

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CASE NO. 02-55516
)	
VALLEY CITY STEEL, LLC,)	CHAPTER 11
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	MEMORANDUM OPINION
)	RE: OBJECTIONS TO PROOFS OF CLAIM
)	## 67 AND 69

This matter comes before the Court on cross motions for summary judgment related to Debtor's objections to proofs of claim ## 67 and 69. This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (B) over which this Court has jurisdiction pursuant to 28 U.S.C. §1334(b). In reaching its determinations and whether or not specifically referenced in this decision, the Court has considered the following pleadings filed in connection with this matter in Debtor's main case:

- (1) a proof of claim filed by Shiloh Corporation (“Shiloh”) on July 16, 2007 (“Claim 67”);
- (2) Debtor’s objection to Claim 67 [docket #290];
- (3) a proof of claim filed by Liverpool Coil Processing, Inc. (“Liverpool”) on July 16, 2007 (“Claim 69”);
- (4) Debtor’s objection to Claim 69 [docket #292];
- (5) Liverpool’s response to Debtor’s objection to Claim 69 [docket #298];
- (6) Shiloh’s response to Debtor’s objection to Claim 67 [docket #299];
- (7) Debtor’s list of disputed issues as to Claim 67 and Claim 69 [docket #323];
- (8) a list of stipulations jointly filed by Debtor, Shiloh and Liverpool [docket #324];
- (9) a “Preliminary Position Statement” of Shiloh and Liverpool regarding Claim 67 and Claim 69 [docket #325];
- (10) Debtor’s list of “summary judgment issues” as to Claim 67 and Claim 69 [docket #326];
- (11) a list of supplemental stipulations jointly filed by Debtor, Shiloh and Liverpool [docket #327];
- (12) Shiloh’s and Liverpool’s joint motion for partial summary judgment (the “Shiloh/Liverpool Motion for Summary Judgment”) as to Claim 67 and Claim 69 [docket #328];
- (13) Debtor’s motion for summary judgment (“Debtor’s Motion for Summary Judgment”) as to Claim 67 and Claim 69 [docket #329];
- (14) Debtor’s brief in response to the Shiloh/Liverpool Motion for Summary Judgment [docket #332];
- (15) Shiloh’s and Liverpool’s brief in opposition to Debtor’s Motion for Summary Judgment [docket #331];
- (16) Shiloh’s and Liverpool’s reply to Debtor’s brief in response to the Shiloh/Liverpool Motion for Summary Judgment [docket #334]; and
- (17) Debtor’s reply to Shiloh’s and Liverpool’s brief in opposition to Debtor’s Motion for Summary Judgment [docket #335].

(18) Shiloh and Liverpool's statement ("Statement") clarifying positions regarding summary judgment issues [docket #357]

(19) Debtor's brief in response to Shiloh and Liverpool's Statement [docket #358]

The Court has also considered the following pleadings filed in the Adversary Proceeding (as hereinafter defined) and entered by the District Court:¹

(20) a Memorandum of Opinion and Order granting Motions to Withdraw the Reference [Adversary Proceeding docket #1];

(21) an Order granting, in part, the Motion for Relief [Adversary Proceeding docket #11];

(22) a Memorandum Opinion and Order denying Debtor's motion for partial summary judgment and granting in part and denying in part Defendants' partial motion for summary judgment [Adversary Proceeding docket #31];

(23) Defendants' motion in limine regarding Debtor's insolvency [Adversary Proceeding docket #43];

(24) a Memorandum Opinion and Order regarding Defendants' motion in limine [Adversary Proceeding docket #67];

(25) a Memorandum Opinion and Order denying Debtor's motion in limine to exclude the use of Debtor's bankruptcy schedules [Adversary Proceeding docket #72];

(26) Excerpts of Trial Transcript [Adversary Proceeding docket #81, Exhibit 1];

(27) Jury General Verdict and Interrogatories [Adversary Proceeding docket #77]; and

(28) Judgment Entry [Adversary Proceeding docket #82];

¹ Pursuant to their list of supplemental stipulations the parties agreed that these documents from the Adversary Proceeding "may be relevant to the issues of claims allowance in this matter." *See* Supp. Stip. at pg. 1 [docket #327].

