IN THE COURT OF APPEALS OF IOWA

No. 2-431 / 92-209

FILED
MAR 30 1993
CLERK SUPREME COURT

PAUL D. PALMER,

Appellee,

vs.

TANDEM MANAGEMENT SERVICES, INC., A California Corporation; **HILLVIEW ASSOCIATES,** A California General Partnership; **WILLIAM E. CAVANAUGH,** Individually and as General Partner of **HILLVIEW ASSOCIATES;** and **NORMAN I. TATCH,** Individually and as a General Partner of **HILLVIEW ASSOCIATES,**

Appellants.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge.

The defendants appeal the district court's judgment awarding the plaintiff damages for retaliatory eviction and abuse of process. **REVERSED AND REMANDED.**

William E. Cavanaugh and Norman I. Tatch, Costa Mesa, California, pro se, for appellants.

Richard M. LaJeunesse of Dreher, Simpson, Jensen, Sellers, Harvey, Butters, Kaiser & Abels, Des Moines, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

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DONIELSON, P.J.

Plaintiff Paul D. Palmer was a resident of Gracious Estates Mobile Home Park in Des Moines. Gracious Estates is owned by Hillview Associates, a partnership operated by William E. Cavanaugh and Norman I. Tatch, who are residents of California. Hillview hired Tandem Management Services, Inc., to manage the park. Cavanaugh also owns a controlling interest in Tandem.

Palmer's lease agreement with Hillview contained certain rules and regulations. In December 1987 Palmer began to complain that Tandem was not enforcing the rules and regulations concerning noise and pets. He claimed he was being deprived of the "peace and tranquillity he deserved for his sunset years." Palmer continued his complaints through January and February 1988. In March 1988 he filed two small claims actions against Hillview and Tandem alleging failure to perform services. He later voluntarily dismissed these actions.

Also, beginning in March 1988 Palmer did not pay the full amount of rent due, but deducted a portion for diminution in services. Hillview did not accept the reduced rental payments. Hillview commenced a forcible entry and detainer (FED) action in small claims court. Palmer counterclaimed pursuant to Iowa Code section 562B.16, landlord's obligation to maintain fit premises; section 562B.24, willful diminution in services; and section 562B.32, retaliatory conduct.

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On September 18, 1988, the court found Palmer was delinquent in his rent and that he had failed to cure after receiving a notice to cure. The court also found Palmer's action of reducing his rental payments was arbitrary and unjustified. The court determined Hillview was entitled to possession within thirty days.

Palmer appealed to the district court, which affirmed. Palmer then sought discretionary review before the supreme court. On June 20, 1990, the supreme court determined further review was not justified and dismissed the appeal. Hillview Associates v. Palmer, 456 N.W.2d 909 (Iowa 1990).

Palmer filed the present action on April 30, 1990, against Tandem, Hillview, Cavanaugh, and Tatch. We will refer to these defendants together as Hillview. Palmer alleged retaliatory eviction, in violation of section 562B.32; abuse of access, in violation of sections 562B.20(1) and 562B.31; and breach of express and implied warranties of habitability, in violation of the mobile home park rental agreement. He also alleged abuse of process and malicious prosecution, based on Hillview's FED action.

Hillview filed a motion to dismiss, claiming Palmer's action was barred under the doctrines of issue and claim preclusion. The district court noted section 648.19 provides a FED action should not be brought in connection with any other action. The court then concluded the small claims court was without jurisdiction to hear the counterclaims in the FED actions, and therefore, the prior

judgment on retaliatory eviction could not have a preclusive effect. The court denied the motion to dismiss.

The case then proceeded to trial. The jury returned its verdict on October 18, 1991. By special verdict, the jury found Hillview had engaged in retaliatory eviction and abuse of access, and awarded Palmer damages of $160 on each of these claims. The jury found for Palmer on his claim of abuse of process, and awarded damages of $5,000. The jury also awarded punitive damages of $10,000 based on the abuse of process claim. The jury did find the conduct of Hillview was not directed especially at Palmer, and thus, a portion of the punitive damages should be paid into a civil reparation trust fund. The jury found defendants had not breached any express or implied warranty of habitability or engaged in malicious prosecution.

