[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12555
Non-Argument Calendar

D.C. Docket No. 2:18-cv-00467-JES-UAM

BLUE HERON COMMERCIAL GROUP, INC.,
f.k.a. Eagle Crest Manufactured Home
Park, Inc.,

Plaintiff - Appellant,

versus

LEE WEBBER,
GERALD T. FILIPIAK,

Defendants - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 7, 2020)

Before JILL PRYOR, GRANT and TJOFLAT, Circuit Judges.

PER CURIAM:

The issue in this appeal is whether Blue Heron Commercial Group, Inc. ("Blue Heron") is precluded from litigating whether it is entitled to recoup capital expenditures it claims it is owed. Blue Heron appeals the district court's grant of summary judgment to defendants Lee Webber and Gerald Filipiak. The district court concluded that Blue Heron's breach of contract and unjust enrichment claims were barred by the doctrine of res judicata. After careful consideration, we affirm the district court's grant of summary judgment.

I. FACTUAL BACKGROUND

A. The Operation and Dissolution of Eagle Crest

Ray Webber, Lee Webber, and Gerald Filipiak (collectively the "shareholders") formed Eagle Crest Manufactured Home Park, Inc. ("Eagle Crest"), a joint real estate venture in which each shareholder owned one third of the shares. The shareholders used Eagle Crest as a holding company for real estate investments that were individually identified and managed by a single shareholder.

The shareholders' actions regarding Eagle Crest were governed by shareholder agreements that were amended or replaced over time. Relevant to this case are the 2002 Shareholder Agreement and the 2007 Shareholder Agreement. Section 2 of the 2002 agreement provided, in relevant part:

> The management fees payable with respect to such Identified Property shall be limited to Available Cash . . . the term "Available Cash" means . . . the excess of the revenues received by the Company, in cash or cash

> equivalents from operations of the Identified Property . . . over the sum of the following amounts:
> . . .
> (iii) Cash payments made for capital construction, acquisitions, alterations or improvements.

Doc. 2-1 at 3. The parties refer to the payments described in (iii) as "capital expenditures."[1]

By contrast, the 2007 agreement made no mention of the items included in (iii) of the 2002 agreement, nor did it reference capital expenditures. All that it said regarding expenditures was that each individual shareholder would be responsible for operating expenses, mortgages, and capital gains taxes incurred by that shareholder in managing his own properties.

Eventually, the relationship among the shareholders soured. Ray Webber filed suit against Lee Webber and Gerald Filipiak (collectively, the "defendants") in New York state court seeking a declaratory judgment and specific performance to permit Ray Webber to refinance Eagle Crest and alleging a breach of contract. Shortly afterward, the defendants redeemed their interests in Eagle Crest, leaving Ray Webber as Eagle Crest's only remaining shareholder. Within a few months, Ray Webber had transferred all of Eagle Crest's assets and rights to Blue Heron, a company that he created and controlled.

[1] The 2002 Agreement does not use the term "capital expenditures," but the parties do not dispute that the term refers to the items described in (iii).

B. Ray Webber's New York Litigation

The New York litigation progressed. After the share redemption that led to his becoming the sole shareholder and owner of Eagle Crest, Ray Webber filed a second amended complaint in the New York action adding as a plaintiff Duane Webber, his son, as the assignee of a percentage of his claims. The core of the plaintiffs' claims was that the defendants had failed to make proper payments to Ray Webber, as Eagle Crest's sole remaining shareholder, when they redeemed their shares in Eagle Crest. The second amended complaint alleged that the defendants breached the 2007 agreement when, upon dissolution of Eagle Crest, they failed to remit payment for the "amount due and owing pursuant to the terms of the 2007 Shareholder Agreement," Doc. 26-9 at 152,[2] including reimbursement for capital expenditures. This claim relied on the premise that the 2007 Shareholder Agreement should be interpreted in conjunction with the 2002 Shareholder Agreement. Ray and Duane Webber later requested leave to file a third amended complaint to add Blue Heron as a plaintiff, but their motion was denied.

