

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED _____

AT _____ O'clock _____ M
CLERK, DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

WILL and BRANDY PARADEE,)

Plaintiffs,)

vs.)

**JON PILLING and SKEEDAWG
CONTRACTING, INC.,**)

Defendants.)

Case No. **CV 2015 8918**

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
MOTION TO DISMISS AND GRANTING
PLAINTIFFS' MOTION TO
CONSOLIDATE**

I. PROCEDURAL BACKGROUND.

On September 22, 2015, Jon Pilling (“Pilling”) filed a claim against Will and Brandy Paradee (collectively “the Paradees”), in Case No. CV-2015-6642 (“Small Claims Action”), to recover unpaid wages in the amount of \$3,675.00, for construction work performed at the Paradee home. Small Claims Action, Case No. CV-2015-6642, Claim. On October 15, 2015, the Paradees filed an Answer, alleging Pilling “did not finish the project hired for and did sloppy work on the work he did do, resulting in us seeking a new contractor to fix and finish the project.” Small Claims Action, Case No. CV-2015-6642, Answer. On November 3, 2015, a bench trial on the small claims action

was held before Kootenai County Magistrate Judge James Stow. Small Claims Action, Case No. CV-2015-6642, Court Trial Minutes. Both parties were present at that trial.

Id. At the conclusion of the bench trial, a judgment was entered in favor of Pilling and against the Paradees in the amount of \$1,196.95. Small Claims Action, Case No. CV-2015-6642, Small Claims Judgment.

On December 3, 2015, the Paradees timely filed a notice of appeal for the Small Claims Judgment. Small Claims Action, Case No. CV-2015-6642, Notice of Appeal of Small Claims Judgment. In the Notice of Appeal of Small Claims Judgment, the Paradees asserted two counterclaims against Pilling for negligence and breach of contract. *Id.* at p. 3. The Paradees requested that the court reverse the judgment entered by Judge Stow, and enter a judgment against Pilling in their favor in the amount of \$13,845.00. *Id.*

The appeal was originally assigned to First District Magistrate Judge Timothy Van Valin. *Id.* at p. 1. On December 11, 2015, the case was administratively reassigned by the First District Administrative Judge to the Second District Administrative Judge Judge Jeff Brudie, to reassign the Paradees' appeal to a district judge in the Second Judicial District. Small Claims Action, Case No. CV-2015-6642, Order of Reassignment. On December 14, 2015, Second District Judge John Stegner was assigned to preside over the case. Small Claims Action, Case No. CV-2015-6642, Order Assigning Judge.

On December 31, 2015, the Paradees initiated the instant action, Case No. CV-2015-8918, in district court, asserting four causes of action: breach of contract, breach of good faith and fair dealing, unjust enrichment, and negligence. *Paradee v. Pilling*,

Case No. CV-2015-8918, Complaint. On February 26, 2016, Judge Stegner dismissed the counterclaims asserted on appeal for the foregoing reasons:

Here, the Paradees' claim for \$13,845.00, should have been filed as a **separate** action with the district court. It may not be brought as a counterclaim to Pilling's small claim because counterclaims to small claims are prohibited. Further the Paradees' claim may not be initially raised on appeal because it was not heard and decided below. As a result, no appealable judgment or order has ever been entered. Consequently, this Court, in its appellate capacity, does not have jurisdiction to hear the Paradees' claim for the first time on this appeal. Given that the Paradees have sought to do what is not allowed by law or rule, their counterclaims will be dismissed.

Small Claims Action, Case No. CV-2015-6642, Order Dismissing Counterclaims and Remanding Appeal from the Small Claims Department to the Magistrate Division, pp. 4–5 (internal citations omitted) (emphasis in original). On February 29, 2016, the Paradees filed a Motion to Reconsider the Order of Judge Stegner. Small Claims Action, Case No. CV-2015-6642, Motion to Reconsider Order Dismissing Counterclaims and Remanding Appeal from the Small Claims Department to the Magistrate Division. On March 29, 2016, Judge Stegner entered an Order Denying Motion to Reconsider, finding:

Because the Paradees' small claims appeal should have been assigned to a magistrate judge instead of to this Court, and because the Paradees improperly asserted their counterclaims against Pilling in their small claims appeal (which were apparently also brought in a separate action in CV-2015-8918), the Paradees' Motion to Reconsider will be denied.

Small Claims Action, Case No. CV-2015-6642, Order Denying Motion to Reconsider, p. 3.

