

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1775  
Summary Calendar

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HOFFMAN CONTROLS CORP.,

Plaintiff-Appellant,

v.

BURGESS-SAIA, INC., ET AL.,

Defendants,

BURGESS-SAIA, INC., and LANDIS & GYR, INC.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:92-CV-2122-R)

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(April 15, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.\*

EDITH H. JONES, Circuit Judge:

The district court granted a conditional summary judgment on grounds of claim preclusion because of a final judgment rendered against Hoffman in a state court proceeding, but he also had to stay his order pending the outcome of the appeal of the state court judgment. We have jurisdiction because the court's stay order was equivalent to a preliminary injunction, an order appealable under

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

28 U.S.C. § 1292(b).<sup>1</sup> Because the district court should have considered on a more factual level whether the claims asserted by Hoffman in the federal case arise out of the same transaction or occurrence as those at issue in the state case, we must reverse and remand.

Hoffman Controls Corporation has been purchasing motor gearbox assemblies from Burgess-Saia, Inc. since the early 1980s. Hoffman alleges that beginning in 1989, it began to notice a trend of failures in its product, which it believed traceable to the Burgess gearboxes. Neither Burgess nor Landis & Gyr, Inc. assisted Hoffman in investigating the failures. Hoffman then filed suit in Texas state court against Burgess.

Burgess responded with a sworn account counterclaim against Hoffman based on Hoffman's refusal to pay an invoice dated December 20, 1990, for the sale of motor gearbox assemblies that had been delivered in November of that year. Before the state case was concluded, Hoffman voluntarily dismissed its state court claims against Burgess. Burgess then obtained judgment for over \$10,000 on its sworn account counterclaim, and that judgment is now on appeal.

In October, 1992, Hoffman filed this suit in federal court against Burgess and Landis<sup>2</sup> alleging in part breaches of contract and warranty, fraud and violations of the Texas Deceptive

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<sup>1</sup> Consequently, Burgess's motion to dismiss the appeal, formerly carried with the case, is overruled.

<sup>2</sup> Saia was not served with citation before the district court stayed this case.

Trade Practices Act for the failed gearboxes. Burgess moved for summary judgment, arguing that Hoffman is barred by its failure to pursue these claims in state court from re-asserting them in federal court. Burgess contends that Hoffman's claim was a compulsory counterclaim to Burgess's sworn account, that it arose out of the same transaction or series of transactions made the basis of the state action, and therefore that the doctrine of claim preclusion prevents the litigation of these matters which should have been litigated in the earlier state court suit.

The district court agreed with Burgess's arguments. His analysis recognized that Texas law determines whether Hoffman's claims are barred by res judicata. See Schmueser v. Burkburnett Bank, 937 F.2d 1025, 1031 (5th Cir. 1991). Further, Texas employs a transactional approach to claim preclusion: hence, a final judgment in a lawsuit will bar a subsequent suit on the transaction or series of connected transactions out of which the prior suit arose. See Barr v. Resolution Trust Corp., 837 S.W.2d 627, 631 (Tex. 1992). Barr explained that in determining what constitutes a transaction, courts should give weight to "'whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit,'" and whether their treatment as a trial unit is consistent with the parties' expectations or business usage. Id. (quoting **Restatement of Judgments** § 24(2)). The transaction approach was also described in Barr as substantially similar to Tex. R. Civ. P. 97, which defines a compulsory counterclaim as any claim that "'arises out of the transaction or

occurrence that is the subject matter of the opposing party's claim.'" Id. at 630 (quoting Tex. R. Civ. P. 97).

