause of action or subject matter").

Res Judicata: The Policy of Judicial Finality

The overarching *policy* served by such doctrines as res judicata and law of the case is the courts' interest in finality. "The doctrine of decisional finality provides that there must be a 'terminal point in every proceeding . . . at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein.'" Fla. Power Corp. v. Garcia, 780 So. 2d 34, 44 (Fla. 2001) (citation omitted).

Consistent with the principle that "[t]here must be an end to litigation sometime," id., cases are legion that even where the prior decision was erroneous when decided, let alone issued under then-prevailing law later reversed by higher courts, our Supreme Court cautions that reviewing courts "should reconsider a point of law previously decided on a former appeal only as a matter of grace, and not as a matter of right," Strazzulla v. Hendrick, 177 So. 2d 1, 4 (Fla. 1965), and that withholding application of res judicata "should not be made except in unusual circumstances and for the most cogent reasons—and always, of course, only where 'manifest injustice' will result from a strict and rigid adherence to the rule," id. Accord United Auto. Ins. Co. v. Comprehensive Health Ctr., 173 So. 3d 1061, 1065–66 (Fla. 3d DCA 2015); see also Allstate Ins. Co. v. Perez, 817 So. 2d 945, 945 (Fla. 3d DCA 2002) (affirming on the basis of the prior appeal as "[a]dherence to the law of the case will not result in a manifest injustice, *even though the law of the district has since changed* . . .") (emphasis added).

"The doctrine of res judicata applies to courts of law and courts of equity, and a judge is bound by the prior precedents of the jurisdiction in which the judge serves, regardless of whether the judge agrees with those prior decisions." Fla. Fish & Wildlife Conservation Comm'n v. Wakulla Fishermen's Ass'n, Inc., 141 So. 3d 723, 726 (Fla. 1st DCA 2014) (citations omitted).

Recognizing the importance of fidelity to the principals of finality served by res judicata, we have stated:

> With no valid reason, the trial judge set aside the judgment and sale solely because he did not "think it [was] fair." Unfortunately, neither the ground of fairness nor "the 'ground' of benevolence and compassion . . . constitute[s] a lawful, cognizable basis for granting relief to one side to the detriment of the other, and thus cannot support the order below: no judicial action of any kind can rest on such a foundation." Republic Fed. Bank, N.A. v. Doyle, 19 So. 3d 1053, 1054 (Fla. 3d DCA 2009).

Phoenix Holding, LLC v. Martinez, 27 So. 3d 791, 793 (Fla. 3d DCA 2010) (alterations in original).

The Elements of Res Judicata in This Case

It is against the above framework of the law and policy of res judicata that we must determine whether the doctrine applies to bar Chavez's lawsuit in this case. The four lynchpins of the doctrine, set forth above, are identity in each case of the thing being sued for, the cause of action, the persons or parties, and the quality or capacity of those parties. See Freeman, 640 So. 2d at 93.

Our courts have made it clear that identity does not mean identical. What is required is that the elements in each case be "substantially similar" to those elements in the other case. See Garcia, 780 So. 2d at 35 (determining whether former administrative hearing before Public Service Commission on an earlier petition to determine jurisdiction "had a *preclusive effect* as applied to its later determination of jurisdiction to entertain a *substantially similar* petition for declaratory statement") (emphasis added); see also S. Bell Tel. & Tel. Co. v. Roper, 438 So. 2d 1046, 1048 (Fla. 3d DCA 1983) (finding res judicata applied where "th[e] same claim, *in essence*, was sued upon in the prior 'Roper I' suit resulting in a summary judgment in Southern Bell's favor") (emphasis added).

On the other hand, "where [the] subsequent hearing or trial develops *material changes* in the evidence," the bar of res judicata will become inoperable. Henry v. State, 649 So. 2d 1361, 1364 (Fla. 1994) (emphasis added).

Here, Chavez I and II are mirror images of one another: (1) both arise from a singular drainage leak causing the same water damage to Chavez's property; (2) the same parties are involved in their unchanged capacities as insured and insurer under the same policy of insurance; and (3) both cases seek money damages in identical breach of contract lawsuits. The only difference is that Chavez seeks a slightly higher amount of money in this case than he sought in Chavez I, based not on any allegation or evidence of latent or hidden damage to his property over the passage of time

between the date of the loss and the filing of the second suit, but merely because Chavez found a contractor whose proposal came in slightly higher than that of his predecessor. Of course, "the thing sued for" in both cases is fungible money. Chavez would have us neutralize res judicata's applicability based on a relatively modest differential between estimated repair costs.

