

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 6, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0858-FT
STATE OF WISCONSIN**

Cir. Ct. No. 00-CV-117

**IN COURT OF APPEALS
DISTRICT III**

ANJANI K. MEHRA,

PLAINTIFF-APPELLANT,

V.

**BAY WATCH CONDOMINIUM ASSOCIATION, STEPHEN E.
RADUE, AND PATREA J. RADUE,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Kewaunee County: D. TODD EHLERS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Anjani Mehra appeals from a summary judgment dismissing his claims contesting the validity of an amendment to the Bay Watch

Condominium Association's declaration and bylaws.¹ The circuit court concluded that claim preclusion applied and granted summary judgment in favor of the Association, Stephen Radue, and Patrea Radue. Mehra contends that the doctrine of claim preclusion is inapplicable. We disagree and affirm the judgment.

BACKGROUND

¶2 In 1993, Patrea and Carol Radue² filed a condominium declaration in Kewaunee County and created the Bay Watch Condominium Association. Section Seven of the Association's declaration and bylaws authorized unit rentals. In November 1994, Mehra purchased unit 4 of the Bay Watch Condominium and rented out the unit.

¶3 In May 1996, the Association's declaration and bylaws were amended to prohibit rentals. A short time later, the Association issued a cease and desist letter to Mehra concerning future rentals and advised Mehra's tenant to vacate the premises. The tenant left and the Association refused to permit Mehra to relet the unit. Mehra contended that the amendment was invalid. In October 1998, Mehra warned the Association that if it continued to insist on the validity of the amendment, Mehra would file a lawsuit against the Association and Stephen Radue.³

¶4 On October 22, 1999, Mehra sued Patrea Radue in small claims court in Brown County, seeking \$5,000 for lost rent. Mehra alleged that Radue

¹ This is an expedited appeal under WIS. STAT. RULE 809.17.

² Carol Radue is deceased.

³ Stephen Radue is president of the Bay Watch Condominium Association.

misrepresented the condominium declaration because the amendment banning rental was invalid. However, the case was dismissed on summary judgment. The court commissioner concluded that Mehra did not rely on any misrepresentations. Mehra appealed to the circuit court, but later withdrew the appeal.

¶5 On December 7, 2000, Mehra filed this action in Kewaunee County against the Association, Stephen Radue and Patrea Radue, contesting the validity of the amendment to the Association’s declaration and bylaws. The Association, Stephen Radue and Patrea Radue filed a motion for summary judgment arguing that claim preclusion barred Mehra’s action. The circuit court agreed and granted the motion.

STANDARD OF REVIEW

¶6 The question whether claim preclusion applies under a given factual scenario is a question of law that this court reviews independently of the circuit court. *NSP Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995).

DISCUSSION

¶7 Mehra argues that the circuit court erred by dismissing the action because claim preclusion is inapplicable. Claim preclusion means that a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceeding. *DePratt v. West Bend Mut. Ins. Co.*, 113 Wis. 2d 306, 310, 334 N.W.2d 883 (1983). “A valid and final judgment on the merits in favor of the defendant bars another action by the plaintiff on the same claim” *Id.* “[S]ummary judgment in favor of the defendant is sufficient to meet the requirement of a conclusive and final judgment.” *Id.* at 310-11. The purpose of

claim preclusion is to prevent repetitive litigation. Fairness to the defendant and sound judicial administration require that at some point litigation over the particular controversy must come to an end. *Id.*

¶8 In order for the earlier proceeding to act as a claim-preclusive bar in relation to the present suit, the following factors must be present: (1) identity between the parties or their privies in the prior and present suits; (2) identity between the claims in the two suits; and (3) a final judgment on the merits in a court of competent jurisdiction. *NSP*, 189 Wis. 2d at 551.

I. IDENTITY BETWEEN THE PARTIES

¶9 Mehra argues that there is no identity among the parties or their privies in the prior and present suits. The Association and Stephen Radue were not parties to the first action, and Mehra contends they do not stand in privity with Patrea Radue.

¶10 The doctrine of claim preclusion applies not only to the actual parties involved in the prior litigation, but to their privies as well. *Muchow v. Goding*, 198 Wis. 2d 609, 622, 544 N.W.2d 218 (Ct. App. 1995). Privity exists when a person is so identified in interest with a party to former litigation that he or she represents precisely the same legal right in respect to the subject matter involved. *Amber J.F. v. Richard B.*, 205 Wis. 2d 510, 516-17, 557 N.W.2d 84 (Ct. App 1996).

