

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

HART RECONSTRUCTION CORP.,	:	October Term 2007
Plaintiff,	:	
v.	:	No. 1975
CENTURY GENERAL CONSTRUCTION	:	
& CONTRACTING, INC., ET. AL.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	Control Number 116512

ORDER

AND NOW, this 23rd day of January 2009, upon consideration of Defendant Century General Construction & Contracting, Inc., Steven Lamm and Henry Lamm, Plaintiff's response in opposition, all matters of record and in accord with the attached Opinion, it hereby is **ORDERED** that the Motion for Summary Judgment is **GRANTED** and the second amended complaint is dismissed.

BY THE COURT,

ARNOLD L. NEW, J.

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Plaintiff,	:	
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Defendants.	:	
	:	Control Number 116512

OPINION

In this action plaintiff Hart Reconstruction Corp. attempts to relitigate claims which have already been litigated and decided against it in a preceding action filed in this court captioned Century General Construction & Contracting, Inc., et. al., October Term 2006 No. 4679. The doctrines of *res judicata* and collateral estoppel prevent Hart Reconstruction Corp. from relitigating these claims.

BACKGROUND

On November 2, 2006, Century General Construction & Contracting, Inc. (hereinafter "Century") commenced an action against Hart Reconstruction Corp. and Richard Hart (hereinafter "Hart") in the Court of Common Pleas in Philadelphia County Commerce Program (hereinafter "Century Action") for breach of contract, fraud, and conversion. Specifically, Century alleged that it entered into three contracts with Hart to demolish, perform structural steel work and provide masonry/ carpentry and other interior finishes for property located at 1201 Race Street. Under the terms of the agreements, Hart was required to complete the demolition and structural steel work by May 8, 2006 and the interior finishes by December 15, 2006. Century alleged that it paid Hart \$330,000 for structural steel work, \$130,000 for demolition and \$200,000 for the interior

finishes. Century further alleged that Hart abandoned the property without completing the contracted work causing Century to terminate the contracts.

Hart filed an answer with new matter and counterclaims against Century and Century's principals, Steven and Henry Lamm¹ for breach of contract. On February 28th, 2007, the court dismissed Hart's counterclaims.

During the discovery phase of the Century Action, Hart repeatedly failed to comply with discovery requirements and obligations. Consequently, Hart incurred two discovery sanctions totaling \$1,500.00.

On October 16, 2007, Hart filed without leave of court another counterclaim in the Century Action asserting claims for breach of contract, quantum meruit, unjust enrichment and conversion. Specifically, the counterclaim alleged that Century failed to pay Hart as per the agreements which forced Hart off the property. Hart alleged that they were owed approximately \$820,000.00. This counterclaim was voluntarily discontinued on November 29, 2007 by Hart.

On the same day that Hart filed the counterclaim against Century in the Century Action, Hart commenced the instant action against Century, Steven Lamm and Henry Lamm asserting the same claims alleged in the counterclaim, breach of contract, quantum meruit, unjust enrichment and conversion (hereinafter "the Hart Action"). Hart alleged that Century failed to pay Hart as per the agreements which forced Hart off the property. Hart once again alleged that they were owed \$820,000.

On October 30, 2007, Hart filed a motion to consolidate the Century Action with the Hart Action asserting that the two actions arose from the same transaction or occurrence and involved common questions of law and fact. The motion sought to

¹ The Lamms were not parties to the Original Action and were not parties to the contracts.

consolidate the actions for purposes of discovery and arbitration/trial under the Hart caption, the later filed action. Century opposed the motion to consolidate arguing that the consolidation motion was improper because it sought to delay litigation in the Century Action, extend discovery which had been closed in the Century Action and overcome the procedural and discovery failures in the Century Action. The motion to consolidate was denied.

On November 29, 2007, Hart filed an amended complaint in the Hart action. The only difference between the two complaints was the amount of damages claimed. In the original complaint filed, Hart alleged damages in excess of \$820,000.00. In the amended complaint, Hart alleged damages in excess of \$520,000.00. On December 17, 2007, Century and the Lamms filed preliminary objections to the amended complaint. In response, Hart filed a second amended complaint on January 7, 2008 asserting claims for breach of contract, quantum meruit, unjust enrichment and conversion.

Century once again filed preliminary objections which were sustained in part and overruled in part. The court dismissed the individual Lamm defendants from the case and directed Century to file an answer. Century filed an answer with new matter alleging that Hart breached all three of the underlying contracts. Thereafter, Century filed a motion for judgment on the pleadings which was denied by the court.

On September 23, 2008, after six days of testimony before the Honorable Mark I. Bernstein, the jury returned an unanimous verdict in favor of Century in the Century Action. The jury found that Hart breached the demolition contract without suffering damages, Hart breached the miscellaneous and structural steel contract without suffering damages and Hart breached the masonry/carpentry/glass & glazing/finishes contract

causing Century to incur damages in the amount of \$89,018.57. Hart did not appeal the verdict or any of the court's earlier issued rulings.

Presently before the court is Century's Motion for Summary Judgment based on *res judicata* and collateral estoppel.

DISCUSSION

Century asserts that Hart's claims in this action are barred by the doctrine of *res judicata* since the issues were all subject to disposition in the Century Action. The doctrine of *res judicata* provides that a final judgment on the merits by a court of competent jurisdiction will bar any future suit between the parties in connection with the same cause of action that either was raised or could have been raised in the prior proceeding. The purposes behind the doctrine is to conserve limited judicial resources, establish certainty and respect for court judgments and protect the party relying upon the judgment from vexatious litigation.

