

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-11102

HOFFMAN CONTROLS CORPORATION,

Plaintiff-Appellant,

VERSUS

BURGESS-SAIA, INC., et al.,

Defendants,

BURGESS-SAIA, INC., et al.,

Defendants-Appellees.

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

October 2, 1995

Before SMITH, BARKSDALE, and BENAVIDES, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Hoffman Controls, Inc. ("Hoffman"), appeals a summary judgment in favor of Burgess-SAIA, Inc., and Landis & Gyr, Inc. Finding Hoffman's claims barred by res judicata, we affirm.

* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Hoffman manufactures heating, ventilating, and air conditioning devices. Two of its products, the 201-5A and 201-7A actuators, require specialized gearbox assemblies. In 1983, Landis began supplying Hoffman with two specialized gearbox assemblies manufactured by Burgess. The two assemblies were the Ba gearbox, which Hoffman used in the 201-5A actuator, and the F gearbox, which Hoffman used in the 201-7A actuator. In 1987, Burgess merged with SAIA and replaced Landis as Hoffman's supplier.

Beginning in 1989, Hoffman's customers began to return an increasing number of failed 201-5A actuators. Hoffman blamed the failures on the inability of the Ba gearboxes to stall continuously without failure, a feature Hoffman required in its agreement with Landis and Burgess. Hoffman filed a claim in state court against Burgess seeking damages for the faulty gearboxes, alleging they were defective. Hoffman did not specify whether the defective models belonged to the Ba or F series.

Burgess retorted with a counterclaim for payment on a 1990 invoice for 500 F series gearboxes. In response to the counterclaim, Hoffman raised affirmative defenses of breach of warranty and breach of contract resulting from the defective gearboxes.

At trial, Hoffman dismissed its original claim without prejudice. It failed to submit a sworn denial to the counterclaim and was therefore barred by Texas law from raising its affirmative defenses. Burgess prevailed on the counterclaim.

Subsequently, Hoffman filed this claim in federal court against both Landis and Burgess, alleging only that the Ba gearboxes were defective. The district court granted summary judgment on the ground that the state court action was res judicata with respect to this claim. We reversed ("Hoffman I"), instructing the district court to take a closer look at the facts to determine whether the two claims arose from the same transaction or occurrence under the standard of Barr v. Resolution Trust Corp., 837 S.W.2d 627 (Tex. 1992). On remand, the district court applied our instructions and granted summary judgment for the defendants.

II.

The question before us is the narrow one of whether the state court counterclaim and this claim involve the same transaction under the Barr standard. Hoffman I resolved most of the issues in this case and remanded solely for application of Barr. We therefore need consider only those arguments that address the application of the Barr test. Applying de novo review, Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992), we affirm.

In Barr, the court adopted the transactional approach to claims preclusion set forth in the Restatement of Judgments. Under that approach, the determination that two claims arise from the same transaction "is to be made pragmatically, 'giving weight to such considerations as 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 conforms to the parties' expectations or business understanding or usage.'" Barr, 837 S.W.2d at 631 (quoting from RESTATEMENT OF JUDGMENTS § 24(2)).

Under Barr, this claim and Burgess's state court counterclaim do involve the same transaction. It is true that the counterclaim involved only F gearboxes, while this action involves only Ba gearboxes. Hoffman's purchase of F gearboxes, however, was closely related to its purchase of Ba gearboxes: Hoffman negotiated to purchase both types of gearboxes at the same time.

Though technically different, the gearboxes performed substantially the same function. The parties treated both gearboxes as a single product throughout their relationship; Hoffman treated both as a single product in the state court litigation by failing to distinguish them in its complaint. We conclude that res judicata bars Hoffman's action because it involves the same transaction as the state court counterclaim.

Hoffman contends that even if res judicata bars its suit against Burgess, it may still maintain an action against Landis, which was not a party to the state court suit. The district court nonetheless found that Landis could benefit from the claim-preclusive effect of Burgess's counterclaim because it was in privity with Burgess. Hoffman did not contest Landis's claim of privity in the district court and therefore cannot raise this issue on appeal. See Noritake Co. v. M/V Hellenic Champion, 627 F.2d 724, 732 (5th Cir. 1980) (holding that appellate court will not consider issue not raised in trial court); Bliss v. Equitable

Life Assurance Soc'y, 620 F.2d 65, 70 (5th Cir. 1980); Excavation & Erectors, Inc. v. Bullard Eng'rs, Inc., 489 F.2d 318, 320 (5th Cir. 1973) (same).

Hoffman contends that it had no duty to contest Landis's privity argument because that argument was "immaterial and irrelevant to any issue raised in [Landis's] Motion for Summary Judgment." Hoffman, however, points to no legal authority holding that a party may choose to ignore an argument it deems "immaterial and irrelevant" without waiving its right to contest the issue later. Even if Hoffman's position were correct, Landis's privity was a material and relevant issue, as it is only through privity that Landis could benefit from the state court judgment. We therefore conclude that the state court action precludes Hoffman from maintaining a claim against either Landis or Burgess.

AFFIRMED.