We have found no authority, nor has Chavez presented any, to support the notion that the $110,050.00 estimated repair cost sought in this case is not "substantially similar" to the $106,347.00 estimate Chavez submitted in Chavez I. See Garcia, 780 So. 2d at 35 (employing the "substantially similar" test); Henry, 649 So. 2d at 1364 (requiring a "material change" in the evidence to negate the res judicata bar); Roper, 438 So. 2d at 1048 (finding res judicata barred the case where it was "in essence" the same claim).

Suffice it to say a plaintiff may not avoid the bar of res judicata by the simple expedient of filing an otherwise identical lawsuit seeking a dollar more than that involved in a prior suit arising out of the same facts.

This Court addressed a nearly identical situation in Charles v. Citizens Property Insurance Co., 199 So. 3d 495 (Fla. 3d DCA 2016). There, Charles initially filed a breach of contract claim based on Citizen's failure to pay her supplemental request for damages arising from a water loss. Id. at 496. The trial court granted Charles leave to amend her claim in response to Citizen's affirmative defenses, and

instead of amending her pleadings, she filed a second lawsuit arising out of the original loss and breach of contract claim. Id. This Court held that the trial court correctly ruled that Charles' second lawsuit was barred by res judicata, because, despite the trial court's invitation to amend her initial pleadings, she chose to file an identical lawsuit. Id.

In the instant case, as in Charles, Chavez ignored the trial court's invitation to file a supplemental claim, and instead, filed an identical lawsuit, as both suits seek to recover damages arising from the original loss in Chavez I, allege that Tower Hill breached the contract by failing to pay the entire loss claimed, and involve the same parties in their same capacities in each suit. Thus, unless Chavez can demonstrate exceptional circumstances such as an intervening change in the law, a manifest injustice, or that he filed a supplemental claim, the bar of res judicata requires that we affirm the judgment appealed herein.

A recognized exceptional circumstance includes an intervening decision or a change in the law between the first and the second judgment or order. As Chavez clearly makes this the centerpiece of his appeal, we now address each of his assertions.

An Intervening Change in the Law

Chavez argues that his lawsuit is not barred because the doctrine of res judicata does not preclude a litigant when there has been a change in the applicable

law. See Wagner v. Baron, 64 So. 2d 267, 267 (Fla. 1953) ("res judicata is not a defense in a subsequent action where the law under which the first judgment was obtained is different than that applicable to the second action, or there has been an intervening d[e]cision, or a change in the law between the first and the second judgment").

As set forth above, at the time that the Chavez I final summary judgment was entered, the decision of the Fifth District in Slayton, was deemed to have supported the trial court's summary judgment in favor of Tower Hill, after payment to Chavez of the amount of damages estimated by the insurer's claims adjuster, while permitting Chavez to submit a supplemental claim after undertaking repairs on his property. Overlooking the fact that we per curiam affirmed this order in Chavez I, and thereafter issued our mandate (see footnote 1, *supra*), Chavez points to our four post-Slayton decisions (the "post-Slayton jurisprudence"), the earliest of which was issued nine months after our Chavez I decision had become final, and argues that these cases distinguished Slayton to now hold that an insured does not need to perform repairs and submit a supplemental claim in order to sue for an alleged inadequate payment for a loss. See Francis v. Tower Hill Prime Ins. Co., 224 So. 3d 259 (Fla. 3d DCA 2017); Siegal v. Tower Hill Signature Ins. Co., 225 So. 3d 974 (Fla. 3d DCA 2017); Milhomme v. Tower Hill Signature Ins. Co., 227 So. 3d 724

(Fla. 3d DCA 2017); Vasquez v. S. Fid. Prop. & Cas., Inc., 230 So. 3d 1242 (Fla. 3d DCA 2017).

It is clear that in our post-Slayton jurisprudence, we declined to follow or eschewed Slayton's rationale. See, e.g., Vazquez, 230 So. 3d at 1243 (noting the trial court's order there "was error"). Chavez thus insists that these cases constitute "intervening decision[s], or a change in the law" as contemplated by Wagner. 64 So. 2d at 267. For two reasons, we must reject Chavez's argument.

First, as Chavez acknowledged at oral argument, not one of the cases involved the doctrines of res judicata or law of the case, and certainly none included the entry of a final summary judgment affirmed by an intervening appellate court. Therefore, while we continue to adhere to our post-Slayton jurisprudence, we hold that all of these cases are materially distinguishable from the case at bar and do not constitute a change in the law or intervening controlling decisional law. Inasmuch as each of these is distinguishable, we conclude that our post-Slayton jurisprudence does not excuse application of res judicata to bar the instant lawsuit.