Regardless of whether the plaintiff affects a recovery in the first action, he may not relitigate an action which has been adjudicated already. In keeping with these purposes, the doctrine must be liberally construed and applied without technical restriction.² Application of the doctrine of *res judicata* requires the concurrence of four conditions between the present and prior action: (1) identity of the thing sued upon; (2) identity of the cause of action; (3) identity of parties or their privies; and (4) identity of the quality or capacity of the parties suing or being sued.³

² McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219 (1993).

³ *See, Matternas v. Stehman*, 434 Pa. Super. 255, 642 A.2d 1120, 1123 (1994).

Here, Hart argues that *res judicata* does not apply because the second condition, identity of the causes of action, is lacking. With respect to this condition, *res judicata* generally is thought to turn on the essential similarity of the underlying events giving rise to the various legal claims. In determining whether a single cause of action is present one may consider the identity of the acts complained of, the demand for recovery, the identity of witnesses, documents and facts alleged. A lack of identity of these facets would, of course, support the conclusion that there is no identity of cause of action.⁴

The underlying events giving rise to the legal claims in the Century Action and in the Hart Action are identical. Both actions concern the same contracts and seek to determine whether Century or Hart breached the respective contracts. Both actions seek monetary compensation for the breaches. The actions share identity of witnesses, documents and facts. Indeed, in the motion to consolidate filed by Hart, it was acknowledged by Hart that the actions arose from the same transaction or occurrence and involved common questions of law and fact. Contrary to Hart's assertion, it is not necessary for the title of the causes of action alleged to be identical. Rather what is essential is the identity of the acts complained of and the identity of the demand for recovery giving rise to the cause of action.⁵ Adjudicating the breach of claim, the unjust

⁴See, McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219, 1222 (1993).

⁵ Hart's argument that the titles of the "causes of action" are not identical is mistaken. Both the Century Action and the Hart Action state a claim for breach of contract. The Pennsylvania Rules of Civil Procedure permit plaintiffs to plead causes of action in the alternative. *See* Pa.R.C.P. 1020(c). Plaintiffs may properly plead causes of action for breach of contract and unjust enrichment in the same complaint. *See, e.g. J.A. & W.A. Hess, Inc. v. Hazle Township*, 465 Pa. 465, 468, 350 A.2d 858, 860 (1976). However, plaintiffs cannot recover on a claim for unjust enrichment if such claim is based on a breach of a written contract. *See Birchwood Lakes Community Ass'n v. Comis*, 296 Pa. Super. 77, 442 A.2d 304, 308 (1982). Furthermore, "a cause of action in quasi-contract for quantum meruit... is made out where one person has been unjustly enriched at the expense of another." Mitchell v. Moore, 729 A.2d 1200, 1202 n.2 (Pa.Super. 1999). "Therefore, a claim of quantum meruit raises the issue of whether a party has been unjustly enriched, and in order to prove such claim a party must successfully prove the elements of unjust enrichment..." Id. In this case since a written contract exists Hart would not have been able to recover for unjust enrichment. Since

enrichment claim, the quantum meruit claim and the conversion claim would require the parties to relitigate the same facts and present the same legal arguments raised in the Century Action. This is improper.

The Restatement (Second) of Judgments provides:

A given claim may find support in theories or grounds arising from both state and federal law. When the plaintiff brings an action on the claim in a court, either state or federal, in which there is no jurisdictional obstacle to his advancing both theories or grounds, but he presents only one of them, and judgment is entered with respect to it, he may not maintain a second action in which he tenders the other theory or ground.⁶

Applying the foregoing to the facts at hand it is clear that the actions are identical.

Consequently, adjudicating the Hart claims would require the parties to relitigate the same facts and present the same legal arguments raised before the court in the Century Action. The claims presented herein have already been decided and are not open to reexamination by this court. A final judgment on the merits was rendered. Accordingly, this action is barred by *res judicata*.

The court also finds that Hart is collaterally estopped from pursuing liability for Century's failure to pay on the contracts since the issue has already been litigated in the Century Action. The doctrine of collateral estoppel requires:

- (1) the issue decided in the prior case is identical to one presented in the later case;
- (2) there was a final judgment on the merits;
- (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case;
- (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding and
- (5) the

Hart could not recover for unjust enrichment the claim for quantum meruit would also fail. As for the conversion claim, failure to pay a debt is not conversion. Francis J. Bernhardt, III, P.C. v. Needleman, 705 A.2d 875, 878 (Pa. Super. 1997). Hence, the "causes of action" are identical.

⁶McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219, 1222 (1993)(citing Restatement (Second) of Judgments § 25 cmt. e. (1982)).

determination in the prior proceeding was essential to the judgment.⁷

Collateral estoppel prevents a question of law or an issue of fact which has been fully litigated “in a court of competent jurisdiction from being relitigated in a subsequent suit.⁸

Here, the issue decided in the Century Action (breach of the contract) is identical to the issue raised in this action. There was a final judgment on the merits in which a jury determined that Hart breached all three contracts and awarded damages. The party against whom the plea is asserted, Hart, was a party in the Century Action. Hart had a full and fair opportunity to litigate the issue of breach of contract in the Century Action and actively participated in the litigation. Finally, the determination that Hart breached the contracts was essential to the Century Action. Consequently, since the jury found that Hart breached the contracts, the instant action is barred by collateral estoppel.

CONCLUSION

For the foregoing reasons, Defendant Century General Construction and Contracting LLC’s Motion for Summary Judgment is Granted and the second amended complaint is dismissed.

BY THE COURT,

ARNOLD L. NEW, J.

⁷ Incollingo v. Maurer, 575 A.2d 939, 940 (Pa. Super. 1990).

⁸ Id.