

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000759-MR

JOHNS MANVILLE

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 06-CI-00146

CTA ACOUSTICS, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Johns Manville (Manville) brings this appeal from a January 10, 2008, summary judgment of the Laurel Circuit Court dismissing the complaint against CTA Acoustics, Inc., (CTA) as barred under the doctrine of *res judicata*. We affirm.

A review of the material procedural facts is necessary for disposition of this appeal. On September 20, 2005, Manville filed a complaint in the Laurel

Circuit Court against “Julie Brock, d/b/a CTA Acoustics” (Civil Action No. 05-CI-01023). In the complaint, Manville claimed that “Julie Brock, d/b/a CTA Acoustics” owed Manville \$231,913.05 plus prejudgment interest for goods allegedly manufactured by Manville for CTA. An answer was filed by “CTA Acoustics, Inc.” Therein, CTA claimed: (1) no person by the name of Julie Brock does business as CTA Acoustics, Inc., and “to the extent that the claim is against Julie Brock,” the complaint must be dismissed; (2) no contract existed between CTA and Manville; and (3) the complaint must be dismissed for a failure of consideration. By order entered November 30, 2005, the circuit court dismissed Manville’s complaint “as satisfied.” Manville acknowledges that the order of dismissal was prepared by and tendered to the court by counsel for Manville.

Meanwhile, Manville filed a complaint against “CTA Acoustics” on November 23, 2005, in the Laurel Circuit Court (Civil Action No. 05-CI-01230). The complaint again sought damages of \$231,913.05 for goods allegedly manufactured by Manville for CTA. The complaint was eventually dismissed for lack of prosecution on February 15, 2008.

On February 6, 2006, Manville filed a third complaint (the instant action) against “CTA Acoustics, Inc.” and again sought recovery of \$231,913.05 for goods allegedly manufactured by Manville for CTA (Civil Action No. 06-CI-00146). CTA filed an answer and alleged the “[c]omplaint [was] barred by operation of the doctrine of *res judicata*.” Thereafter, CTA and Manville both filed motions for summary judgment. By summary judgment, the circuit court

dismissed Manville's complaint as barred by *res judicata*. In so doing, the circuit court reasoned:

The Order dismissing the previous action [05-CI-01023] stated that [Manville] had "received payment" and the debt was "satisfied." Thus, the Order spoke to *the merits* of the action.

[Manville] counters that the parties to this action [06-CI-00146] are not the same as those in the previous action [05-CI-01023]. The Defendant in the previous action was listed as "Julie Brock, d/b/a CTA Acoustics." The record is clear that CTA Acoustics was a named Defendant in the previous action. It is equally clear that Plaintiffs in the actions were also the same.

Further, the attorneys in this action are the same attorneys that litigated the previous action [05-CI-01023]. It is clear that the interests of the current parties were represented in the previous action.

Therefore, summary judgment *for [CTA]* is appropriate.

This appeal follows.

Manville contends that the circuit court erred by rendering summary judgment dismissing the complaint upon *res judicata* grounds. For the reasons hereinafter stated, we disagree.

Summary judgment is proper where the material facts are undisputed and movant is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). Our review proceeds accordingly.

The doctrine of *res judicata* has two components – claim preclusion and issue preclusion. Resolution of this appeal centers upon the former component – claim preclusion. Claim preclusion generally bars a party from relitigating a previously adjudicated cause of action. To operate as a bar to subsequent litigation, claim preclusion requires: (1) identity of parties, (2) identity of the causes of action, and (3) resolution of the previous cause of action on the merits.

In this case, it is clear that the previous action (05-CI-01023) and the current action (06-CI-00146) involve the same cause of action – recovery of damages for goods allegedly manufactured by Manville for CTA. Manville, however, disputes that the previous action (05-CI-01023) and the current action (06-CI-00146) involve identical parties and that the November 30, 2005, order dismissing the previous action (05-CI-01023) constituted a resolution on the merits.

Although Manville named “Julie Brock, d/b/a CTA Acoustics” as defendant in the previous action (05-CI-01023), the record clearly established that “CTA Acoustics, Inc.,” filed the answer and otherwise defended against Manville’s claims. For claim preclusion purposes, the requirement of identity of parties is not confined to only “actual parties in the litigation,” but rather parties also include those “who by their conduct bring themselves in such relationship to the litigation as to become bound by the judgment.” *McKenzie v. Hinkel*, 271 Ky. 587, 112 S.W.2d 1019, 1021 (1938). In particular, the courts are instructed to “look beyond the nominal parties, and treat all those whose interests are involved in the litigation

and who conduct and control the action or defense as real parties, and hold them concluded by any judgment which may be rendered.” *Amburgey v. Adams*, 196 Ky. 646, 245 S.W. 514, 516 (1922). As CTA clearly defended and actively participated as the defendant in the previous action (05-CI-01023), we believe that CTA constituted a party and, thus, fulfilled the requirement of identity of parties.

Manville also contends that the November 30, 2005, order dismissing the previous action (05-CI-01023) did not constitute a resolution on the merits necessary to invoke the doctrine of claim preclusion. The November 30, 2005, order read, in relevant part:

IT IS HEREBY ORDERED AND ADJUDGED
that the claim for the plaintiff, Johns Manville, is hereby
dismissed against the defendant, Julie Brock, d/b/a CTA
Acoustics, as **SATISFIED**.

Manville believes that the November 30, 2005, order was not an adjudication on the merit because it failed to specify “with prejudice.” However, as noted by the circuit court, the November 30, 2005, order stated that the complaint was dismissed “as satisfied.” As to a debt or an obligation, the term satisfaction is defined as the state of being “satisfied” and is generally understood as meaning the “discharge of an obligation by paying a party what is due to him.” *BLACK’S LAW DICTIONARY* 1342 (6th ed. 1990). Thus, under the November 30, 2005, order, Manville’s complaint in the previous action (05-CI-01023) was dismissed

because the debt owed was satisfied. As such, we view the November 30, 2005, order as constituting a disposition on the merits.¹

In sum, we cannot say the circuit court erred by rendering summary judgment dismissing Manville's current action (06-CI-00146) as barred by the doctrine of *res judicata*.

For the foregoing reasons, the summary judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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¹ Johns Manville argues that the November 30, 2005, order in Civil Action No. 05-CI-01023 erroneously or mistakenly recited that the complaint was dismissed as satisfied. Manville's remedy, if any, is to seek to vacate the November 30, 2005, order upon such ground, pursuant to Kentucky Rules of Civil Procedure 60.02. However, this opinion takes no position on the merits of this issue.