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IN THE
COURT OF APPEALS OF INDIANA

SHEILA SKOBEL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-0801-CV-11
	)	
DOUGLAS S. SHAW d/b/a DOUG'S WELDING & GATE SHOP,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Roderick D. McGillivray, Judge
Cause No. 03D02-0502-CC-022

July 2, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Sheila Skobel appeals the trial court's order granting summary judgment in favor of appellee-plaintiff Douglas S. Shaw d/b/a Doug's Welding & Gate Shop (the Shop) on the Shop's complaint against Sheila to enforce a promissory note on which a business, Skobel's Fencing, defaulted. Sheila argues that summary judgment is improper because she is not bound by the result of prior litigation between the Shop and John Skobel, her husband, and because there are multiple issues of fact. Finding that Sheila is not bound by the prior litigation because she was not a party and the issue of her liability was not fully litigated and finding multiple issues of fact, we reverse and remand for further proceedings.

FACTS

During the relevant period of time, Skobel's Fencing was in the business of constructing and installing residential and commercial fencing. John was a principal of the business. The Shop was in the business of, among other things, selling fencing to individuals and businesses. Skobel's Fencing became a customer of the Shop in the 1990s.

On July 15, 2001, John signed a promissory note on behalf of Skobel's Fencing in favor of Shaw and the Shop in the amount of $161,653.13. Skobel's Fencing defaulted on the note. Therefore, on February 4, 2005, the Shop filed a complaint against John and Skobel's Fencing, seeking to enforce the note. The 2005 complaint does not refer to Sheila. On April 4, 2006, judgment was entered in favor of the Shop and against John and Skobel's Fencing in the amount of $169,728.73.

Evidently, John and Skobel's Fencing failed to pay the judgment, because the Shop began proceedings supplemental to enforce the judgment. On August 3, 2006, the trial court held a hearing on the proceedings supplemental, at which time Sheila's role in the business was discussed for the first time. On August 16, 2006, the Shop filed a petition for an order requiring the application of certain property belonging to John and Sheila to the April 2006 judgment. John objected to the petition, arguing that the judgment was entered only against John and that all of the property sought to be applied to the judgment was owned by John and Sheila as tenants by the entireties. On December 5, 2006, the trial court entered an order denying the Shop's petition and finding in relevant part as follows:

> 1. On April 4, 2006 a judgment of $169,728.73, plus court costs, was entered jointly and severally against John Skobel individually and John Skobel d/b/a Skobel's Fencing.
>
> 2. John Skobel and his wife jointly own Skobel's Fencing. John Skobel's wife was not named as a defendant in this case and no judgment has been entered against her in this matter.
>
> 3. John Skobel d/b/a Skobel's Fencing owns all of his business assets jointly with his wife. John's ownership interest in those business assets is less than $8,000.00.
>
> ***
>
> 7. . . . [A]ny interest that John has in real estate held as a tenant by the entireties is exempt from attachment and execution. This means that the home and rental properties John owns with his wife cannot be attached and sold to pay the judgment entered against John Skobel individually in this case.
>
> 8. . . . [T]angible personal property of less than $8,000.00 cannot be attached to satisfy a judgment. Since John's ownership interest in his business assets is less than $8,000.00, those assets cannot be attached and sold to pay the judgment entered against John

> Skobel d/b/a Skobel's Fencing. Additionally, the truck and motorcycles John owns with his wife cannot be attached and sold because John's ownership interest in those assets is less than $8,000.00.
>
> 9. As a result, plaintiff's petition . . . is denied. This does not mean, however, that John Skobel individually and John Skobel d/b/a Skobel's Fencing are relieved of their obligation to pay the judgment entered against them.

Appellant's App. p. 28-29.

On January 29, 2007, the Shop filed a complaint against Sheila, individually and d/b/a Skobel's Fencing, on the note. On June 21, 2007, the Shop filed a motion for summary judgment against Sheila, arguing that she is liable on the note as a joint owner of Skobel's Fencing. The only designated evidence in support of the summary judgment motion was the April 4, 2006, judgment against John and Skobel's Fencing and the December 5, 2006, order in which the court found that John and Sheila jointly owned Skobel's Fencing. Following a September 25, 2007, hearing, the trial court granted summary judgment in favor of Skobel's Fencing on October 30, 2007, finding, in pertinent part, as follows:

> 1) Under this case number [the Shop] won a judgment against Defendant John Skobel and Skobel's Fencing.
>
> 2) Skobel's Fencing is neither a corporation [n]or limited liability company.
>
> 3) Skobel's Fencing's owner(s) is/are personally responsible for its debts.
>
> 4) [The Shop] did not obtain a judgment against Defendant Sheila Skobel individually.

5) There is no question that Sheila Skobel was not a party to the litigation leading up to the judgment against her husband and the company Skobel's Fencing.

6) Upon attempting to collect the judgment, [the Shop] learned that Defendants John and Sheila owned their real property as tenants by the entireties. The Defendants also owned their personal property as joint tenants.

7) This Court entered an order on December 5, 2006 finding that Sheila Skobel was a joint owner of Skobel's Fencing and all of Skobel's Fencing's property.

8) It is unclear from the record whether Sheila Skobel was put on notice that the court was prepared to decide the question of whether she is a joint owner of Skobel's Fencing.

