STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0642

Cottage Industries, LLC,
Appellant,

vs.

Gregory Yetter,
Respondent.

Filed January 6, 2009
Reversed and remanded
Stoneburner, Judge

St. Louis County District Court
File No. 69DUCV071004

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Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges summary judgment granted to respondent, arguing that the district court erred in dismissing its action to recover amounts loaned to respondent as

barred by the doctrine of res judicata. Because the district court erred in the application of res judicata, we reverse and remand.

FACTS

Robert Fierek and respondent Gregory Yetter formed appellant Cottage Industries, LLC (Cottage) in 2001 to manufacture and sell prefabricated cabins and storage buildings. Fierek agreed to contribute capital for two seasons, and Yetter contributed management and labor. Fierek owned 75% of the business, and Yetter owned 25%. During 2001 and 2002 Cottage loaned $12,300 to Yetter to pay health-insurance premiums. Despite having acknowledged his obligation to repay these loans, Yetter failed to do so.

In 2003, soon after Fierek told Yetter that he would no longer contribute capital and that the business needed to become self-sufficient, Yetter resigned. A few weeks after his resignation, Yetter unlawfully entered Cottage's warehouse, where he destroyed some property and removed other property. In 2005, Cottage sued Yetter in small-claims court in Bayfield County, Wisconsin, for vandalism and conversion and was awarded $3,545 in damages.

Cottage sued Yetter in 2006 for breach of contract and unjust enrichment to recover the amount of the loans plus prejudgment interest. Yetter asserted the defenses of res judicata and set off, and he counterclaimed for unpaid salary. Yetter's set-off defense was based on his counterclaim.

Both parties moved for summary judgment. The district court dismissed Cottage's claims as barred by res judicata and dismissed Yetter's counterclaim as barred by the applicable statute of limitations.[1] This appeal by Cottage followed.

D E C I S I O N

"On appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Application of the doctrine of res judicata is reviewed de novo. *Erickson v. Comm'r of Human Servs.*, 494 N.W.2d 58, 61 (Minn. App. 1992). "[T]he full faith and credit clause of the United States Constitution (article IV, §1) 'generally requires every State to give a judgment at least the *res judicata* effect which the judgment would be accorded in the State which rendered it.'" *McBroom v. Al-Chroma, Inc.*, 386 N.W.2d 369, 372 (Minn. App. 1986) (citing *Durfee v. Duke*, 375 U.S. 106, 109, 84 S. Ct. 242, 244 (1963)). We therefore apply Wisconsin law to determine whether this action is barred by res judicata.

In Wisconsin, the term "claim preclusion" has replaced the term "res judicata." *See Kruckenberg v. Harvey*, 694 N.W.2d 879, 884 (Wis. 2005). In *Kruckenberg*, the Wisconsin Supreme Court stated:

> The doctrine of claim preclusion provides that a final judgment on the merits in one action bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences. When the doctrine of claim preclusion is applied, a final judgment on the merits

[1] A notice of review was not filed with this court on the issue of Yetter's counterclaim. Therefore we do not disturb the district court's dismissal of Yetter's counterclaim.

> will ordinarily bar all matters "'which were litigated or which might have been litigated in the former proceedings.'"

Id. at 884 (quoting *Sopha v. Owens-Corning Fiberglas Corp.*, 601 N.W.2d 627, 637 (Wis. 1999)) (footnotes omitted).

In Wisconsin, claim preclusion has three elements: "(1) identity between the parties or their privies in the prior and present suits; (2) prior litigation resulted in a final judgment on the merits by a court with jurisdiction; and (3) identity of the causes of action in the two suits." *Id.* at 885. Here, as appellant concedes, the first and second elements of claim preclusion are met, and the only issue is the identity of the causes of action.

Under Wisconsin law, identity of the causes of action is analyzed using the "transactional approach" from the Restatement (Second) of Judgments § 24 (1982). *Id.* at 886. "Under the doctrine of claim preclusion, a valid and final judgment in an action extinguishes all rights to remedies against a defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Id.* (citing Restatement (Second) of Judgments § 24(1) (1982)). The legal theories employed and remedies sought are irrelevant to the transactional assessment. *Menards, Inc. v. Liteway Lighting Prods.*, 698 N.W.2d 738, 747 (Wis. 2005). The Restatement directs that the determination of what facts constitute a "transaction" or a "series" is "to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit,

and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." Restatement (Second) of Judgments § 24(2) (1982).

Yetter argues that because both the Wisconsin action for vandalism and conversion and the Minnesota action for repayment of loans arise out of Yetter's employment relationship with Cottage, they are part of the same transaction. We disagree. The two causes of action are not related in time, space, origin, or motivation, and they have no material facts in common. That two causes of action arise from the same employment relationship does not make those actions identical for purposes of claim preclusion. *See Kabes v. Sch. Dist. of River Falls*, 387 F. Supp. 2d 955, 967 (W.D. Wis. 2005) (applying Wisconsin law and holding that employees' claims for non-renewal of contract were not barred by earlier claims for demotion). Because Cottage's suit to recover amounts loaned to Yetter does not arise out of the same operative facts as the prior Wisconsin action, the claims are not identical. The district court erred by dismissing Cottage's loan-recovery action as barred by claim preclusion.

Cottage asks this court to enter judgment in its favor, including prejudgment interest. Alternatively, Cottage asks that we direct the district court to enter judgment in its favor. Based on the record, it appears that Cottage is entitled to summary judgment, but because the scope of this appeal is limited to whether the district court erred in dismissing Cottage's claim based on claim preclusion, we reverse that decision and remand to the district court for further proceedings. *See McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 832 (Minn. 1995) (citing Minn. R. Civ. App. P. 103.03 for the proposition that generally, an order denying summary judgment is not an

appealable order unless the district court certifies the question presented as important and doubtful).

Yetter's claim for attorney fees on appeal, based on the assertion that Cottage's appeal is frivolous, is without merit.

Reversed and remanded.