I. BACKGROUND²

- (1) Valley City Steel, LLC is an Ohio limited liability company that was formed by Viking Steel LLC (“Viking Steel”) for the purpose of acquiring certain assets from Value City Steel Company (“VCS Company”). VCS Company was a wholly owned subsidiary of Shiloh.
- (2) Shiloh is an Ohio corporation which is a wholly owned subsidiary of Shiloh Industries, Inc.
- (3) In late 2000 or early 2001, Shiloh entered into negotiations with Viking Steel and on May 29, 2001 an Asset Purchase Agreement was entered into between Valley City Steel, LLC and VCS Company.
- (4) Pursuant to that transaction Valley City Steel, LLC acquired substantially all of the personal property and some of the intangible assets of VCS Company. Valley City Steel, LLC also agreed to assume certain liabilities to trade creditors and employees of VCS Company.
- (5) On July 31, 2001, a series of transactions took place as contemplated by the Asset Purchase Agreement. In one such transaction, VCS Company entered into a Membership Interest Subscription Agreement wherein VCS Company received a 49% interest in Valley City Steel, LLC in exchange for the assets identified in the Asset Purchase Agreement. The value of the transferred assets was set at \$12,000,000.00. In another transaction on July 31, 2001, Valley City Steel, LLC entered into a Lease Agreement with VCS Company for the real property on which Valley City Steel, LLC was to conduct its business.
- (6) Valley City Steel, LLC also obtained various loans from Comerica Bank (“Comerica”) to fund the cash purchase portion of the acquired assets. In exchange for these loans Comerica obtained liens on Valley City Steel, LLC’s assets.
- (7) On or about the same day that the loans with Comerica were closed, Shiloh, to induce Comerica to extend financing to Valley City Steel, LLC, executed an agreement with Comerica whereby Shiloh promised to waive its right to setoff against Valley City Steel, LLC. From the Comerica loans, \$12,400,000.00 was transferred to or for the

² All facts set forth in this Background section are taken from (1) the joint stipulations filed by Debtor, Shiloh and Liverpool in relation to the claims allowance issues at bar [docket #324 and docket #327] and (2) the District Court’s Memorandum Opinion and Order denying Debtor’s motion for partial summary judgment and granting in part and denying in part defendants’ partial motion for summary judgment [Adversary Proceeding docket #31]. The facts from the District Court’s opinions were taken from the parties’ stipulations [Adversary Proceeding docket #31 note 3].

benefit of Defendants.

- (8) In April 2002 Valley City Steel, LLC was declared in default of the Comerica loans.
- (9) VCS Properties is an Ohio limited liability company and is the successor by statutory merger of Valley City Steel Company.
- (10) On November 27, 2002, Valley City Steel, LLC filed a voluntary chapter 11 bankruptcy petition and operated and managed its business as a debtor in possession.
- (11) On June 25, 2003, this Court entered an Order approving the sale of certain of Debtor's assets for a purchase price of \$5,700,000.00. Of that amount, \$5,000,000.00 was paid to Comerica to satisfy certain of its loans.
- (12) On July 13, 2004, Debtor initiated adversary proceeding no. 04-5111 against Shiloh, Liverpool and certain other related entities (the "Adversary Proceeding"). Through its complaint, Debtor asserted constructive fraudulent transfer claims pursuant to Ohio Revised Code § 1334.04(A) and (B) as well as breach of contract claims against, *inter alia*, Shiloh and Liverpool.
- (13) Shiloh and Liverpool contended at all material times that they were not directly obligated on the breach of contract claim or that the claim was subject to a right of setoff. Stipulation #4 [docket # 327]. Shiloh and Liverpool asserted the amount of their claims against the Debtor at least equaled the claim asserted by the Debtor against Shiloh and Liverpool. Stipulation #6 [docket #327]
- (14) Defendants did not consent to a trial of the Adversary Proceeding before this Court and moved to withdraw the reference and to have the Adversary Proceeding tried to a jury.
- (15) The reference was withdrawn and the District Court sat as a trial court of original jurisdiction in the Adversary Proceeding.
- (16) In the Adversary Proceeding, Shiloh and Liverpool sought and obtained an Order, dated November 2, 2005, from the District Court granting them relief from the automatic stay to assert setoff as an affirmative defense. The District Court expressly reserved for future consideration and determination whether the exercise of a set-off of any amounts owed to Liverpool and/or Shiloh by the Plaintiff is proper, and, if so, the amount of the set-off. [Adv. Pro. Docket# 11]
- (17) On cross motions for summary judgment, the District Court, in an order dated September 29, 2006, determined that Shiloh and Liverpool had established their right to setoff, but that the amount remained to be proven at trial. [Adv. Pro. Docket # 31].

