

FILED OCT 26 2001

JEANNE A. KRIEGER  
CLERK OF COURT

IN THE COURT OF APPEALS OF  
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Leonard Prescott,

Appellant-Defendant,

v.

Little Six, Inc. d/b/a Mystic Lake Casino,

Appellee-Plaintiff

Ct. App. No. 027-01

MEMORANDUM OPINION AND ORDER

FACTUAL BACKGROUND

In this case, Little Six, Inc. (LSI) initiated an action against Leonard Prescott (Prescott) claiming that he breached an agreement to pay back certain sums of money. At various different times, Prescott has served as this Community's Chairman, the President of LSI, and the Chairman of the Board of LSI.

In 1994, the SMS(D)C Gaming Commission initiated an investigation into some of the actions Prescott undertook when he served as an officer of LSI. At the beginning of that investigation, the LSI Board decided to provide Prescott with funds to hire a lawyer in order to defend himself. LSI alleges that when it forwarded the money to Prescott, it had an agreement with him that if he was found guilty of misconduct he was to reimburse LSI for the forwarded funds.

The Commission concluded that some of Prescott's actions justified revoking his gaming license, and on appeal this Court ultimately allowed that decision to stand. See

In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order, No. 015-97 (SMS(D)C Ct. App. July 30, 1999). The Community alleges that after this Court's decision in 1999, it made a demand upon Prescott to return the money forwarded to him for attorney's fees. Although Prescott does not appear to have answered in this case, the Court will assume that Prescott has failed to repay the money that LSI claims he owes.

LSI then filed this action claiming Prescott violated their agreement to give the money back. LSI has based this action on breach of contract and unjust enrichment.

Prescott filed a motion to dismiss, arguing that any claims related to the money forwarded in 1994 were settled by the litigation in an earlier case, LSI v. Prescott and Johnson, No. 020-99, 021-99, 022-99 (SMS(D)C Ct. App. Feb. 1, 2000). For the sake of clarity, we adopt the terms used by the Trial Court – we will refer to the Complaint in this case as the 2000 Complaint, and the complaint in the earlier LSI v. Prescott litigation as the 1994 Complaint.

The 1994 Complaint was filed by LSI against Prescott and others for money damages related to a number of different legal and factual theories. Ultimately, this Court concluded that either summary judgment or the doctrine of qualified immunity shielded Prescott from liability on all of those claims. Prescott now argues in his motion to dismiss that the claims made in the 2000 Complaint are barred by the doctrine of res judicata based on the litigation resulting from the 1994 Complaint. In the alternative, Prescott claims that the doctrine of qualified immunity shields him from liability in this case, as it did in the litigation based on the 1994 Complaint.

Because we agree with the Trial Court that LSI could not have brought its present claims for breach of contract and unjust enrichment earlier, we conclude that the 2000 Complaint is not barred by res judicata. And because we agree that even if Prescott was acting within the scope of his duty, a reasonable officer would have known that not paying back money he owed violated the law, we affirm the Trial Court's decision on qualified immunity as well.<sup>1</sup>

## LEGAL DISCUSSION

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<sup>1</sup> Since the Trial Court deferred ruling on Prescott's motion for attorney's fees, that issue is not presently before this Court at this time.

We review a decision on a motion to dismiss de novo, assuming all the facts alleged in the complaint as true and viewing the allegations in the light most favorable to the plaintiff. Clifford Crooks, Sr. v. SMS(D)C, No. 016-97 (SMS(D)C Ct. App. Jan. 30, 1998).

#### **A. Res Judicata**

As noted by the Trial Court, res judicata can take one of two forms: (1) claim preclusion, which bars the same claim between two parties where a final judgment has been issued on the merits in an earlier case by a court of competent jurisdiction, and (2) issue preclusion, which prevents the relitigation of a specific legal or factual issue decided between two related parties in an earlier case. See, e.g., W.A. Lang Co. v. Anderberg-Lund Printing, 109 F.3d 1343, 1346 (8<sup>th</sup> Cir. 1997).

#### **1. Claim Preclusion**

To demonstrate that claim preclusion bars this suit, Prescott must show that the 1994 Complaint was (1) between the same parties, (2) brought in a court of competent jurisdiction, (3) based on the same cause of action as the 2000 Complaint, and (4) resulted in a judgement on the merits. Lang, 109 F.3d at 1346. The parties do not seriously dispute that the 1994 Complaint and the 2000 Complaint involve the same parties or that this Court is a court of competent jurisdiction.

The main issue seems to be whether each complaint involves the same cause of action. Whether two cases involve the same cause of action is determined by analyzing whether they stem from the same nucleus of operative facts. United States v. Gurley, 43 F.3d 1188, 1195-96 (8<sup>th</sup> Cir. 1994). Another way to analyze this same question is to ask whether the cause of action alleged in the second action could have been raised in the first action. Gurley, at 1196-97; Myers v. Price, 463 N.W.2d 773, 776-77 (Minn. Ct. App. 1990).

Here the elements of the 2000 Complaint could not have been pled until after this Court's 1999 decision upholding the Gaming Commission's finding of misconduct. In re Leonard Prescott, supra. It was not until after that decision that LSI could allege in good faith that an appropriate tribunal had found Prescott guilty of misconduct. If LSI had

tried to add its present breach of contract and unjust enrichment claims in the 1994 Complaint, those claims would have likely been dismissed or stayed on ripeness grounds because a series of complex appeals concerning Prescott's licensing dispute were still pending.

