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Boca Park Marketplace Syndications Grp., L.L.C. v. Higo, Inc., 133 Nev. Adv. Op. 114 (Dec. 28, 2017)

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CIVIL APPEAL: CONTRACTS

Summary

The Court held the declaratory judgment exception to claim preclusion applies when the initial action sought only declaratory relief.

Background

Appellant Boca Park, a shopping center, entered into a 20-year lease with respondent Higco, Inc. in 2002. The lease granted Higco the exclusive use of the space for gaming, except for any tenants already located in the center that had gaming at the time. In late 2011 or early 2012, Higco discovered that Boca Park entered into a lease with a new tenant, Wahoo's Fish Tacos, who applied for a gaming license. On April 23, 2012, Higco sued Boca Park for declaratory relief. Higco sought a judgment declaring that the Higco and Boca Park lease gave Higco the exclusive right to offer gaming in the shopping center. Shortly after this complaint was filed, Wahoo's obtained its gaming license. The case was submitted to the district court who then entered into declaratory judgment for Higco in December 2012.

Despite this, Boca Park continued to allow Wahoo's to offer slot machine gaming. In December 2014, Higco filed a second complaint against Boca Park, seeking damages for breach of contract. Boca Park moved to dismiss, arguing the doctrine of claim preclusion barred Higco's claims for damages. The district court denied Boca Park's motion, and awarded Higco \$497,000 in damages following a bench trial. Boca Park appealed.

Discussion

II.

Claim preclusion makes a final judgment conclusive on the parties and bars a later action that could have been asserted on the first case.² The court reviewed this case de novo.

A.

The Court placed great deference in the underlying policies of claim preclusion doctrine. Exceptions to the doctrine have been created in situations where the later-filed claim does not advance the doctrine's underlying policies or the agreed-upon limits of the first proceeding.³ The Restatement (Second) of Judgments endorses an exception to claim preclusion where a suit seeking solely declaratory judgment is succeeded by a later action for damages.⁴ The Court found the Restatement's reasoning persuasive, and held that claim preclusion does not apply where the original action sought only declaratory relief.

¹ By Tamara Cannella.

² *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d. 1135, 1137 (2008).

³ RESTATEMENT (SECOND) OF JUDGMENTS § 26 (AM. LAW INST. 1982).

⁴ *Id.*

The legislative scheme for declaratory relief is inconsistent with the purpose of claim preclusion, as “declaratory actions are to supplement rather than supersede other types of litigation.”⁵ Further relief may be granted when necessary on a declaratory judgment or decree.⁶ A party may pursue a separate action seeking damages based on the rights established by the declaratory judgment.⁷ Therefore, the statutory scheme for declaratory relief is contradictory to the doctrine of claim preclusion, justifying exceptions to its bar.

A declaratory action provides a remedy that is less harsh than coercive relief.⁸ The purpose of declaratory action is to conserve judicial resources by clarifying the legal relationships of parties and determining their rights, thereby avoiding full blown litigation.⁹ Therefore, it would frustrate that purpose to require parties to bring forth all conceivable claims and counterclaims in an action seeking only declaratory judgment.¹⁰

Here, the court illustrates the declaratory judgment exception. Faced with a dispute with Boca Park to respect the exclusivity provision in its lease, Higo sought only a declaratory judgment of the parties’ rights. It is not disputed that Higo did not seek further relief on this first action because it assumed Boca Park would honor the declaratory judgment of the parties’ rights under the lease agreement, therefore avoiding the need for coercive relief and conserving judicial resources.

B.

Per the Restatement (Second) of Judgments § 26 cmt. g., a second, independent ground exists for denying claim-preclusive effect to the declaratory judgment Higo won: “A judgment in an action for breach of contract does not normally preclude a plaintiff from thereafter maintaining an action for breaches of the same contract that consist of a failure to render performance due after commencement for the same action.”¹¹ Once Wahoo’s obtained a gaming license and began offering slot-machine gaming, Higo could have amended its complaint to add contract damages claims or other coercive relief. However, the law did not require this.

III.

Claim preclusion does not bar the second action because the original action between the parties only sought declaratory relief. The district court denied Boca Park’s motion to dismiss based on claim preclusion. The Court affirmed the district court’s decision.

Conclusion

Higo sought only declaratory relief in the original suit, assuming that Boca Park would honor the declaratory judgment of the parties’ rights under the lease agreement. Because Boca Park did not honor the declaratory judgment, Higo’s second suit is not barred by claim preclusion since the original suit only sought a declaratory judgment. The Court upheld the district court’s denial of Boca Park’s motion to dismiss based on claim preclusion.

⁵ RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c. (1982).

⁶ NEV. REV. STAT. § 30.100 (1929).

⁷ *Id.*

⁸ RESTATEMENT (SECOND) OF JUDGMENTS § 33 cmt. c. (1982).

⁹ *Andrew Robinson Int’l, Inc. v. Hartford Fire Ins. Co.*, 547 F.3d 48, 58 (1st Cir. 2008).

¹⁰ *Id.*

¹¹ RESTATEMENT (SECOND) OF JUDGMENTS § 26 cmt. g. (1982).