- (18) At the conclusion of the presentation of evidence at trial, the District Court instructed the jury,

“In this case there is both a complaint and a claim to setoff asserted by Liverpool ..., [and] Shiloh ... against the plaintiff’s contract claims. Thus, the burden is on each party to establish material issues necessary for their claims by a preponderance of the evidence. ... “ Trial Transcript, page 399, attached as exhibit 1 to Brief in support of motion for judgment as a matter of law [Adv. Pro. Docket. # 81]

“If you find by the greater weight of the evidence that the plaintiff failed to prove any part of its claim, or if you find that Defendant Liverpool ... proved by the greater weight of the evidence that it is entitled to setoff that are not³ equal to or greater than plaintiff’s claim, ..., then you will find for Defendant Liverpool” pg.422

“If you find that Defendant Shiloh ... proved by a greater weight of the evidence that it is entitled to setoff in an amount equal to or greater than plaintiff’s claim, ..., then you will find for Defendant Shiloh.” pg. 423

“If you find that Defendant Sectional Stamping, Inc. Proved by the greater weight of the evidence that it is entitled to setoff in an amount equal to or greater than plaintiff’s claim, ..., then you will find for the Defendant Sectional Stamping, Inc.” pg. 423

“Affirmative Defense, Setoff. The defendants have each claimed they are entitled to setoff. ... Here, the court has already determined that defendants have established their right to setoff, but the amount of setoff to which each of defendants is entitled remains to be determined by you. The burden of proving by a preponderance of the evidence the amount of the setoff to which each of the defendants is entitled is on the defendants.” page 425

- (19) As to Debtor’s breach of contract claims against Shiloh and Liverpool, the jury was asked to “state the amount of money, if any after setoff, that Plaintiff is owed under the contract with Liverpool.” The Jury answered “\$0.” The jury was then instructed, “If you awarded the amount of zero or less, please sign the General Verdict Form for Defendant Liverpool.” The jury signed the General Verdict Form for Liverpool. The jury was asked the same question and given the same instruction with respect to Shiloh. The jury answered “\$0” and entered the General Verdict From for Shiloh.

- (20) Following the entry of Judgment in the District Court, this Court set a bar date for the filing of proofs of claim in the Debtor’s main case. Shiloh and Liverpool timely filed

³ The Court presumes that the inclusion of the word “not,” if correctly transcribed, is the result, either of an error of the party requesting the instruction or a slip of the tongue. Were the Court to deem otherwise, this instruction would be directly inconsistent with the remaining instructions.

proofs of claim, claims 67 and 69. The Debtor filed an objection to the claims of Shiloh and Liverpool asserting that the claims are barred, *inter alia*, by the judgment entered by the District Court in the adversary proceeding. [Docket ## 290 and 292].

- (21) Shiloh and Liverpool filed a motion for summary judgment suggesting that claims #67 and 69 should be allowed as a matter of law. [docket #328]. Debtor filed a motion for summary judgment seeking to bar claims 67 and 69 as a matter of law. The Court held the cross-motions for summary judgment in abeyance because Shiloh and Liverpool have appealed the jury's verdict. Based on discussions at a status conference in February 2009, the Court placed the cross-motions back on its active docket and asked counsel to file supplemental papers in support of their respective positions. Supplemental briefs were filed. [Docket #357 and 358].

III. DISCUSSION

A court shall grant a party's motion for summary judgment "if...there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056. The party moving for summary judgment bears the initial burden of showing the court that there is an absence of a genuine dispute over any material fact, *Searcy v. City of Dayton*, 38 F.3d 282, 286 (6th Cir. 1994) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)), and, upon review, all facts and inferences must be viewed in the light most favorable to the nonmoving party. *Searcy v. City of Dayton*, 38 F.3d 282, 285 (6th Cir. 1994); *Boyd v. Ford Motor Co.*, 948 F.2d 283, 285 (6th Cir. 1991), *cert. denied*, 503 U.S. 939 (1992).

Debtor contends Claim 67 and Claim 69 have already been utilized fully in opposition to the breach of contract claims asserted by the Debtor in the Adversary Proceeding and the result of that litigation bars the use of such matter as the basis of a subsequent independent action. Shiloh and Liverpool disagree and suggest that they can, having asserted their claims as an affirmative defense to offset their liability on the Debtor's breach of contract claim, subsequently seek affirmative relief based on those claims against the Debtor. The Court previously analyzed this matter according to the doctrine of res judicata and determined that it was necessary to abate this matter because there

was a pending appeal of the District Court decision and therefore there was not a final judgment.⁴ The Court placed this matter back on its active docket following the parties agreement during a February 17, 2009 status hearing because the parties agreed that the judgment was final with respect to the breach of contract and setoff issues.⁵ There are no material disputed facts. The only remaining dispute is a question of law. The question before the Court is whether or not the assertion of a claim as an affirmative defense, precludes the use of the claim subsequently to seek affirmative relief. For the reasons set forth more fully below, the Court agrees with the Debtor.