On April 16, 2016, the Paradees filed a Motion to Consolidate the Small Claims Action, Case No. CV-2015-6642, with the instant action, CV-2015-8918. In response, on June 7, 2016, Pilling filed Defendant's Motion to Dismiss and Objection to Consolidate CV-2015-6642 and CV-2015-8918. The Paradees filed their Response to

Defendants' Motion to Dismiss on June 22, 2016.

The Court heard oral argument on both motions on June 29, 2016. At the conclusion of the hearing, the Court took both motions under advisement. For the reasons set forth below, the Court denies the Motion to Dismiss and grants the Motion to Consolidate.

II. STANDARD OF REVIEW.

Under Idaho Rule of Civil Procedure 12(b)(8), a trial court may dismiss an action where there is "another action pending between the same parties for the same cause." IRCP 12(b)(8). The determination of whether to proceed with an action where a similar case is pending before another court is committed to the sound discretion of the trial court. *Klaue v. Hern*, 133 Idaho 437, 439, 988 P.2d 211, 213 (1999) (citing *Zaleha v. Rosholt, Robertson & Tucker, Chtd.*, 129 Idaho 532, 533, 927 P.2d 925, 926 (Ct. App. 1996)). On appeal, the appeals court reviews the trial court decision to determine "(1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) and whether the court reached its decision by an exercise of reason." *Id.* (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

III. ANALYSIS

A. Defendants' Motion to Dismiss.

1. Procedural Requirements.

To make a determination on the Motion to Dismiss, the Court must look to the rules governing small claims actions. On July 1, 2016, Idaho Rule of Civil Procedure

81, Small Claims, was removed from the Idaho Rules of Civil Procedure (“IRCP”) and the Idaho Rules for Small Claims Action (“IRSCA”) was created. The IRSCA contains similar provisions to former IRCP 81. While the language of the IRSCA is not identical to IRCP 81, the IRSCA has the same effect and application in the law as former IRCP 81. As such, these changes do not effect the decision made by this Court.

Pilling argues the Paradees are precluded from bringing the instant district court action because the Paradees were required to either file a separate claim in the small claims department as required by IRCP 81(b), now IRSCA Rule 5, or assert those claims in a separate action in district court pursuant to IRCP 81(c), now IRSCA Rule 7, prior to the entry of the Small Claim Judgment by Judge Stow. Defendant’s Motion to Dismiss and Objection to Motion to Consolidate, p. 6. Pilling contends the Paradees were required to simultaneously plead their claims with the small claims action. *Id.*, p. 8. Pilling maintains the Paradees had an opportunity to fully litigate their claims before Judge Stow, the claims that they now assert in the instant district court case. *Id.*, p. 6. Pilling claims that “[t]o allow them to relitigate their compulsory counterclaim dealing with the same contract, same parties, and same transaction or events, now, in a different forum, violates the procedural rules . . . and unfairly prejudices Mr. Pilling who did follow the correct procedural framework.” *Id.*, p. 8. Moreover, he argues that the Paradees have already had a “second attempt” to argue these claims before Judge Stegner on appeal. *Id.*, p. 6. As such, he alleges the Paradees are barred from asserting their claims in the instant action. *Id.*, p. 8.

In response, the Paradees contend the rules governing small claims actions do not require defendants to such actions to file a separate claim prior to the entry of a

small claim judgment or prior to the execution a small claim judgment. Response to Defendants' Motion to Dismiss, p. 6. They assert that they complied with IRCP 81(c), now IRSCA Rule 7. *Id.*, p. 7. The Paradees argue that pursuant to Idaho Code §§ 6-2503 and 12-120, they could not proceed with filing the instant action until twenty days had passed from serving writing a written notice and demand for payment on their claim upon Pilling. *Id.*, p. 8. They claim they served written notice on Pilling on November 20, 2015, and thus were statutorily unable to file the instant action in district court until December 7, 2015, after the Small Claim Judgment was entered. *Id.* The Paradees also contend that since they filed the instant action prior to a trial de novo, it would preclude them from fully litigating their claims if the Motion to Dismiss is granted. *Id.*, p. 9.

An aggrieved party to a small claims action has the right to appeal the initial small claims judgment within 30 days of the judgment. IRCP 81(k)¹, (l)²; IRSCA Rule 15(a)³, (b). Such appeal will be conducted as a trial de novo by a separate magistrate judge. IRCP 81(n)⁴, (o)(1)⁵; IRSCA 15(c)⁶, 15(d)(1)⁷. In this case, Pilling received a

¹ IRCP 81(k) provided:

Who May Appeal a Small Claim Judgment. Any aggrieved party from a small claims judgment may appeal to the district court as provided in these rules and by law; provided, however, any party who defaults or does not appear at the small claim proceeding shall have no right to appeal the judgment in the small claim proceeding to the district court.