Hillview filed a motion for a new trial on the issue of abuse of process. It argued that because the jury found Hillview's conduct was not directed towards Palmer, Palmer did not suffer any damages as a result of the FED action. A poll of the jurors showed they had awarded actual damages of $5,000 and punitive damages of $10,000 to send a message to the landlord concerning all tenants.

Hillview filed a second motion for new trial on the ground the damages awarded for abuse of process and retaliatory eviction were duplicative because they were both based on the FED action. It also argued the award of

damages was not supported by substantial evidence, was excessive, and was the result of passion and prejudice.

Hillview also filed a motion for judgment notwithstanding the verdict. It stated it had probable cause to file the FED action. Hillview claimed the verdict for abuse of process was inconsistent with the other verdicts and was duplicative and cumulative.

Palmer filed a motion seeking attorney fees.

The district court ruled on these motions on January 2, 1992. The court ordered Hillview to pay $10,000 for Palmer's attorney fees. The court denied Hillview's motions. Hillview has appealed.

I. This case was tried as an action at law. Our review is for the correction of errors of law. Iowa R. App. P. 4. We review the record to determine if there is substantial evidence to support the jury's verdict. Recruiter, Inc. v. Brenco Automation Center, Inc., 354 N.W.2d 245, 246 (Iowa App. 1984). If that quantum of evidence exists, we are bound thereby. Id.

II. Hillview first contends the issue of retaliatory eviction should have been barred by the doctrines of issue or claim preclusion. As discussed above, the district court found the small claims court lacked subject matter jurisdiction to consider a counterclaim in a FED action due to section 648.19.

Section 648.19 provides:

> An action of this kind shall not be brought in connection with any other action, with the exception of a claim for rent or recovery as provided in sections 562A.24, 562A.32, 562B.22, 562B.25, or 562B.27, nor shall it be made the subject of a counterclaim.

Palmer's counterclaim of retaliatory eviction was made pursuant to section 562B.32(1), which prohibits a landlord from bringing an action for possession after a tenant has complained of a failure to maintain fit premises. Subsection (2) of this section provides:

> If the landlord acts in violation of subsection 1 of this section, the tenant is entitled to the remedies provided in section 562B.24 and has a defense in an action for possession. (Emphasis added.)

Section 562B.25(3) provides a landlord may recover possession of the mobile home space pursuant to an action in forcible detainer. Section 562B.32(2) thus specifically allows a claim of retaliatory eviction to be raised in a FED action.

Where there is a conflict or ambiguity between specific and general statutes, the provisions of the specific statute control. Hillview Associates v. Palmer, 456 N.W.2d 909, 910 (Iowa 1990). It is a fundamental rule of statutory construction that where a general statute includes the same matter as a special statute and conflicts with it, the special statute will be considered an exception to or a qualification of the general statute and will prevail over it, whether it was passed before or after the general statute. State v. Perry, 440 N.W.2d 389, 390

(Iowa 1989). The special statute will prevail over a general provision only if the two statutes cannot be reconciled. Id.

In the present case, we determine section 648.19 and section 562B.32(2) cannot be reconciled. Section 562B.32(2) is the more specific statute, and thus prevails. Therefore, under section 562B.32(2) the small claims court had jurisdiction to consider Palmer's claim of retaliatory eviction.

We next turn to the question of whether the decision in the small claims court should act to bar further litigation on the issue of retaliatory eviction.

Issue preclusion does not bar subsequent relitigation in district court of an issue adjudicated in a small claims action. Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551, 554 (Iowa 1981). Claim preclusion is different than issue preclusion. Bagley v. Hughes A. Bagley, Inc., 465 N.W.2d 551, 554 (Iowa App. 1990). Claim preclusion can prevent a claimant from relitigating a claim in district court if the claim has been litigated in small claims court. Id.; Donahue v. American Farmers Mutual Casualty Co., 380 N.W.2d 437, 439 (Iowa App. 1985).