The district court then determined that Hoffman's federal court claims all arose out of the series of connected transactions that formed the basis of the state court suit. These claims, the court found, were related in time, space and motivation to Hoffman's affirmative defenses in the state court action, which asserted breach of contract and breach of warranty against Burgess's counterclaim for failure to pay for a shipment of motor gearbox assemblies. According to the court, the fact that Hoffman alleged such claims in both actions suggests that Hoffman viewed the facts in both actions as forming a series of related transactions. Through the exercise of diligence, Hoffman could have pursued its federal court claims in the first action. Further, Rule 97 required Hoffman to raise its claims as compulsory counterclaims in the first action. Significantly, the court stated that under the foregoing analysis, it did not matter whether Burgess's sworn account suit involved precisely the same gearbox assemblies or products that Hoffman now asserts in federal court were defective. Because the claims in the federal action arose out of a series of connected transactions consisting of the same subject matter as the state court suit, and the claims form a convenient trial unit, they should have been raised in the state court suit.

The dispositive question before us is the correctness of the district court's conclusion that Hoffman's federal claim arose

out of the same transaction or occurrence as the state court sworn account lawsuit. Although Hoffman's federal pleadings do not explicitly exclude the gearbox assemblies that were the subject of that sworn account, it asserts that the defective gearbox assemblies for which it seeks recovery were purchased throughout the 1980's and are therefore not those involved in the state court suit. Hoffman also states that the defects arose in an entirely different type of gearbox assembly than was involved in the sworn account suit. Indeed, Hoffman concedes that the outcome of this federal lawsuit could not affect its liability on the state court sworn account suit, if that judgment is upheld on appeal.

Burgess responds to this argument in two ways. First, Burgess relies on the district court's application of the transaction rule described above. Second, Burgess contends that because Hoffman never expressly limited its breach of contract and warranty defenses in state court to the motor gearbox assemblies at issue therein, it may not now seek to draw that factual distinction. Hoffman, in other words, must be caught in the web of its perhaps unintentionally broad pleading. Paraphrasing Burgess's brief, because Hoffman never expressly distinguished by shipment date or otherwise one group of motor gearbox assemblies from another and treated them as though they were fungible for purposes of its defenses to the sworn account, the state court likewise had no basis for making such a distinction. Therefore, Burgess asserts, when the state court entered judgment on its sworn account

claim, the effect was to bar forever Hoffman's claims of product defect against Burgess for any of its assemblies.

Burgess's second argument is easily rejected. We agree that the entry of a final judgment on Burgess's sworn account for sales of certain motor gearbox assemblies would have a claim preclusive effect against any later lawsuit by Hoffman asserting defects in those assemblies. It is not clear, however, why Hoffman's initially broad description of its later-dismissed breach of contract and warranty claims in state court should necessarily bar Hoffman from ever filing suit on gearbox assemblies it already paid for, i.e., those assemblies that were not the subject of Burgess's counterclaim. Whether Hoffman's claims asserted in state court were compulsory or permissive counterclaims cannot, in other words, be determined solely by Hoffman's pleading strategy. Whether there is a single transaction or occurrence for preclusion purposes depends instead on the several factors enunciated in Barr.

What concerns us about the district court's application of the transaction rule is its lack of concern with the underlying facts of the dealings between Burgess and Hoffman. The court was apparently satisfied that any defects in performance under an ongoing sales relationship between two parties are automatically compulsory counterclaims to suits for the amount due on sale of some of the goods. This rule has the virtue of clarity in application. Whether it would always streamline litigation, however, and at what cost, is not necessarily as clear. We can conceive of a case in which the parties' relationship involved

sales of many different kinds of goods over a wide geographic and temporal span. In such circumstances, it could be grossly unfair to hold a later suit barred by claim preclusion arising from a routine sworn account.

The district court's bright-line rule is simply inconsistent with the multi-factor, fact-intensive approach mandated by Barr. On remand, the court should more carefully and specifically examine how -- if at all -- transactions spanning over many years and involving different series of gearbox assemblies are so related as to constitute the same transaction for res judicata purposes. While we do not intimate a result on remand, it certainly is not implausible that the transactions here are spread far enough apart in time and involve sufficiently distinct products as to render the transactions unrelated. The district court's conclusory assertions to the contrary leave us unconvinced that Barr is being properly applied.

Reversal of the summary judgment necessitates our also vacating the stay of the case pending outcome of the state court appeal.

For these reasons, the judgment and stay order are **REVERSED** and **REMANDED**.