² IRCP 81(l) provided:

Notice of Appeal and Appeal Bond. Any aggrieved party desiring to appeal the judgment in a small claim proceeding to the district court shall do so by filing a notice of appeal with the magistrates division wherein the small claim proceeding was held in the manner, within the 30-day statutory appeal period in the form provided by law. The notice of appeal shall not be filed by the clerk of the court without the prepayment of the filing fee, except as provided by section 31-3220, Idaho Code.

³ IRSCA Rule 15(a) provides: "Who May Appeal. Any aggrieved party may appeal to the district court as provided in these rules and by law; provided, however, any party who defaults or does not appear will not have any right to appeal the judgment."

⁴ IRCP 81(n) provided: "Appeal of Small Claims Judgment. Any appeal of a small claims judgment of the small claims department of the magistrate division shall be conducted as a trial de novo by an attorney magistrate."

⁵ IRCP 81(o)(1) provided:

Small Claims Judgment in his favor and against the Paradees in Case No. CV-2015-6642 on November 2, 2015. The Paradees then timely appealed that judgment on December 3, 2015. The appeal was initially assigned to Kootenai County Magistrate Judge Van Valin. However, prior to Judge VanValin conducting a trial *de novo*, it was reassigned to Latah County District Judge Stegner to preside over the appeal. Pursuant to IRCP 81(n), now IRSCA Rules 15(c) and 15(d)(1), the Paradees had a right for their appeal to be heard as a trial *de novo* by a magistrate judge. The Paradees were never permitted to exercise that right.

Rather, on appeal, the Paradees attempted to raise their counterclaim before Judge Stegner. In their Notice of Appeal of Small Claims Judgment, the Paradees asserted two counterclaims against Pilling for negligence and breach of contract. Pursuant to those counterclaims, the Paradees sought a reversal of the Small Claims Judgment entered against them by Judge Stow, and requested a judgment against Pilling. IRCP 81(b)⁸, now IRSCA Rules 5⁹ and 6¹⁰, precludes a defendant to a small

Procedure on Appeal. In the *de novo* trial of a small claims judgment appeal to an attorney magistrate the following procedures shall apply:

(1) When a notice of appeal is filed, the clerk of the magistrates division wherein the small claim was filed shall assign a district court file number of the magistrates division to the appeal and cause it to be assigned to an attorney magistrate in accordance with the assignment procedures of the county and serve copies of the notice of assignment on the parties or their attorneys by mail.

⁶ IRSCA 15(c) provides: "The court will conduct any appeal as a trial *de novo*."

⁷ IRSCA 15(d)(1) provides:

Procedure on Appeal

(1) When a notice of appeal is filed, the clerk of the court where the action was filed will assign a file number and a magistrate in accordance with the assignment procedures of the county and serve copies of the notice of assignment on the parties or their attorneys by mail.

⁸ IRCP 81(b) provided:

Counterclaims Prohibited. There shall be no counterclaims filed to a claim in the small claims department, provided this shall not prevent the filing of a separate claim in the small claims department, regardless of the residence of the original plaintiff; and such small claim may be consolidated for hearing with the original small claim in the discretion of the magistrate division or the district court.

⁹ IRSCA Rule 5 provides: "Counterclaims are not permitted, however a separate action may be filed in the

claims action from filing a counterclaim. IRCP 81(b); IRSCA Rules 5 and 6. Judge Stegner dismissed the Paradees' appeal on the basis that counterclaims are prohibited in small claims actions and the district court did not have jurisdiction to hear such claims for the first time on appeal.

A defendant in a small claims action must file a separate action in the small claims department, the magistrate division of the district court, or the district court to assert a counterclaim. IRCP 81(b), (c)¹¹; IRSCA Rules 5 and 7¹². If the claim in the separate action "arises out of the same transaction or occurrence, or is similar to a compulsory counterclaim" as defined by IRCP 13(a), then the cases must be consolidated for trial. IRCP 81(c); IRSCA Rule 7. Prior to a decision on their appeal by Judge Stegner, the Paradees filed their Complaint in Case No. CV-2015-8918, the instant district court action, asserting two of the counterclaims they attempted to raise in their appeal, breach of contract and negligence, and adding and additional two causes of action, breach of good faith and fair dealing and negligence. Pilling has not directed the Court to any rule governing small claims action that requires the separate action to

same court against the plaintiff in the original action."

