IN THE COURT OF APPEALS OF IOWA

No. 9-164 / 98-281
Filed May 26, 1999

SUN VALLEY IOWA LAKE ASSOCIATION, INC.,
Appellant,

vs.

QUENTIN ANDERSON, RITA ANDERSON, and **SUN VALLEY LAKE, INC.,**
Appellees.

Appeal from the Iowa District Court for Ringgold County, Darrell J. Goodhue, Judge.

The plaintiff appeals a district court ruling dismissing its foreclosure actions against the defendants' property based on a failure to pay association dues and assessments. **REVERSED AND REMANDED.**

Louis R. Hockenberg, James G. Sawtelle, and Jill Mataya Corry of Sullivan & Ward, P.C., Des Moines, for appellant.

Richard L. Wilson of Richard L. Wilson, P.C., Lenox, for appellees.

Heard by Sackett, C.J., Vogel, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

VOGEL, J.

The plaintiff appeals a district court ruling dismissing its foreclosure actions against the defendants' property based on a failure to pay association dues and assessments. Based on the principle of unjust enrichment, we reverse and remand.

Background facts. Plaintiff Sun Valley Iowa Lake Association is a homeowners' association in a development near Ellston, Iowa. The Association owns and is responsible for the maintenance of all common areas in the development, which include a lake, clubhouse, green areas, picnic areas, and roads. To finance this maintenance, the Association collects annual assessments from property owners within the development. The Association has authority to collect the assessments pursuant to a series of protective covenants adopted in 1988.

Defendants Quentin and Rita Anderson initiated the Sun Valley Development in the early 1970s. They currently own four lots within the development in their own name. The Andersons are also the principals for Defendant Sun Valley Lake, Inc., which owns six lots in the development. Up until April of 1993, defendants voluntarily paid the Association's assessments on some, but not all, of their lots. Pursuant to the provisions of the 1988 covenants, the Association filed a notice of lien every year on each of the defendants' lots for which an assessment had not been paid.

In 1997, the Association filed a petition seeking to foreclose the liens on the defendants' lots. The defendants filed a motion for summary judgment which was granted by the district court. The Association now appeals.

Scope of review. This was a foreclosure action brought in equity. *See* Iowa Code § 654.1 (1997). Our review of such actions is de novo. *See* Iowa R. App. P. 4; *Sun Valley Iowa Lake Association v. Anderson*, 551 N.W.2d 621, 629 (Iowa 1996).

I. Applicability of 1988 covenants to defendants' lots. The Association first claims the district court erred in ruling that the defendants' lots were not subject to the 1988 covenants.

In 1978, the defendants drafted and filed the original covenants which applied to all lots in the Sun Valley Lake development. These covenants provided, in relevant part:

> All of the restrictions, conditions, covenants and agreements contained herein shall continue until January 1, 1991, except that they may be changed, altered, amended or revoked in whole or in part by the record owners of the Lots in the subdivision whenever the individual and corporate record owners of at least two-thirds of said platted lots, or the owners of 1000 lots, whichever is greater, so agree, in writing.

In 1988, Patten Corporation purchased 784 of the platted lots and interest in some of the common areas. Patten then drafted the 1988 covenants, and the owners of 238 additional plots agreed in writing to adopt the 1988 covenants prior to January 1, 1991.[1]

The Association asserts that because the owners of at least 1,000 lots agreed in writing to the 1988 covenants, the 1988 covenants amended and replaced the

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[1] The defendants further assert that the 1,000 votes accumulated by Patten could not have amended the original covenants because 160 of the votes were garnered from lot owners who were not covered by the original covenants, and therefore had no right to vote. However, we need not address this issue due to our other findings.

original covenants. However, the district court found, and we agree, that the 1988 covenants did not amend nor replace the original covenants. The 1988 covenants apply only to those lots Patten purchased and other lot owners who voluntarily agreed to be bound by them. There is no mention of the original covenants in the 1988 covenants and no language purporting to amend the same. In addition, although Article VII of the 1988 covenants grants the Association authority to levy assessments against all lots in the development, "development" is defined by Article I, section (h) as: "Sun Valley Lake as the same be shown on the map thereof recorded from time to time hereafter and as described in the Supplemental Declaration." The defendants' lots are not included in the Supplemental Declaration, nor are they included on a "map thereof recorded from time to time hereafter."

