

No Second Bite at the Apple: Eighth Circuit Examines Identity- of-Parties and Identity-of- Causes-of-Action Requirements for Claim Preclusion Under Florida Law

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On June 18, 2021, the Eighth Circuit Court of Appeals [determined](#) that claims brought by Daredevil Inc. in the Eastern District of Missouri were precluded under Florida res judicata principles by an earlier arbitration in Jacksonville, Florida. The Eighth Circuit so ruled even though the Missouri defendant was a different entity from the defendant in the arbitration and despite that the plaintiff included a claim in the Missouri lawsuit that was not arbitrated.

Background

Daredevil sued ZTE USA for breach of contract, fraud, and unjust enrichment. The parties agreed to arbitrate the dispute in Jacksonville. Once the case was in arbitration, Daredevil sought to add ZTE Corp., the parent company of ZTE USA, to its arbitration claims. The arbitrator rejected this request, ruling that Daredevil's claims against ZTE Corp. were outside the scope of arbitration because Daredevil had not sued ZTE Corp. when arbitration began. So Daredevil sued ZTE Corp. in Missouri federal court, alleging breach of contract, fraud, unjust enrichment, and tortious interference with contract. Daredevil lost at arbitration, and that result was confirmed by the U.S. District Court for the Middle District of Florida and affirmed by the Eleventh Circuit Court of Appeals. Daredevil then pivoted to its federal lawsuit in Missouri against ZTE Corp., which had been stayed during the arbitration proceedings. But the Missouri district court put an end to that, determining that

Daredevil's claims were precluded by the arbitration decision and confirmation. Daredevil appealed to the Eighth Circuit.

Choice of Law

On appeal, Daredevil first argued that the district court should have applied Missouri preclusion law rather than Florida preclusion law. The panel disagreed, stating that “when a federal court, exercising diversity jurisdiction, renders the first judgment, then ‘[a]s a matter of federal common law, we must give that federal diversity judgment the same claim-preclusive effect that [the forum's] state courts would give to a state court judgment.’” Because the arbitration award was granted in Florida, and confirmed by a federal district court sitting in diversity in Florida, the Florida district court's decision was a final judgment on the merits and so the law of that forum — Florida — governed the court's claim-preclusion analysis. Under Florida law, there are four requirements for claim preclusion to apply: (1) identity of the parties; (2) identity of the quality in the person for or against whom the claim is made; (3) identity of the cause of action; and (4) identity of the thing sued for. Daredevil's arguments on appeal asserted that ZTE Corp. could not establish identity of parties or identity of causes of action.

Identity of Parties

ZTE Corp. was not a party to the arbitration. Thus, Daredevil argued that its lawsuit in Missouri against ZTE Corp. could not be precluded by the final judgment in the arbitration in which ZTE USA was the defendant. The panel rejected that argument and determined that ZTE Corp. and ZTE USA were in privity and that such privity was enough to satisfy the identity-of-parties requirement. Indeed, the court found, Daredevil “consistently described the duties and alleged violations of ZTE USA and ZTE Corp. using virtually identical language” in both cases, and the complaint “describe[d] the two companies' representatives, ‘efforts,’ and actions as one.”

Identity of Causes of Action

The actual claims in the Missouri federal lawsuit and the claims in the arbitration were not the same. Indeed, the Missouri litigation included a claim — tortious interference — that was not at issue in the arbitration. Notwithstanding, the district court concluded that the causes of action in the Missouri lawsuit and the arbitration were substantially indistinguishable, with the main difference being that the arbitration statement referenced ZTE Corp. and ZTE USA, while the complaint referred only to ZTE Corp. The Eighth Circuit panel agreed with the district court's assessment that “[t]his is not sufficient to distinguish these causes of action,” as the underlying contracts, facts, and named individuals were the same in both suits, and both suits relied on the same evidence from the same witnesses.

The Upshot

Whether pressing or defending an assertion of claim preclusion, practitioners should remain aware that “identity” requirements may not actually demand the exactitude that the term would imply. In certain circumstances, an “identity of parties” might be established in some jurisdictions by showing that the party in the earlier litigation and the party in the current litigation are privies. Likewise, in certain circumstances, an identity of causes of action might be established in some jurisdictions if the true substance of the later lawsuit wholly overlaps with the substance of the earlier lawsuit, even if the actual claims may differ slightly.

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