Prescott argues the trial court erred by focusing on the different theories of recovery in the two complaints, rather than the facts of the two cases. It strikes the Court, however, that the facts underlying the 1994 Complaint are simply different than the facts alleged in the 2000 Complaint. The 1994 Complaint involved a claim that in 1994 Prescott induced LSI to forward funds through misrepresentations and deceit. The 2000 Complaint, on the other hand, involves allegations that in 1999 Prescott refused to honor an earlier agreement concerning the forwarded funds. While both complaints deal with the same funds, the factual contexts of the claims are entirely different, and the claims in the 2000 Complaint did not ripen until five years later. These differences make the factual predicates underlying each complaint separate in "time, space, origin, [and] motivation," such that they do not constitute the same nucleus of operative facts. Gurley, 43 F.3d at 1195-96.

Prescott argues that since LSI's other claims in its 1994 Complaint were ripe in 1994, there is no reason the breach of contract claim was not ripe either. Brief of Appellant Leonard Prescott at 19. However, as explained above, although the two claims involved the same funds, the factual allegations concerning those funds are separated by significant amounts of time, space, origin, and motivation. The allegations in the 1994 Complaint involve actions by Prescott that had been completed by the time the complaint was filed in 1994. The actions alleged in the 2000 Complaint were not completed until 1999. The two claims simply involve different facts.

Prescott also argues that since the Gaming Commission's findings did not impose monetary damages upon him, he was never found "liable" for misconduct such that he was ever obligated to return the funds. Brief of Leonard Prescott, at 21. We are not persuaded. First, Prescott's argument is based on an extremely narrow reading of the Complaint and our precedent. Such a reading is inappropriate given the standard of review here that requires viewing the Complaint in a light most favorable to LSI. Second, "liable" does not mean strictly responsible for monetary damages, but includes

any kind of legal responsibility. See Ballentine's Law Dictionary, 3<sup>rd</sup> Ed. We are satisfied that the Gaming Commission's findings, and our affirmance of those findings, constitute a finding of misconduct sufficient to withstand Prescott's motion to dismiss.

Since we agree with the Trial Court that the two complaints involve different causes of action, we do not decide whether a decision based on official or sovereign immunity is a decision on the merits for the purpose of res judicata. Contrary to LSI's assertion in its brief, there are no cases in the SMS(D)C Court system that consider whether a decision based on an immunity doctrine is "on the merits" for the purposes of res judicata. Since such a decision is not necessary to our conclusion today, we will not reach that issue.

## **2. Issue preclusion**

As the Trial Court noted, issue preclusion bars a subsequent suit, or a part of a subsequent suit, when the issue in question is identical in both suits, the earlier judgment was on the merits, the estopped party was a party or in privity with a party in the earlier litigation, and the estopped party was given a full and fair opportunity to be heard. See Willems v. Commissioner of Public Safety, 333 N.W.2d 619, 621 (Minn. 1983). Issue preclusion "operates only as to matters actually litigated, determined by, and essential to a previous judgment." Roseberg v. Steen, 363 N.W.2d 102, 105 (Minn.App.1985).

Here, the issues are clearly not the same. A breach of fiduciary duty claim under the 1994 Complaint is not the same as a breach of contract claim in the 2000 Complaint, and as discussed above, the facts underlying each claim are not the same. In addition, it is not clear how LSI could have had a fair opportunity to litigate its breach of contract and unjust enrichment claims in 1994, when those claims did not ripen until 1999. We therefore affirm the Trial Court's decision that issue preclusion does not bar this suit.

## **B. Official Immunity**

We agree with the Trial Court that even assuming that Prescott was acting within the scope of his duty, he should have known that failing to pay back money he owed was a violation of Community law.

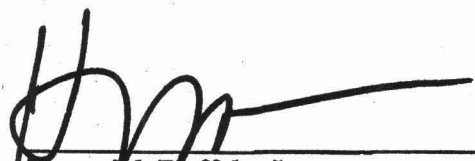
Prescott argues that since he was granted qualified immunity on the breach of fiduciary duty claim in the 1994 Complaint, he is entitled to such protection here. Brief of Appellant Leonard Prescott, at 25. There are at least two responses to this argument. First, when LSI allegedly demanded its money back in December 1999, this Court's February 1, 2000 decision on the 1994 Complaint had not been issued, so any indecision Prescott had regarding his legal responsibilities was not a result of our decision on the 1994 Complaint. Second, our earlier decision granted Prescott immunity because we could not say that any specific representation attributed to him clearly violated Community law. Contrary to Prescott's arguments, that is a completely separate question from whether a refusal to honor a contractual agreement is a clear violation of law. See Reply Brief of Appellant Leonard Prescott at 6-7. If we assume all the facts alleged in LSI's 2000 Complaint are true, when LSI asked for its money back in December of 1999, more than four months after this Court upheld the Gaming Commission's findings, a reasonable official in Prescott's position would have realized that a refusal to return the money was a violation of LSI's rights. Therefore, we affirm the Trial Court's decision on official immunity.

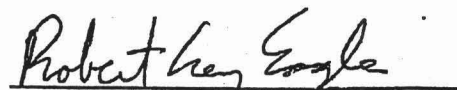
ORDER

The Trial Court's decision in this matter is affirmed in all respects. Appellant's motion to dismiss is denied. The matter is remanded for further proceedings in the Trial Court consistent with this opinion.

Dated:

10/26/01

  
Henry M. Buffalo, Jr.  
Judge

  
Robert A. Grey Eagle  
Judge