II. Issue preclusion. The Association also argues that the district court erred in failing to find that the defendants were bound by the holding of a similar case pursuant to the doctrine of issue preclusion.

Issue preclusion is a form of res judicata which prevents a party to a prior action from relitigating in a subsequent action an issue raised and resolved in a prior action. *See KJOS v. City of Sioux City*, 346 N.W.2d 25, 28 (Iowa 1984); *see also Matsui v. King*, 547 N.W.2d 228, 230 (Iowa App. 1996). The four requisite elements of issue preclusion are:

> (1) the issue must be identical in the two actions; (2) the issue must be raised and litigated in the prior action; (3) the issue must be material and relevant to the disposition of the prior action; and (4) the

> determination made of the issue in the prior action must be necessary and essential to the judgment.

Matsui, 547 N.W.2d at 231 (citing *Ackley State Bank v. Haupt*, 451 N.W.2d 495, 496 (Iowa 1990)). The doctrine may be utilized in either a defensive or offensive manner. *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981).

> The phrase "defensive use" of the doctrine of collateral estoppel is used here to mean that a stranger to the judgment, ordinarily the defendant in the second action, relies upon a former judgment as conclusively establishing in his favor an issue which he must prove as an element of his defense.
>
> On the other hand, the phrase "offensive use" or "affirmative use" of the doctrine is used to mean that a stranger to the judgment, ordinarily the plaintiff in the second action, relies upon a former judgment as conclusively establishing in his favor an issue which he must prove as an essential element of his cause of action or claim.
>
> In other words, defensively a judgment is used as a "shield" and offensively as a "sword."

Id. (quoting *Goolsby v. Derby*, 189 N.W.2d 909, 913 (Iowa 1971)).

When using issue preclusion offensively, in addition to the four prerequisites listed above, a party must also show either (1) the parties in both actions are the same (mutuality of parties), or (2) privity between the party against whom issue preclusion is invoked and the party against whom the issue was decided in the first litigation. *See Brown v. Kassouf*, 558 N.W.2d 161, 163 (Iowa 1997) (citing *Hunter*, 300 N.W.2d at 123). A "privy" for purposes of issue preclusion means "one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, or purchase." *See Brown*, 558 N.W.2d at 163 (quoting *Goolsby*, 189 N.W.2d at 914). However, where a party seeks to use issue preclusion offensively and mutuality or privity is lacking, the doctrine may be applied as long as: 1) the party against whom preclusion is sought to be applied was afforded a full and fair opportunity to litigate the issues in the first action, and 2) no other circumstances are present which would justify granting that party occasion to relitigate those issues. *See Hunter*, 300 N.W.2d at 124-25.

The prior litigation which the Association seeks to use offensively is *Sun Valley Iowa Lake Association v. Anderson Supply, Inc.*, Ringgold County No. 4325, in which the district court entered summary judgment in favor of the Association and specifically found that the 1988 covenants amended the original 1978 covenants. The district court in the present case took judicial notice of that ruling, but found that the Association was barred from using issue preclusion offensively because the requisite privity was lacking. We agree. The defendants were not parties to the prior litigation and there is no privity between themselves and the defendants in the prior litigation. Furthermore, the defendants in this case were not parties to case No. 4325, and there is no evidence in the record to indicate that they were aware of that litigation. We therefore cannot say that defendants were afforded a full and fair opportunity to litigate the issue. *See Hunter*, 300 N.W.2d at 124-25.

III. Claim preclusion. The Association further contends that the district court erred in finding that its claim was further barred by the doctrine of claim preclusion.

Claim preclusion, also a form of res judicata, applies when a litigant has brought an action, an adjudication has occurred, and the litigant is thereafter foreclosed from further litigating that claim. *See Riley v. Maloney*, 499 N.W.2d 18, 20 (Iowa 1993); *Israel v. Farmers Mut. Ins. Ass'n*, 339 N.W.2d 143, 146 (Iowa 1983). A second claim is likely to be considered precluded if the acts complained of, and the recovery demanded, are the same, or when the same evidence will support both actions. *Riley*, 499 N.W.2d at 20; *B & B Asphalt Co. v. T.S. McShane Co.*, 242 N.W.2d 279, 286 (Iowa 1976).