¶11 Here, we conclude that there is a sufficient identity of interest among the Association, Stephen Radue and Patrea Radue. In fact, Mehra's own complaint supports the conclusion that the defendants all have the same relationship to the legal issue: the adoption of the amendment. The complaint

contains numerous “all for one and one for all” references that would support the application of claim preclusion. The complaint also characterizes Patrea Radue as a “declarant” of Bay Watch Condominium, and alleges that the conduct of Stephen and Patrea is tied to their positions as “officers of the Association.”

¶12 Despite this, Mehra contends that as a “declarant” of Bay Watch Condominium, Patrea Radue is not responsible for the operations of the Association and thus has a distinctly different role. We disagree. While Patrea, as a declarant, generally may have different legal rights and responsibilities as opposed to Stephen Radue and the Association, their legal relationship to this claim is identical. If we were to accept Mehra’s interpretation, privity would almost never exist.

¶13 However, privity exists when the legal relationship to a claim is identical. Here, while generally not sharing identical legal rights or responsibilities, as to this claim the Association and Stephen Radue and Patrea Radue do share precisely the same legal rights. Therefore, there is identity between the parties.

II. IDENTITY BETWEEN THE CLAIMS

¶14 Mehra argues that there is no identity between the claims in the two suits. Mehra contends that there can be no nexus between the two cases due to the fact that the summary judgment in the Brown County case addresses only a misrepresentation claim and did not decide the validity of the amendment to the declaration.

¶15 Wisconsin has adopted a transactional approach to determining whether two suits involve the same claim:

The present trend is to see claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.

We also adopt the transactional view of claim or cause of action. Wisconsin's modern procedural system provides the parties with an adequate method of fully developing the entire transaction in the one action going to the merits to which the plaintiff is ordinarily confined. It permits the presentation in the action of all material relevant to the transaction without artificial confinement to any single substantive theory or kind of relief without regard to historical forms of actions.

DePratt, 113 Wis. 2d at 311-12 (citation and footnotes omitted).

¶16 In *DePratt*, our supreme court refused to permit prosecution of a second action alleging independent acts of negligence against a crane supplier where the plaintiff's prior action alleging a safe place statute violation was dismissed by summary judgment. *Id.* at 312. Likewise, the court in *NSP*, 189 Wis. 2d at 558-59, foreclosed the plaintiff from litigating the constitutionality of certain state income tax deductions where the plaintiff had earlier unsuccessfully litigated its objection on statutory interpretation grounds.

¶17 Transactionally, Mehra's claims in this case are the same as in the prior Brown County case. Both cases are based on the alleged invalidity of the amendment to the condominium declaration. For Mehra to recover damages in either case, it would have been necessary for him to prove that the amendment was invalidly adopted.

¶18 We agree with the circuit court analysis:

These are different alleged causes of action but they all arise out of one transaction. That transaction being the alleged improper and invalid 1996 condominium document amendments. The Plaintiff was obligated to propound all his substantive theories and variant forms of relief in the first action. He did not and he is now barred from suing Patrea Radue anew regarding that same transaction under new theories of recovery.

Therefore, we conclude that there is identity between the two suits and allowing the case to go forward would be to allow piecemeal and repetitive litigation.

III. FINAL JUDGMENT ON THE MERITS

¶19 Mehra argues that claim preclusion does not apply because there has never been a determination whether the amendment was invalid and because the small claims court was without jurisdiction to decide interests in property. Granted, the court commissioner decided the small claims case based on lack of reliance on the alleged misrepresentation. Nevertheless, the commissioner granted summary judgment. A summary judgment is a final judgment on the merits. *Depratt*, 113 Wis. 2d at 310-11. Claim preclusion applies both to matters that were litigated and to matters that might have been litigated. *Id.* at 311. The entire basis for the misrepresentation claim was the alleged invalidity of the amendment to the condominium declaration. Therefore the amendment was a matter that might have been litigated.

¶20 Mehra also asserts that the small claims court was without jurisdiction to decide interests in property. First, Mehra himself submitted the issue when he filed his small claim. Thus, he has waived any objection now. Further, his assertion misses the mark. The small claims court clearly had jurisdiction to decide the misrepresentation claim. Claim preclusion is not based

on the legal theory of the claim, but on the factual terms of the transaction that form the basis for the claim. *Id.* Here, those factual terms were completely based on the amendment of the condominium declaration. That is exactly what claim preclusion is.

By the Court.—Judgment affirmed.

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