Secondly, we recognize that these four cases constitute intervening decisional law that would ordinarily serve as an exception to res judicata's preclusive effect. However, we cannot apply such an exception here because, once Chavez I became final upon issuance of our mandate on October 14, 2016, and no further review in

the Supreme Court was sought, the "intervening decisional law" rule no longer could operate to defeat the salutary purposes of the res judicata doctrine.

Abundant controlling Florida law so provides. The Florida Supreme Court long ago established this rule of law:

> After a judgment, order or decree has become final and the time for appeal has expired, an intervening decision which may change the liability or *the rule of law applicable to a case is not sufficient* ground to open the case up *for the filing of a new claim under the same facts*.

Garcia, 780 So. 2d at 42–43 (quoting Plymouth Citrus Prods. Co-op. v. Williamson, 71 So. 2d 162, 163 (Fla. 1954)).

The Garcia Court collects a plethora of controlling Florida law compelling this rule. See Garcia, 780 So. 2d at 42-45. This Court, citing Williamson, *supra*, applied res judicata to bar a malicious prosecution action, holding:

> [W]e have no problem in concluding that the malicious prosecution claim below was, as urged, barred by res judicata. Without doubt, this same claim, *in essence,* was sued upon in the prior "Roper I" suit resulting in a summary judgment in Southern Bell's favor and from which no appeal was taken. The fact that the legal authority relied on by the trial court for the summary judgment in "Roper I" was subsequently disapproved by the Florida Supreme Court cannot change this result. Williamson, 71 So. 2d 162. Moreover, *we are unpersuaded* by the plaintiff Roper's argument that the *documentary evidence adduced below* did not establish a res judicata defense or that the causes of action here were *not in substance the same.* The trial court, then, committed reversible error in denying Southern Bell's motion for summary judgment as to the malicious prosecution count.

Roper, 438 So. 2d at 1048 (second, third, and fourth emphasis added); accord Theiesen v. Old Republic Ins. Co., 468 So. 2d 434, 435 (Fla. 5th DCA 1985).

Based upon the well-established law, we hold that to the extent that our post-Slayton jurisprudence, issued well after our mandate in Chavez I, constituted an "intervening change in the law" that would have required a different result, we may not grant relief from the final summary judgment applying res judicata to bar Chavez's lawsuit. Curiously, we note that neither party to this appeal cited any of the decisions which compel our resolution of this case.

Chavez's Remaining Claims Against Res Judicata

Chavez makes several further assertions seeking to avoid res judicata's claim preclusion bar. We find none persuasive. He argues that exceptional circumstances amounting to a "manifest injustice" will follow if his replica lawsuit is foreclosed, a claim that rings particularly hollow here given his choice, like the plaintiff in Charles, not to pursue the similar remedy offered to her by the court to amend her breach of contract complaint to avoid dismissal in the first case, instead choosing to file virtually the same complaint thereby inviting, if not assuring a res judicata bar. Had Chavez commenced repairs to his damaged property and filed a supplemental claim, an option presumably still open to him, he would not be exposed to any such bar. See Rizo v. State Farm Fla. Ins. Co., 133 So. 3d 1114 (Fla. 3d DCA 2014). As

in Rizo, the prior checks tendered by the insurer were not marked "in full and final payment," nor did they "anticipatorily preclude the possibility of supplemental claims." Id. at 1115.

Thus, Chavez may still have a path to relief by filing a supplemental claim. See Charles, 199 So. 3d at 496; Rizo, 133 So. 3d at 1115. It follows that Chavez has failed to show extraordinary circumstances requiring that we excuse or forgive application of res judicata in this case.

Finally, we see no reason here to invoke the "manifest injustice" exception nor does Chavez offer any such basis. Only in extremely rare circumstances will an appellate court exercise its limited authority to withdraw its mandate after its jurisdiction to do so has expired. We did so in De La Hoz v. Crews, 123 So. 3d 101, 105 (Fla. 3d DCA 2013), to afford a convicted inmate habeas relief observing:

> At this point, the petitioner's sole remedy is via habeas. Although this Court's term expired in December, 2011, the Court may still grant habeas relief based on manifest injustice. Where the issue is deemed one of fundamental error, as it was in Haygood [v. State, 54 So. 3d 1035 (Fla. 2d DCA 2011)], the writ of habeas can be used to provide relief after the expiration of term of court in limited circumstances.

(Citations omitted). The referenced case had to do with a fundamental error that may have resulted in wrongful convictions and lengthy prison sentences. Clearly, the kind of "manifest injustice" we found in De La Hoz is nonexistent here.

The Supplemental Claim

Having rejected his assertion that an "intervening change in the law" renders Chavez I "obsolete," and allows him to escape the "trap" of res judicata's bar, we next address Chavez's claim that he did indeed make a supplemental claim.