The very same parties in this action were opposing parties in a prior Ringgold County case initiated in 1995. In that case the Association filed a counterclaim on June 12, 1995, seeking a judgment against the plaintiffs (the same defendants in this action) for unpaid assessments. On March 4, 1996, all parties filed a dismissal with prejudice. The district court in the present case concluded that the doctrine of claim preclusion would operate as a bar to any claims for assessments levied against the defendants prior to the filing of the Association's counterclaim on June 12, 1995. The district court further found, however, that the prior action did not act as a final adjudication with respect to the applicability of the 1988 covenants to assessments levied after June 12, 1995.

The Association argues that claim preclusion should not apply because 1) there was no evidence that the dismissal of the prior action was a final adjudication; and 2) the claims and facts of the present action are not the same.

Iowa Rule of Civil Procedure 217 provides that: "All dismissals not governed by R.C.P. 215 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise." The voluntary dismissal of an action with prejudice operates as an adjudication on the merits, and will sustain a plea of res judicata if the other elements of the doctrine are present. *See Brosamle v. Mapco Gas Products, Inc.*, 427 N.W.2d 473, 475 (Iowa 1988); *Bloom v. Steeve*, 165 N.W.2d 825, 827 (Iowa 1969); *see also Phipps v. Winneshiek County*, ____ N.W.2d ____ (Iowa 1999).

We agree with the district court's determination that the prior action bars the Association from seeking restitution for assessments before June 12, 1995. The Association's counterclaim in the prior action sought to collect the past-due assessments from the defendants. The fundamental principals of res judicata do not allow the Association to now seek foreclosure based on an underlying debt that was the subject of a final adjudication. Although the recovery demanded by the Association is different in this action, the acts complained of are the same, and the same evidence supports the two actions. *See Riley*, 499 N.W.2d at 20; *B & B*, 242 N.W.2d at 286.

IV. Unjust enrichment. The Association alternatively argues that the defendants should be liable to pay annual assessments pursuant to the doctrine of unjust enrichment.

Unjust enrichment is an equitable principle mandating that one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them. *West Branch State Bank v. Gates*, 477 N.W.2d 848, 852 (Iowa 1991); *Johnson v. Dodgen*, 451 N.W.2d 168, 175 (Iowa 1990) (citation omitted).

The defendants assert that the Association may not recover under a theory of unjust enrichment because it also pled for relief under a theory of express contract. *See Giese Const. Co., Inc. v. Randa*, 524 N.W.2d 427, 431 (Iowa App. 1994) ("One who pleads an express oral contract cannot ordinarily recover under an implied contract or quantum meruit.") (citation omitted). However, as we find that the 1988 covenants are not contractually binding on the defendants, the Association is free to rely on its alternate request for relief. *See Id.* (the law will not imply a contract where there *is* an express contract) (emphasis added); *see generally Irons v. Community State Bank*, 461 N.W.2d 849, 855 (Iowa App. 1990) (holding that where an express contract proves unenforceable, the law may imply a contract); *Olberding Constr. Co. v. Ruden*, 243 N.W.2d 872, 875 (Iowa 1976) (noting that an implied contract may exist on a point not covered by an express contract).

Before rendering its decision, the district court in this action did not have the advantage of reviewing a recent Iowa Supreme Court case which dealt with similar facts and issues. In *Okoboji Camp Owners Cooperative v. Carlson*, 578 N.W.2d 652 (Iowa 1998), the plaintiff was an organization consisting of property owners within a subdivision. The cooperative owned and maintained the streets and common areas in the subdivision, including a park, playground, beach, and docks. To maintain these amenities, the cooperative assessed maintenance fees to all property owners in the cooperative. The defendants were property owners in the subdivision who refused to pay the cooperative's fees, claiming they were not members of the cooperative and did not use the roads or recreational facilities. The supreme court ruled that "irrespective of the use that defendants make of the cooperative's facilities, the availability of these facilities benefits both defendants by conferring added value to their properties." *Id.* at 654. Relying on principles of quasi-contract and restitution, the court found that the defendants were obligated to pay the cooperative's assessments. *Id.*