The case proceeded to a bench trial. During the trial, Ray and Duane Webbers' expert witness testified regarding the reimbursement for capital expenditures that they claimed the defendants owed. The expert noted that the

[2] "Doc. # refers to the numbered entry on the district court's docket.

2002 agreement explicitly addressed capital expenditures, but there was no comparable language in the 2007 agreement. Despite the absence of a provision addressing capital expenditures, the expert opined that when the two agreements were read together, it became clear that the 2007 agreement implicitly addressed the treatment of capital expenditures in calculating what the parties referred to as "even-up" values upon a shareholder's redemption of his shares. Based on this implied agreement, the expert testified, the defendants owed Eagle Crest around $600,000 in reimbursement for capital expenditures. According to an exhibit introduced at trial, the amount of capital expenditures to be reimbursed was $652,807. The expert further testified that the defendants should have to repay the capital expenditures to Eagle Crest, not to Ray Webber. The expert's opinion was based on an assumption that, because the 2007 agreement did not obligate each shareholder to pay his own capital expenditures and capital expenditures were not mentioned anywhere in the agreement, the company must be responsible for them. The expert acknowledged, however, that the 2007 agreement did not expressly provide that Eagle Crest was responsible for all expenditures not relegated to the shareholders.

The defendants filed a motion for directed verdict, arguing that they were not liable to reimburse capital expenditures under the 2007 agreement. The trial court granted defendants' motion, finding that "[n]either a reasonable

interpretation of the written agreements among the parties, nor the additional proof elicited during the trial supports the capital expenditures claim." Doc. 26-4 at 2-3. Ray and Duane Webber then filed proposed findings of fact, which included the proposed finding that the plaintiffs presented proof of their damages, including reimbursement for capital expenditures. The defendants filed proposed findings of fact in response. The trial court vacated its directed verdict and adopted the defendants' proposed findings regarding the claim for reimbursement for capital expenditures: (1) that the plaintiffs failed to make a prima facie case of liability for reimbursement of capital expenditures, and (2) that the trial testimony established that there was no specific provision of any relevant agreement that that would require capital expenditure reimbursement and that the parties never intended it.[3]

Ray and Duane Webber appealed to the New York Supreme Court, Appellate Division, arguing that the trial court erred in failing to award them capital expenditure reimbursement. That court affirmed the trial court's denial of the capital expenditures claim and stated that:

> Contrary to plaintiffs' contention, we conclude that a fair interpretation of the evidence supports the court's determination that plaintiffs were not entitled to capital expenditure costs under the 2007 agreement. Courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include. Here, there is no reference to capital expenditure costs in the 2007 agreement, and any interpretation of the 2007

[3] Despite finding against plaintiffs as to the capital expenditure claim, the trial court entered judgment for the plaintiffs on other claims not relevant to this appeal.

> agreement that is dependent on language from the 2002 agreement cannot be, as plaintiffs claim, an unambiguous interpretation.

Doc. 26-25 at 4 (alteration adopted) (internal quotation marks and citation omitted).

C. Blue Heron's Florida Litigation

After the New York appellate court ruled against Ray and Duane Webber, Blue Heron filed this action against the defendants in Florida state court. The defendants removed the action to federal district court in the Middle District of Florida. Blue Heron claimed that it was owed $652,807 in unreimbursed capital expenditures upon the conclusion of Eagle Crest's business relationship with the defendants. The complaint alleged that the defendants owed Blue Heron, as successor to Eagle Crest, reimbursement for capital expenditures Ray Webber had made while a shareholder in Eagle Crest. The complaint cited the 2002 and 2007 Shareholder Agreements.

The defendants moved for summary judgment on the ground that res judicata barred the action following the judgment previously entered in the New York action. The district court agreed and granted the summary judgment motion, determining that "Blue Heron's Complaint asserts claims against Defendants which were previously asserted by its privy, Ray Webber, and adjudicated on the merits in New York state court." Doc. 74 at 11. This appeal followed.