Both at the summary judgment hearing held on April 6, 2018, and here, Chavez took the position that he *need not* have made any supplemental claim at all, contending, "I don't have to do a thing in order to" file suit against Tower Hill for actual cash value. In addition, he agreed below and at oral argument that he undertook no repair nor incurred any expense before filing suit. However, at another point during the same hearing, Chavez toggled to the assertion that he did make a supplemental claim which was based on the "full amount" of the repair cost estimate contained in his contractor's proposal and that merely by filing the lawsuit, "we submitted a supplemental [claim] . . ." The court rejected these arguments as follows:

> No. But, see, you're trying to tell me it's a supplemental claim because you've called it a supplemental claim . . . I'm seeing a lawsuit filed in 2014 for approximately $106,000 [Chavez I]. I'm seeing a lawsuit filed now for $108,000 [Chavez II]. *I'm not seeing what's supplemental about it.*

(Emphasis added).[5]

Upon considering our post-Slayton jurisprudence, the court defined what "supplemental claim" meant for purposes of this case:

[5] The court's reference to the second figure was obviously meant to be the $110,050.00 estimate contained in the proposal submitted by Chavez's new contractor.

> [T]he supplemental claim is when you actually start making repairs. It's not fair, by the way–in my sense of justice, it's not fair. Your client[] shouldn't go out of pocket, but that's the policy.

The trial court thus rejected both of Chavez's mutually exclusive assertions that: (1) he did not "have to do anything" in order to file suit; and (2) J & J Construction's cost proposal alone, without Chavez making any repairs, was, *itself*, his "supplemental claim." Accordingly, the court granted Tower Hill's motion for summary judgment.

While not directly at issue before us, it is readily apparent that the contractor's cost proposal, made contingent on Chavez "being successful in recovering the amount of the [p]roposal from. . . Tower Hill . . . ," a contingency never met, fails to even constitute an enforceable contract as between Chavez and J & J Construction. See Fincher v. Belk-Sawyer Co., 127 So. 2d 130, 132 (Fla. 3d DCA 1961) ("[I]f an essential element is reserved for the future agreement of both parties, the promise can give rise to no legal obligation until such future agreement.").

More importantly for our purposes, the cost proposal alone certainly fails the trial court's definition of a "supplemental claim," the correctness of which we now address.

Black's Law Dictionary defines a supplemental claim as "[a] claim for further relief based on events occurring after the original claim was made." *Supplemental Claim*, Black's Law Dictionary (11th ed. 2019). This definition seems compatible

with what the Chavez I court contemplated when it granted Tower Hill's motion for summary judgment while affording Chavez the right to file a supplemental claim. The Black's definition also appears to us to accommodate Tower Hill's insurance contract provision relating to loss settlement, which states as follows:

> [W]e will initially pay at least the actual cash value of the insured loss, less any applicable deductible. We will then pay any remaining amounts necessary to perform such repairs *as work is performed and expenses are incurred*.

(Emphasis added). Chavez himself, in his written submission, recites the definition of a "supplemental claim" from section 626.854(10)(a), Florida Statutes (2019), which regulates public adjusters, and refers to a claim which "seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer."

We note that each of these defines a supplemental claim as an *additional* claim made by an insured seeking damages or recovery for a loss from an insurer after an initial payment. Importantly, however, none of the definitions embraces the notion that a supplemental claim means the identical claim previously litigated with finality, as Chavez would have us sanction.

We are left with the task of determining what is meant by "supplemental claim" in the case before us, a definition necessarily cabined within the boundaries of the unique facts presented here. We agree with the learned trial court that a supplemental claim means an additional claim made after an insured has actually

undertaken or commenced repairs arising out of damages for a covered loss and after the insurer has tendered initial payment based upon its determination of actual cash value.

CONCLUSION

As it is undisputed that Chavez undertook no repairs, which we have found to be integral to the supplemental claim he was invited to make in Chavez I, it necessarily follows that the instant lawsuit is but a replica of Chavez's prior lawsuit, as was well demonstrated when, with obvious incredulity, the trial court posed the following questions to Chavez at the summary judgment hearing:

> What has changed from when the lawsuit started in 2014 till now except the time has passed? * * * What has changed? What are you seeking now that's different than then?

Chavez's response was the same refrain he makes here about the intervening change in the law and his nonexistent supplemental claim. As we have found each of his assertions unavailing, we conclude that the doctrine of res judicata precludes this lawsuit.[6] Accordingly, we hold that the trial court correctly granted summary judgment in favor of Tower Hill.

Affirmed.

[6] Consistent with res judicata principles, we will not repeat Yogi Berra's solecism.