We find that the circumstances in the present case are sufficiently analogous such that the holding in *Okoboji* must control. Furthermore, unlike the defendants in *Okoboji*, the defendants in this action freely admit to using the amenities and facilities that are maintained by the Association. We conclude that equity requires the defendants to make restitution for the benefits they receive. As there is insufficient proof in the record to support the reasonableness of the Association's assessments, we remand for further proceedings on this issue. *See Id.* (holding that the plaintiff must offer proof of the reasonable value of the benefits conferred to obtain restitution); *Brentwood Subdivision Road Ass'n, Inc., v. Cooper*, 461 N.W.2d 340, 342 (Iowa App. 1990).

Having considered all other issues properly before us on appeal, we hereby reverse the ruling of the district court and remand for determination of the amount of restitution due for benefits conferred after June 12, 1995. We do not retain jurisdiction. Costs are assessed one-half to plaintiff and one-half to defendants.

REVERSED AND REMANDED.

Schlegel, S.J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting)

I dissent. I would affirm. I believe the trial court made the correct decision and I find *Okoboji Camp Owner Coop. v. Carlson*, 578 N.W.2d 652 (Iowa 1998) distinguishable.

No. 98-281. [9-164] SUN VALLEY IOWA LAKE ASSOCIATION, INC. v. ANDERSON

Appeal from the Iowa District Court for Ringgold County, Darrell J. Goodhue, Judge. **REVERSED AND REMANDED.** Heard by Sackett, C.J., and Vogel, J., and Schlegel, S.J. Opinion by Vogel, J. Dissent by Sackett, C.J. (12 pages $4.80)

Plaintiff Sun Valley Iowa Lake Association is a homeowners' association in a development near Ellston, Iowa. Pursuant to covenants adopted in 1988, the Association

collects annual assessments from property owners within the development to maintain all common areas. Each year that defendants Quentin Anderson, Rita Anderson, and Sun Valley Lake, Inc. refused to pay assessments on their lots, the Association filed a notice of lien. In 1997, the Association petitioned to foreclose the liens, and the district court granted summary judgment in favor of the defendants. **OPINION HOLDS:** ***I. Applicability of 1988 covenants to defendants' lots.*** The Association first claims the district court erred in ruling that the defendants' lots were not subject to the 1988 covenants. However, we agree that the 1988 covenants apply only to those lots purchased by the Patten corporation in 1988 and other lot owners who voluntarily agreed to be bound by them. ***II. Issue preclusion.*** The Association also argues the district court erred in failing to find that the defendants were bound by the holding of a similar case pursuant to the doctrine of issue preclusion. However, we agree that the Association is barred from using issue preclusion offensively because the requisite privity is lacking and there is no evidence in the record to indicate that the defendants were aware of the other litigation. We cannot say that defendants were afforded a full and fair opportunity to litigate the issue. ***III. Claim preclusion.*** The Association further contends the district court erred in finding its claim was further barred by the doctrine of claim preclusion. We agree with the district court's determination that the prior action bars the Association from seeking restitution for assessments before June 12, 1995. ***IV. Unjust enrichment.*** The Association alternatively argues that the defendants should be liable to pay annual assessments pursuant to the doctrine of unjust enrichment. Before rendering its decision, the district court in this action did not have the advantage of reviewing a recent Iowa Supreme Court case which dealt with similar facts and issues, *Okoboji Camp Owners Cooperative v. Carlson*, 578 N.W.2d 652 (Iowa 1998). We find that the circumstances in the present case are sufficiently analogous such that the holding in *Okoboji* must control. Because of the added value conferred by the Association to the defendants' property, we conclude that equity requires the defendants to make restitution for the benefits they receive. As there is insufficient proof in the record to support the reasonableness of the Association's assessments, we remand for further proceedings on this issue. **DISSENT ASSERTS:** I dissent. I would affirm. I believe the trial court made the correct decision and I find *Okoboji Camp Owner Corp. v. Carlson*, 578 N.W.2d 652 (Iowa 1998) distinguishable.