¹⁰ IRSCA Rule 6 provides: "The court may hear related actions together."

¹¹ IRCP 81(c) provided:

Transfer to Magistrate Division – When Permitted. In the event the defendant in a small claim filed in the small claims department files an action in the magistrate division of the district court or the district court, which action arises out of the same transaction or occurrence, or is in the nature of a compulsory counterclaim as defined by Rule 13(a), I.R.C.P., then in such event the judge or magistrate presiding over the non-small claim action shall order the small claim transferred to the magistrate division or district court and consolidated with that action for trial under the I.R.C.P. Except as provided above, a defendant in a small claim shall have no right to have the small claim transferred to the magistrate division or the district court.

¹² IRSCA Rule 7 provides:

When a defendant in an action under these rules files an action in the district court or the magistrate division which arises out of the same transaction or occurrence, or is similar to a compulsory counterclaim pursuant to Rule 13(a), Idaho Rules of Civil Procedure, the judge presiding over the non-small claims action must order the small claims action transferred and consolidate the actions for trial.

be filed prior to the entry of the first small claims judgment. Pursuant to IRCP 81(c), the Small Claims Action, Case No. CV-2015-6642, was required to be consolidated with the instant action, CV-2015-8918, for a trial de novo, as they arise out of “the same transaction or occurrence, or is similar to a compulsory counterclaim”.

As the Paradees timely filed their notice of appeal pursuant to IRCP 81(k) and (l), now IRSCA Rule 15(a) and (b), have not yet had an opportunity to have a trial de novo as required by IRCP 81(n) and (o)(1), now IRSCA Rules 15(c) and 15(d)(1), and filed a separate district court action to assert their counterclaims pursuant to IRCP 81(b) and (c), now IRSCA Rules 5 and 7, Pilling’s Motion to Dismiss CV-2015-8918 under the theory that the Paradees failed to properly plead such claims prior to the entry of the Small Claims Judgment is denied.

2. *Res Judicata.*

Pilling alternatively requests that this Court dismiss the district court action under the doctrine of res judicata because it involves the same and the same cause as the Small Claims Action. Defendant’s Motion to Dismiss and Objection to Motion to Consolidate, pp/8–10. Specifically, he argues the Paradees had an opportunity to litigate their defenses and argue their counterclaims during the bench trial before Judge Stow. *Id.*, p. 10. *Id.* Pilling asserts the Paradees were required to file this action, CV-2015-8918, while the Small Claims Action was pending before Judge Stow. *Id.* Once a final judgment was entered in the Small Claims Action, Pilling maintains the Paradees were precluded from commencing this action because it involves the same parties, contract and transaction as the Small Claims Action. *Id.*

The Paradees claim *res judicata* should not bar the instant district court action because the rules governing small claims actions specifically prohibit defendants from presenting defenses and counterclaims in a small claims action and require defendants to file a separate action. Response to Defendants' Motion to Dismiss, p. 10. Moreover, they argue there is no requirement in the rules governing small claims actions which require defendants to file their separate action prior to the small claims judgment. *Id.*, pp. 12–13. The Paradees contend their district court claims were not ripe at the time the bench trial for the Small Claims Action was heard by Judge Stow because at that time they had not yet served Pilling with their statutorily required construction defect demand letter. *Id.*, pp. 8, 15. They served their letter on November 20, 2015, and thus they were precluded from filing the instant district action until December 7, 2015, more than one month after Judge Stow entered the Small Claims Judgment. *Id.*

Idaho Rule of Civil Procedure 12(b)(8) provides:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses shall be made by motion . . . (8) another action pending between the same parties for the same cause.

IRCP 12(b)(2). Under Idaho Rule of Civil Procedure 12(b)(8), a trial court may dismiss an action where there is “another action pending between the same parties for the same cause.” I.R.C.P. 12(b)(8). There are two tests used to determine whether a law suit should proceed in such an instance: “First, the court should consider whether the other case has gone to judgment, in which event the doctrines of claim preclusion and issue preclusion may bar additional litigation. The second test is whether the court, although

not barred from deciding the case, should nevertheless refrain from deciding it.” *Klaue v. Hern*, 133 Idaho 437, 440, 988 P.2d 211, 214 (1999) (internal citations omitted).

