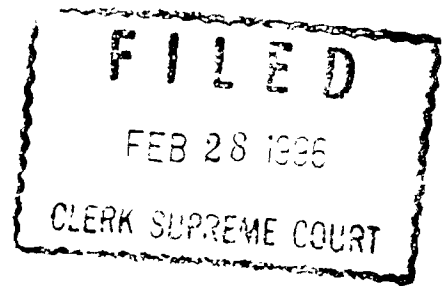


IN THE COURT OF APPEALS OF IOWA

No 5-230 / 94-1125



**NORBERT TIGGES and
PHYLLIS TIGGES,**

Appellants,

vs.

**PATRICIA TIGGES d/b/a
DREW'S CHOCOLATES,**

Appellee.

Appeal from the Iowa District Court for Dallas County, Dale B. Hagen, Judge.

Plaintiffs appeal the district court's order dismissing their action seeking recovery for an amount allegedly owed under an oral agreement for the sale of a candy store. **AFFIRMED.**

Roger J. Kuhle and John O. Haraldson of Law Office of Roger J. Kuhle, P.C.,
West Des Moines, for appellants.

Michael P. Mallaney of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney,
Shindler & Scalise, P.C., Des Moines, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

HUITINK, J.

On July 7, 1988, Mark and Patricia Tigges, husband and wife, entered into an agreement to purchase the business "Drew's Chocolates" in Dexter, Iowa, from Norbert and Phyllis Tigges, husband and wife. Norbert and Phyllis are the parents of Mark. The purchase price was \$120,000. Mark and Patricia paid \$80,000 down and agreed to pay \$40,000 in annual installments of \$10,000 plus eight percent interest.

On July 12, 1989, Norbert and Phyllis filed a deed conveying the property to Mark and Patricia. At that time Mark and Patricia had paid \$10,000 of the debt. Additional payments totaling \$20,000 were made in 1990 and 1991.

No payments were made in 1992. Mark and Patricia were having marital difficulties during this time. On November 3, 1992, Norbert and Phyllis had an attorney send Patricia a demand letter for the amount of \$11,950. Mark and Patricia were divorced on December 30, 1992. In the dissolution decree Patricia was awarded the candy business. She was also ordered to assume the debt to Norbert and Phyllis.

Norbert and Phyllis filed an action against Patricia on February 4, 1993, claiming she was in default under the parties' written contract of July 7, 1988. They claimed Patricia owed them \$20,262 in principal and interest under the terms of the contract. The district court dismissed this suit on April 16, 1993, on the ground that plaintiffs had failed to state a cause of action. The court found that because the warranty deed was filed with no reservations, it signified complete satisfaction of the

contract and therefore plaintiffs could not now claim amounts remained due under the contract.

Norbert and Phyllis filed the present action against Patricia on July 8, 1993. In this suit they alleged that in July 1989 they had entered into an oral agreement to modify the original written contract. They stated that at the request of Mark and Patricia they had filed the deed to the property before the contract was paid in full. They claimed Mark and Patricia had orally agreed to pay the amount remaining on the debt in annual installments of \$10,000 plus accrued interest. Plaintiffs claimed Patricia owed them \$17,924 under this oral agreement. As an affirmative defense, Patricia claimed this action was barred by the doctrine of res judicata.

At the trial in this case, both Phyllis and Norbert admitted that the money demanded in the present suit was the same money which was the cause of action in the previous suit. Norbert also admitted that in the first suit they were seeking to recover on the claimed oral agreement.

At the close of plaintiffs' case, Patricia filed a motion to dismiss on the ground that the case was barred by the doctrine of res judicata. The district court granted her motion. The court concluded the adjudication in the former suit between the same parties on the same claim was final as to all matters which could have been presented to the court for determination. The court noted that the existence of the oral agreement was known to plaintiffs at the time they filed the previous suit, but they elected to bring

their action under the written contract. The court found this election barred plaintiffs' subsequent recovery under an oral contract which arose from the same set of circumstances.

Plaintiffs filed a motion for a new trial, which was denied by the district court. Plaintiffs now appeal.

Plaintiffs contend the district court erred in ruling that the claim based on the oral agreement was barred by the doctrine of claim preclusion. They believe the doctrine of claim preclusion should not apply because they are not raising the same claim in the present suit as was raised in the previous suit. They state the second suit was based on the 1989 oral agreement, which they assert was a separate transaction from the 1988 written contract.

Under the doctrine of res judicata, claim preclusion bars further litigation on the same claim or cause of action and issue preclusion bars further litigation on the same issue. *Riley v. Maloney*, 499 N.W.2d 18, 20 (Iowa 1993). Claim preclusion, as distinguished from issue preclusion, applies only if the claim for relief litigated in the previous proceeding was the same as the claim in the present action. *West v. Wessels*, 534 N.W.2d 396, 398 (Iowa 1995). In the present case we are dealing with claim preclusion.

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. *Riley*, 499 N.W.2d at 20. Under Iowa Rule of Civil Procedure 217 a ruling on a motion to dismiss may act as a final adjudication. *Tigges v. City of Ames*, 356 N.W.2d 503, 509 (Iowa 1984). We find the dismissal in the earlier action acted as an adjudication on the merits. The final adjudication in the case will bar further action on the same claim.

Claim preclusion prevents relitigation of all issues, whether raised or not, following judgment on the same cause of action. *Riley*, 499 N.W.2d at 20. The supreme court has stated:

Claim preclusion under the doctrine of res judicata is based on the principle that a party may not split or try his claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial. An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claim at one time and not in separate actions.

B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976).

Where a cause of action is the same in both proceedings, judgment in the first precludes relitigation of any aspect thereof in the second. *State ex rel. Iowa Dept. of Natural Resources*, 512 N.W.2d 579, 581 (Iowa App. 1993). In other words, the claim and all attendant arguments and theories are put to rest. *Id.* A party is obliged to raise all of its different theories of recovery based on the same transaction or suffer the consequences of claim preclusion. *Palmer v. Tandem Mgmt. Serv., Inc.*, 505 N.W.2d

813, 817 (Iowa 1993). If it does not, its later claim based on a different theory of recovery should be dismissed *Id.*

The claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. *West*, 534 N.W.2d at 398 (citing Restatement (Second) of Judgments §24(1) (1982)). We find the written contract and oral agreement are part of the same transaction or are connected transactions. Phyllis and Norbert each testified the monies sought to be recovered in the present suit were the same monies they sought to recover in the first suit. Norbert also admitted he was attempting to recover under the alleged oral agreement in the first suit.

We agree with the district court that the second suit raised the same claims as the first suit, but under a different theory. Plaintiffs were obliged to raise all of their different theories of recovery in the first suit. Their failure to do so leads to the conclusion the second suit was properly dismissed because it is barred by the doctrine of res judicata.

We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.