II. STANDARD OF REVIEW

We review a district court's grant of summary judgment *de novo*, applying the same legal standards as the district court. *See Galvez v. Bruce*, 552 F.3d 1238, 1241 (11th Cir. 2008). We also review *de novo* the district court's application of res judicata. *See Griswold v. Cty. of Hillsborough*, 598 F.3d 1289, 1292 (11th Cir. 2010).

III. ANALYSIS

The doctrine of res judicata "bars the filing of claims which were raised or could have been raised in an earlier proceeding." *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999). In determining whether a state court judgment bars a second action in federal court, we apply that state's res judicata law. *See Amey, Inc. v. Gulf Abstract & Title, Inc.*, 758 F.2d 1486, 1509 (11th Cir. 1985) ("Where the first suit is brought in state court and the second suit is brought in federal court based on diversity, state law of res judicata is to be applied."). Our analysis of whether Blue Heron's claims are barred by res judicata is therefore governed by New York law.[4]

Under New York law, res judicata doctrine gives binding effect to a judgment of a court of competent jurisdiction and prevents the parties to an action, and those in privity with them, from relitigating any questions that were

[4] The parties agree that New York law applies.

necessarily decided there. *In re Shea's Will*, 132 N.E.2d 864, 868 (N.Y. 1956). New York law applies a transactional approach to res judicata, "bar[ring] successive litigation based upon the same transaction or series of connected transactions," if the following elements are met: (1) there was a judgment on the merits rendered by a court of competent jurisdiction, and (2) the previous action involved the party against whom the doctrine is invoked or its privies. *See People ex rel. Spitzer v. Applied Card Sys., Inc.*, 894 N.E.2d 1, 12 (N.Y. 2008) (internal quotation marks omitted).

Blue Heron argues that the capital expenditure claim was not decided on the merits and that Ray Webber was not in privity with it. We address these arguments in turn.

A. Blue Heron's Capital Expenditure Claim Was Decided on the Merits in the New York Action.

Blue Heron first argues that the district court erred in granting summary judgment because its capital expenditure claim was not fully and fairly litigated in the New York case.[5] Although the rationale behind New York's res judicata law is "that a party who has been given a full and fair opportunity to litigate a claim should not be allowed to do so again," in determining whether a party has had such an opportunity, New York courts look to whether the later claim arises out of the

[5] The parties do not contest that the judgment in New York state court was issued by a court of competent jurisdiction.

same transaction as the earlier claim. *In re Hunter*, 827 N.E.2d 269, 269 (N.Y. 2005). Under New York's transactional approach, once a claim has been brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy. *O'Brien v. City of Syracuse*, 429 N.E.2d 1158, 1159 (N.Y. 1981).

This rule applies not only to claims that were actually litigated, but also to claims that could have been raised in the prior litigation. *In re Hunter*, 827 N.E.2d at 274. The fact that theories of recovery may involve materially different elements of proof will not justify presenting a claim in two different actions if the theories are seeking essentially the same relief for harm arising out of the same or related facts. *O'Brien*, 429 N.E.2d at 1160. Here, Blue Heron's capital expenditure claim arises out of the same transaction, or series of transactions, at issue in the New York action—the defendants' alleged breach of the shareholder agreements by failing to reimburse Eagle Crest's capital expenditures upon redemption of the defendants' shares. In the New York action, a bench trial resulted in a final order and judgment. On appeal, the state appellate court understood Ray and Duane Webber's claim on appeal as including "*capital expenditure costs*, attorney's fees, consequential damages, contractual interest, and damages associated with defendants' alleged conversion." *Webber v. Webber*, 44

N.Y.S.3d 633, 636 (N.Y. App. Div. 2016) (emphasis added). The appellate court then evaluated whether the trial court had erred regarding these claims and concluded that "a fair interpretation of the evidence supports the court's determination that plaintiffs were not entitled to capital expenditure costs under the 2007 agreement." *Id.* at 637.