The right to setoff is generally controlled by state law; however, in bankruptcy, the right to setoff is also addressed in 11 U.S.C. § 553. Under Ohio law, setoff is defined as “that right which exists between two parties, each of whom under an independent contract owes a definite amount to the other, to set off their respective debts by way of mutual deduction.” *Chickerno v. Society Nat’l Bank*, (1979) 58 Ohio St. 315, 318 (quoting *Witham v. South Side Building & Loan Assn.*, (1938) 133 Ohio St. 560, 562). In the matter at hand, Shiloh and Liverpool asserted the right of setoff as an affirmative defense to the Debtor’s breach of contract claim heard by the District Court. The District Court granted Shiloh and Liverpool the right to assert setoff and left the determination of the amount of the setoff to the Jury. The District Court instructed the Jury to determine what amount Shiloh

⁴ *Order Postponing Decision* [docket #337]. Under the doctrine of res judicata a claim is barred if there is: (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. *Rawe v. Liberty Mut. Fire Ins. Co.*, 462 F.3d 521, 528 (6th Cir. 2006) (quoting *Kane v. Magna Mixer Co.*, 71 F.3d 555, 560 (6th Cir. 1995)). See also *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981) (“A final judgment on the merits of an action precludes the parties or their privies from re-litigating issues that were or could have been raised in that action.”). The parties mainly focused on only one issue with respect to res judicata, whether or not claims 67 and 69 were litigated or should have been litigated in the District Court action [docket #337].

⁵ Defendants have appealed the District Court decision with respect to the constructive fraudulent conveyance claim to the Sixth Circuit Court of Appeals.

and Liverpool owed Debtor, taking into consideration the right to setoff, and the Jury found that Shiloh and Liverpool each owed "\$0" on the breach of contract claim.

Shiloh and Liverpool maintain that they did not assert an affirmative claim against the bankruptcy estate and merely asserted setoff as a means of reducing or extinguishing the Debtor's claim against them [docket# 331]. It is illogical, however, to say that Shiloh and Liverpool asserted a right to setoff without asserting a claim against the estate. *Commercial Fin. Servcs., Inc. v. Jones (In re Commercial Financial Services, Inc.)* 251 B.R. 397, 405-06 (Bankr. N.D. Okla 2000). It does not matter "whether a setoff is labeled an 'affirmative defense' or a 'counterclaim,' a setoff is a claim against the bankruptcy estate. *N. Am. Energy Conservation, Inc. v. Interstate Energy Res., Inc. (In re N. Am. Energy Conservation, Inc.)*, 2000 U.S. Dist. LEXIS 15084, *6 (Bankr. S.D. N.Y. 2000) (quoting *Commercial Fin. Servcs., Inc.* 251 B.R. at 405) (asserting the right to setoff triggered the process of the allowance and disallowance of claims and the defendant was then subject to the equitable power of the bankruptcy court.). The same evidence is required to prove a right to setoff as is required to prove Shiloh and Liverpool's affirmative claims against the estate. *See Commercial Fin. Servcs.*, 251 B.R. at 406.) Once Shiloh and Liverpool asserted the right of setoff, they essentially triggered the claims allowance and disallowance process. The Court finds that Shiloh and Liverpool, by asserting setoff as a defense, asserted claims against the estate and the amount of its claim was determined by the Jury. It is a generally established rule that where a party asserts a defense that is included in an indivisible claim or cause of action, that party is estopped from maintaining a subsequent action on that same claim. *Brown v. First Nat. Bank* 132 Fed. 450, 453 (8th Cir. 1904); *see* General Rule, 83 ALR 642, part II.; *see also Timmons v. Dunn*, (1855) 4 Ohio St. 680 (holding that a

judgment in an action for the price of goods, following a defense in recoupment based on breach of warranty, is a bar to a subsequent action for such breach of warranty whether the judgment be for or against the defendant). Shiloh and Liverpool had the opportunity to present their claims to the Jury in the District Court action, which they did and the Jury rendered a verdict that encompassed those claims. The jury instructions permitted an award of "zero or less." A finding that a negative number was owing from either Shiloh or Liverpool to the Debtor would have supported the assertion of a claim in the bankruptcy case. The jury found "zero" in both instances. Accordingly, Shiloh and Liverpool are not entitled to a second chance to litigate their claims.

IV. CONCLUSION

When Shiloh and Liverpool asserted their right to setoff with respect to the breach of contract claim, they also, as a practical matter, asserted an affirmative claim against the bankruptcy estate. The issues surrounding the breach of contract claim and Shiloh and Liverpool's right to setoff have been adjudicated and the Jury rendered a final decision on the merits. Shiloh and Liverpool are barred from trying to re-litigate the setoff issue by filing proofs of claim in the main bankruptcy case. Therefore, based upon the foregoing, the Court **HEREBY ORDERS** that claim # 67 and claim #69 are **DISALLOWED**.

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