Claim preclusion applies when a litigant has brought an action, an adjudication has occurred, and the litigant is thereafter foreclosed from further litigation on the claim. Selchert v. State, 420 N.W.2d 816, 818 (Iowa 1988). The doctrine is based on the principle that a party

may not split or try a claim piecemeal, but must put in issue the entire claim or defense in the case on trial. Id. A fundamental feature of the doctrine is that adjudication of the claim in the former suit must have been between the same parties. Id.

We determine claim preclusion applies here. The parties in the small claims action were the same as those in the present suit. Palmer's claim of retaliatory eviction in the small claims action was the same as that raised here. The small claims court found against Palmer on this claim. We conclude the doctrine of claim preclusion bars further litigation on the issue of retaliatory eviction. We therefore reverse the jury's verdict based on retaliatory eviction.

III. Hillview's second argument alleges the claims of retaliatory eviction and abuse of process were duplicative and cumulative. Hillview's argument is based on the jury instructions for abuse of process, which allowed the jury to find abuse of process if Hillview's motive for the FED action was retaliation.

We first note we have reversed the verdict for retaliatory eviction, and thus the verdicts could no longer be duplicative or cumulative. We also note Hillview did not object to the jury instructions for abuse of process, and therefore, failed to preserve error. See Woods v. Schmitt, 439 N.W.2d 855, 866 (Iowa 1989).

IV. Finally, Hillview contends the jury's verdict for abuse of process should be reversed. Palmer alleged Hillview used the FED action to intimidate him and as retaliation for his action filed against Hillview in March 1988. Hillview points out that the claim of retaliatory eviction was decided adverse to Palmer in the small claims action. Hillview claims Palmer could not then show its primary purpose in filing the action was retaliation.

Abuse of process is the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it is not designed. Wilson v. Hayes, 464 N.W.2d 250, 266 (Iowa 1990). The essence of this tort is an improper purpose for using the legal process. Id. The improper purpose is ordinarily an attempt to secure from another some collateral advantage not properly includable in the process itself, and is a form of extortion in which a lawfully used process is perverted to an unlawful use. Schmidt v. Wilkinson, 340 N.W.2d 282, 284-285 (Iowa 1983). An abuse of process can occur even though there is probable cause to bring the action and the original action terminates in favor of the plaintiff. Wilson, 464 N.W.2d at 266.

The elements of abuse of process are (1) the use of a legal process, and (2) its use in an improper or unauthorized manner. Lindaman v. Bode, 478 N.W.2d 312, 314-315 (Iowa App. 1991). A third element requires that

the plaintiff suffered damages as a result of the abuse. Wilson, 464 N.W.2d at 266.

For the second element, the plaintiff must prove that the defendant used the legal process primarily for an impermissible or illegal motive. Id. A very restrictive view is taken of this element. Id. at 267. Abuse of process will not lie for a civil action which inconveniences a defendant, or for one filed in expectation of settlement. Id. Additionally, there is no abuse of process when the action is filed to intimidate and embarrass a defendant knowing there is no entitlement to recover the full amount of damages sought. Id. Proof of an improper motive by the person filing the lawsuit, even a malicious purpose, does not satisfy this element. Grell v. Poulsen, 389 N.W.2d 661, 664 (Iowa 1986).

We conclude that because the claim of retaliatory eviction had already been decided adversely to Palmer, as a matter of law he could not base his abuse of process action on an allegation of retaliatory eviction as the improper purpose. Palmer brought his claim of retaliatory eviction in the small claims action and it was decided against him. Palmer's claim of abuse of process is based on the same set of facts and again raises the allegations of retaliatory eviction. We determine Palmer may not now raise the retaliatory eviction claim as the basis for the abuse of process claim.

We therefore determine this issue should not have been submitted to the jury because Palmer has failed to show the second element of an abuse of process claim as a matter of law. We reverse the jury's verdict on this issue. Furthermore, because we have reversed the abuse of process verdict, we must also reverse the award of punitive damages.

V. In summary, we have reversed the jury's verdict on the claims of retaliatory eviction and abuse of process. The judgment against defendants for abuse of access, which was not appealed, still stands. We remand to the district court with directions to enter judgment in accordance with this decision. Costs of this appeal are assessed to Paul Palmer.

REVERSED AND REMANDED.