

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-0401-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STEVEN WADZINSKI AND LIZ WADZINSKI,

PLAINTIFFS-APPELLANTS,

v.

ROGER DALEIDAN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Marathon County:
RAYMOND THUMS, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Steven and Liz Wadzinski appeal a summary judgment that dismissed their lawsuit against Roger Daleidan.¹ The Wadzinskis rented part of their building to Patrick and Kristine Adams for use as a tavern.

¹ This is an expedited appeal under RULE 809.17, STATS.

The premises included a thirty-foot-long bar attached to the floor. Before the Adamses' occupancy of the building, Daleidan purported to acquire a security interest in the thirty-foot-long bar to secure a loan he made to the Adamses' predecessor tenant in the premises. The Wadzinskis claim unfettered ownership of the bar and reject the legal validity of this purported security interest. In any event, the Adamses, on taking over the tavern, assumed their predecessor tenant's debt and later defaulted on the loan. Daleidan then seized the collateralized bar, ripping it from the tavern floor and cutting it into pieces. This ruined the bar and caused ancillary damage to the Wadzinskis' building itself. The Wadzinskis sued Daleidan for the bar's destruction, flooring and plumbing damage, and lost rent.

Before their lawsuit against Daleidan, the Wadzinskis had recovered some money from the Adamses in a prior eviction lawsuit, allegedly for the same damage. The trial court dismissed the Wadzinskis-Daleidan lawsuit on the ground that the Wadzinskis-Adamses lawsuit operated as claim preclusion and issue preclusion, formerly known respectively as *res judicata* and collateral estoppel. On appeal, Daleidan argues that claim preclusion and issue preclusion arising from the Wadzinskis-Adamses lawsuit barred the Wadzinskis-Daleidan lawsuit. The Wadzinskis argue that neither doctrine barred the Wadzinskis-Daleidan lawsuit. The trial court correctly granted summary judgment if Daleidan showed no dispute of material fact and deserved judgment as a matter of law. *See Powalka v. State Life Mut. Assur. Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). We conclude that Daleidan has not shown a definitive claim preclusion or issue preclusion defense arising from the Wadzinskis-Adamses lawsuit. We therefore reverse the summary judgment and remand the matter for further proceedings.

First, Daleidan has not stated a valid defense of claim preclusion. "A judgment against one person liable for a loss does not terminate a claim that

the injured party may have against another person who may be liable therefore.” See RESTATEMENT (SECOND) OF JUDGMENTS § 49, at 34 (1982). Claims against others who are liable for the same loss are regarded as separate claims; they are not the same cause of action. See *id.* § 49, comment a, at 34. In other words, the Wadzinkis’ claims against Daleidan and the Adamses are considered separate by definition. Injured persons like the Wadzinkis are free to sue multiple wrongdoers separately and sequentially; such suits do not concern the same cause of action. Claim preclusion applies only to the same cause of action. See *DePratt v. West Bend Mut. Ins. Co.*, 113 Wis.2d 306, 310, 334 N.W.2d 883, 885 (Ct. App. 1983). However, the Wadzinkis do face hurdles in their lawsuit against Daleidan. For example, they may not relitigate against Daleidan any issues actually determined against them in the Wadzinkis-Adamses lawsuit. See RESTATEMENT § 49, comment a, at 35 (*citing* RESTATEMENT § 29, at 291-92)). This is the rule of issue preclusion. See *id.* Moreover, the Wadzinkis may not obtain a double recovery. See RESTATEMENT § 49, comment a, at 35. This is the rule of equitable satisfaction. See *id.*

Second, Daleidan has not shown a definitive defense of issue preclusion. Issue preclusion requires identity of issues. See *Michelle T. v. Crozier*, 173 Wis.2d 681, 694 n.13, 495 N.W.2d 327, 333 n.13 (1993). Here, the record does not show an identity of issues between the Wadzinski-Adamses lawsuit and the Wadzinkis-Daleidan lawsuit. For example, the record does not show whether the Wadzinkis were seeking to recover from Daleidan the same damages that they had already recovered from the Adamses. In the same vein, the lawsuits may have little in common in terms of legal principles. The Wadzinkis-Adamses lawsuit rested on landlord-tenant legal principles and the law of property, while the Wadzinkis-Daleidan lawsuit stood on tortious damage

to real or personal property, essentially sounding in the law of trespass to real property or conversion of chattels. Unlike tenants, who have duties to safeguard their landlords' property against waste and to return the property at the end of their tenancy in good condition, third-party tortfeasors operate under a different set of legal duties and defenses. At this point, Daleidan has shown no identity of issues in these matters. In short, Daleidan must develop a better record on the issue preclusion defense in the trial court.

Last, as noted above, the Wadzinskis have no right to a double recovery, regardless of whether Daleidan can show valid defenses of claim preclusion and issue preclusion. Under the doctrine of equitable satisfaction, which operates independently of the doctrines of claim preclusion and issue preclusion, the Wadzinskis may recover no more than the damage they actually sustained. *See Seymour v. Summa Vista Cinema, Inc.*, 809 F.2d 1385, 1389 (9th Cir. 1987) (*citing* RESTATEMENT (SECOND) OF TORTS § 885(3) (1977)); PROSSER ON TORTS § 48, at 299-301 (4th ed. 1971); *see also Swanigan v. State Farm Ins. Co.*, 99 Wis.2d 179, 202, 299 N.W.2d 234, 245 (1980); RESTATEMENT (SECOND) OF JUDGMENTS § 49, comment a, at 35, and § 50, comment a, at 41. In other words, if the Wadzinskis' recovery against the Adamses had the effect of fully satisfying their loss, they may not recover additional sums from Daleidan. In that instance, their recovery from the Adamses operates to satisfy their claim and to discharge their claim against Daleidan. This issue likewise requires further factual development and briefing by the parties in the trial court. We therefore reverse the summary judgment and remand the matter for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded for further proceedings.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