9) However, the issue was fully litigated with Sheila Skobel's knowledge and constructive consent, and the court will not vacate its earlier finding that Sheila Skobel is also responsible for the debts of Skobel's Fencing.

Id. at 10-11. Sheila now appeals.

DISCUSSION AND DECISION

I. Standard of Review

Summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning, 754 N.E.2d at 909. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving

party. Id. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

An appellate court faces the same issues that were before the trial court and follows the same process. Id. at 908. The party appealing from a summary judgment decision has the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court. Id.

II. Effect of the December 2006 Order

Sheila argues that the trial court erroneously determined that it was required, pursuant to the April 2006 judgment and December 2006 order, to grant summary judgment in the Shop's favor. It is undisputed that Sheila was not a party to the litigation that culminated in the April 2006 judgment against John and Skobel's Fencing. We must first determine, therefore, the extent to which she is bound by the December 2006 order that was entered in the proceedings supplemental to that judgment.

Initially, we will consider whether the doctrine of res judicata bars Sheila from litigating the issue of her liability on the note. Under the doctrine of res judicata, "'a judgment rendered on the merits is an absolute bar to a subsequent action between the same parties or those in privity with them on the same claim or demand.'" Gill v. Pollert, 810 N.E.2d 1050, 1057 (Ind. 2004) (quoting Sullivan v. Am. Cas. Co, 605 N.E.2d 134, 137 (Ind. 1992)). Res judicata does not apply here because the December 2006 order is not a judgment rendered on the merits—it was an order entered in proceedings

supplemental. Furthermore, the order was not between the same parties—Sheila was not a party to the action and the Shop has not established that she was in privity with John. Finally, the order was not based on the same claim or demand; instead, it concerned the liability of John and Skobel's Fencing, not Sheila, on the note. More specifically, the December 2006 order concerned the Shop's request that certain properties belonging to John be used to fulfill the judgment already entered against him.

Next, we turn to the doctrine of collateral estoppel, which

> bars subsequent litigation of a fact or issue which was adjudicated in previous litigation if the same fact or issue is presented in a subsequent lawsuit. . . . A two-part analysis determines whether collateral estoppel should be employed in a particular case: (1) whether the party against whom the former adjudication is asserted had a full and fair opportunity to litigate the issue and (2) whether it would be otherwise unfair under the circumstances to permit the use of issue preclusion in the current action.

Fitz v. Rust-Oleum Corp., 883 N.E.2d 1177, 1182-83 (Ind. Ct. App. 2008). Here, again, Sheila was not a party to the lawsuit that resulted in the April 2006 judgment and the December 2006 order.[1] The Shop argues that she could have intervened in the action once her role in the business became an issue during the proceedings supplemental. Initially, we note that although she likely could have intervened in the litigation, the Shop has directed our attention to no authority requiring that she do so or risk being bound by the result therein.

[1] To the extent that the Shop emphasizes that John did not appeal the December 2006 order, we note that because Sheila was not a party to those proceedings, she is not bound by his actions or admissions. Furthermore, we note that the order was resolved in John's favor, inasmuch as the trial court denied the Shop's petition.

Furthermore, even if we accept for argument's sake that Sheila should have intervened when her role in the business became an issue, we note that the trial court found that there is a question of fact as to "whether Sheila Skobel was put on notice that the court was prepared to decide the question of whether she is a joint owner of Skobel's Fencing." Appellant's App. p. 11. On this record, therefore, we cannot conclude that Sheila's failure to intervene in the prior litigation means that she is bound by the order entered in the proceedings supplemental.

Additionally, we note that "the same fact or issue" that is central to this litigation—Sheila's liability—was not adjudicated in the prior lawsuit. Although the trial court stated in the October 2007 order that "the court will not vacate its earlier finding that Sheila Skobel is also responsible for the debts of Skobel's Fencing," in fact, there is no such finding in the December 2006 order. Id. At the most, the December 2006 order finds that John and Sheila jointly own Skobel's Fencing; nowhere is her liability considered.[2] Under these circumstances, we cannot conclude that she is barred from litigating the issue of her liability on the note by collateral estoppel.

Inasmuch as neither res judicata nor collateral estoppel bar this matter from being litigated and the Shop has not directed our attention to any other authority that would cause Sheila to be bound to the December 2006 order, we find that she is not, in fact,

[2] Furthermore, even if we were to conclude that Sheila is bound by this finding—which we do not—the mere fact that she is a joint owner in Skobel's Fencing does not necessarily mean that the business was a partnership. See, e.g., Vohland v. Sweet, 433 N.E.2d 860, 863 (Ind. Ct. App. 1982) (holding that "joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property"); see also Byrd v. E.B.B. Farms, 796 N.E.2d 747, 754 (Ind. Ct. App. 2003) (holding that "[t]he existence of a partnership is generally a question of fact").

bound by the findings in that order. The issue of Sheila's liability on the note—including her role in the business and any potential liability for its debts, including the note—has never been fully litigated and is, therefore, rife with questions of fact rendering it improper for disposition on summary judgment.

The judgment of the trial court is reversed and remanded for further proceedings.

RILEY, J., and ROBB, J., concur.