Blue Heron argues that Ray Webber failed to present its claim to the trial court in a meaningful way, such that the claim was not fully and fairly litigated on the merits. We disagree. The second amended complaint alleged that the defendants breached the 2007 Shareholder Agreement because, upon the dissolution of their business relationship with Eagle Crest, they failed to pay their "even-up obligations." Doc. 26-9 at 150-151. At trial, when the plaintiffs' expert was asked what "even-up obligations" referred to, he replied that they included "an even-up of capital expenditures." Doc. 26-3 at 2. The plaintiffs' expert then explained how he calculated the even-up value of the capital expenditures the defendants owed. Furthermore, in their proposed findings of fact filed after the court had granted a directed verdict, Ray and Duane Webber asked the trial court to award "$652,807 relating to the capital expenditures"—the exact amount Blue Heron seeks in this case. Doc. 26-22 at 168. We therefore conclude that the New York court entered a judgment on the merits of Blue Heron's capital expenditures claim.

B. Blue Heron Was in Privity with Ray Webber.

Blue Heron argues that the second element of res judicata also has not been met because it is not in privity with Ray Webber. Blue Heron argues that it and Ray Webber are not in privity because Ray was not Eagle Crest's "alter ego." Under New York law, privity does not have a "technical and well-defined" meaning. *Watts v. Swiss Bank Corp.*, 265 N.E.2d 739, 743 (N.Y. 1970), New York courts have, however, identified several instances where privity exists. Privity extends to a party who is a successor to a property interest, those whose interests were represented by a party to the first action, and possible co-parties to the prior action. *Id.*

In particular, New York law has recognized that privity exists when a lawsuit is brought by the owner of a corporation and a later suit is brought by the corporation itself. *See In re Shea's Will*, 132 N.E.2d at 869 (reasoning that "[a] clearer case for the application of [res judicata] could hardly be imagined than one involving successive attempts to litigate the same question by a corporation and by its owner"). Where a party is the sole owner of a corporation, he will "not be permitted to use the corporate cloak as a means to avoid the finality of the former adjudication to which he was a party." *McNamara v. Powell*, 11 N.Y.S.2d 491, 496 (N.Y. App. Div. 1939).

We agree with the district court that Blue Heron was in privity with Ray Webber. When the second amended complaint—the operative complaint in the New York action[6]—was filed, Ray Webber was the sole shareholder of Eagle Crest. As Eagle Crest's sole shareholder, Ray Webber assigned all the company's rights and assets to Blue Heron. Blue Heron was therefore in privity with Ray Webber. Moreover, when Ray and Duane Webber sought to file a third amended complaint adding Blue Heron as an additional plaintiff in the New York case, they argued that their "substantive claims remain unchanged" and that adding Blue Heron as an additional plaintiff introduced "no new theories of liability." Doc. 26-10 at 239-40. Our conclusion that Blue Heron was in privity with Ray Webber is further bolstered by representations Ray Webber's and Blue Heron's counsel made to the New York trial court:

> [W]e're talking about a closely held corporation that has a single shareholder. So that for all intents and purposes, Ray Webber is Eagle Crest, Eagle Crest was Ray Webber. The assignment has been made to Blue Heron. So . . . I think at this point it's a distinction without a difference.

Doc. 26-7 at 18. Because Eagle Crest cannot use a "corporate cloak as a means to avoid the finality of the former adjudication to which [Ray Webber] was a party," and Blue Heron brings this claim as the assignee of Eagle Crest's rights, Blue

[6] Although Ray Webber was not the sole shareholder at the time the first complaint was filed, the operative complaint at the time of the New York judgment was the second amended complaint.

Heron was, without a doubt, in privity with Ray Webber. *McNamara*, 11 N.Y.S.2d at 496.

The defendants have satisfied both contested elements of res judicata under New York law. The district court thus did not err in granting summary judgment in the defendants' favor.

IV. CONCLUSION

For the reasons set forth above, we affirm the district court's judgment.

AFFIRMED.