Relitigation of a matter that was previously adjudicated is precluded by the doctrine of *res judicata*. *Aldape v. Akins*, 105 Idaho 254, 256, 668 P.2d 130, 132 (Ct. App. 1983). *Res judicata* is applicable to small claims actions. *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002); *Williams v. Christiansen*, 109 Idaho 393, 707 P.2d 504 (Ct. App. 1985). It encompasses both claim preclusion and issue preclusion or collateral estoppel. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 123, 157 P.3d 613, 617 (2007) (citing *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002)). As Pilling only seeks dismissal of CV-2015-8918 under the theory of claim preclusion, the Court will only address that theory.

“Claim preclusion bars a subsequent action between the same parties upon the same claim or upon claims ‘relating to the same cause of action . . . which might have been made.’” *Id.* (internal citations omitted). For claim preclusion to apply, the subsequent action must have the same parties or their privies, same claim and a final judgment. *Id.* at 124, 157 P.3d at 618 (citing *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805; *Farmers Nat’l Bank v. Shirey*, 126 Idaho 63, 68, 878 P.2d 762, 767 (1994)); see also *Foster v. City of St. Anthony*, 122 Idaho 883, 888, 841 P.2d 413, 418 (1992).

“Claim preclusion bars adjudication not only on the matters offered and received to defeat the claim, but also as to ‘every matter which might and should have been litigated in the first suit.’” *Ticor Title Co. v. Stanion*, 144 Idaho at 126, 157 P.3d at 620 (citing *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 437, 849 P.2d 107, 110 (1993)).

Here, the Court finds that since at the present time there is no final judgment in the Small Claims Action, claim preclusion does not bar litigation of CV-2015-8918. The Paradees timely filed their Notice of Appeal of Small Claims Judgment, which should have granted them a trial de novo. Moreover, it was impossible for the Paradees to have litigated their counterclaims in the Small Claims Action. Idaho Rule of Civil Procedure 81(b), now IRSCA Rule 5 and 7, precluded the Paradees from raising their counterclaims claims for breach of contract and negligence in the initial Small Claims Action before Judge Stow, and it was improper for them to have attempted to raise such claims in their appeal of the Small Claims Judgment before Judge Stegner. Instead, the proper procedure as mandated by IRCP 81(b) and (c), now IRSCA Rules 5 and 7, required the Paradees to file the instant district court action to raise any counterclaims to the Small Claims Action. Pilling has cited to no rule requiring the district court action to be filed prior to the entry of the Small Claims Judgment. Moreover, in the instant action, it would have been impossible for the Paradees to have filed their Complaint in this case prior to the entry of the Small Claims Judgment and still complied with serving Pilling with their construction defect demand letter.

For the foregoing reasons, *res judicata* does not bar the Paradees from filing CV-2015-8918. Pilling's Motion to Dismiss under the theory of *res judicata* is denied.

B. Plaintiffs' Motion to Consolidate.

Again, counterclaims are prohibited in small claims actions. IRCP 81(b), now IRSCA Rule 5. While stated above, for ease of reference, IRCP 81(b) and (c), now IRSCA Rule 7, require a defendant who wishes to assert a counterclaim in a small claims action, to file a separate action in the small claims department, the magistrate

division of the district court, or the district court to assert a counterclaim. IRCP 81(b), (c); IRSCA Rules 5 and 7. If the claim in the separate action “arises out of the same transaction or occurrence, or is similar to a compulsory counterclaim” as defined by IRCP 13(a), then the cases must be consolidated for trial. IRCP 81(c); IRSCA Rule 7. See, *Berning v. Drumwright*, 122 Idaho 203, 206, 832 P.2d 1138, 1141, n. 1 (Ct. App. 1992). As there is no question that the Small Claims Action and the instant case arise out of the same transaction or occurrence, the rules governing small claims actions require consolidation. The Court finds Small Claims Action, Case No. CV-2015-6642 and *Paradee v. Pilling*, Case No. CV-2015-8918 must be consolidated for trial. As such, the plaintiffs “Motion to Consolidate CV 2015-6642 With CV 2015-8918” is granted.

IV. ORDER

For the reasons set forth above, defendants’ Motion to Dismiss is denied and plaintiffs’ Motion to Consolidate is granted.

IT IS HEREBY ORDERED, defendants’ Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED, plaintiffs’ “Motion to Consolidate CV 2015-6642 With CV 2015-8918” is GRANTED. All future filings shall be in CV 2015 8918.

DATED this 28th day of August, 2016

JOHN T. MITCHELL, District Judge

Certificate of Service

I certify that on the _____ day of August, 2016, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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