

ORDERED.

Dated: March 01, 2021



 Karen S. Jennemann
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF FLORIDA
 ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Global Asset Rental, LLC,)	Case No. 6:20-bk-04126-KSJ
)	Chapter 11
Debtor.)	
_____)	

**ORDER GRANTING WHITE OAK'S
 MOTION FOR SUMMARY JUDGMENT
 ON SCHAEFER SUDEX'S MOTION FOR RELIEF FROM STAY**

White Oak Global Advisors, LLC (“White Oak”)¹ seeks summary judgment on the motion for relief from stay filed by creditor, Schaefer Sudex s.r.o (“Schaefer Sudex”).² Schaefer Sudex seeks stay relief to relitigate issues already finally resolved by the United States District Court for the Middle District of Florida (the “District Court”) and obtain possession of certain stainless-steel kegs owned by the Debtor. The principle of *res judicata* requires the denial of stay relief **with prejudice**.

¹ White Oak is both a creditor of the Debtor, Global Asset Rental, LLC. (“Debtor”), and, through its designee, International Keg, LLC, the purchaser of Debtor’s assets.
² White Oak’s Motion for Summary Judgment is Doc. No. 274. Schaefer Sudex’s Response is Doc. No. 290. White Oak’s Reply is Doc. No. 299. Schaefer Sudex’s Motion for Relief from Stay is Doc. No. 208.

Debtor is a Nevada limited liability company based in Orlando, Florida, who was one of the largest keg rental companies in the world.³ Schaefer Sudex is a Czech Republic foreign limited liability company who manufactures and distributes stainless-steel kegs.⁴

In 2018, Debtor submitted a purchase order to Schaefer Sudex for 44,160 Euro 20L slim kegs (“European Kegs”).⁵ Schaefer Sudex confirmed the order,⁶ delivered the European Kegs and sent Debtor invoices totaling over \$3 million.⁷ Debtor, however, did not pay Schaefer Sudex for the European Kegs.⁸ Schaefer Sudex then instituted attachment proceedings in Belgium and Netherlands attempting to collect the amounts owed by the Debtor (the “Attachment Proceedings”).⁹

On October 24, 2019, Schaefer Sudex sued the Debtor in the Florida U.S. District Court (“District Court Action”).¹⁰ The complaint, as amended, alleges claims against the Debtor for account stated, breach of contract, and unjust enrichment for failing to pay for the European Kegs (the “Claims”). The purchase order, order confirmation, and invoices for the European Kegs are attached to the amended

³ Doc. No. 29. Chapter 11 Case Management Summary.

⁴ Doc. No. 290. Exh. 1. Amended Declaration of Marcus Duber, ¶¶ 2 and 5.

⁵ *Id.* at ¶ 7.

⁶ *Id.* at ¶ 8.

⁷ *Id.* at ¶ 17.

⁸ *Id.* at ¶ 21.

⁹ *Id.* at ¶ 22.

¹⁰ Doc. No. 274. Exh. C. Release and Settlement Agreement, p. 1. The District Court case is *Schaefer Container Systems of North America, Inc. v. Global Asset Rental, LLC*, Case No. 6:19-cv-02048-CEM-LRH (M.D. Fla. Oct. 24, 2019).

complaint and, in Schaefer Sudex's own words "together contained all the material terms of the parties' agreement."¹¹

In particular, the order confirmation and invoices state:¹² "...[w]e retain ownership of all deliveries until such time as all claims arising from them have been paid in full."¹³ Schaefer Sudex, however, did not allege a claim to enforce or determine any ownership or title retention rights it may have had to the European Kegs under this provision in the documents (the "Title Retention Claim").

Shortly after filing the District Court Action, Schaefer Sudex and the Debtor signed a Release and Settlement Agreement (the "Settlement Agreement").¹⁴ Under the Settlement Agreement, Debtor agreed to pay Schaefer Sudex about \$4 million in monthly installments over a two-year period, to the entry of a \$3.4 million judgment in the District Court Case, and to release all claims it has against Schaefer Sudex through the date of the Settlement Agreement. Schaefer Sudex, in return, agreed to forebear collection on the judgment and dismiss the pending European Attachment Proceedings.

The District Court then entered the judgment.¹⁵ Nobody appealed. Debtor paid some installments, but eventually deferred payments until July 2020.¹⁶

¹¹ Doc. No. 274. Exh. A. Amended Complaint at ¶ 24.

¹² White Oak disputes the Debtor received the order confirmation and invoices attached to the amended complaint, however, it does not dispute that the order confirmation and invoices attached to the amended complaint contain this language.

¹³ Doc. No. 274. Exh. A. Amended Complaint at Exh. E, F and H.

¹⁴ Doc. No. 274. Exh. C. Release and Settlement Agreement.

¹⁵ Doc. No. 274. Exh. D. Judgment in Civil Case.

¹⁶ Doc. No. 274. Exh. C. Amendment to Release and Settlement Agreement.

On July 23, 2020, Debtor sought relief under Chapter 11 of the Bankruptcy Code.¹⁷ Debtor disclosed assets of over \$26 million and liabilities of over \$100 million.¹⁸ White Oak, the largest creditor, was owed almost \$60 million and held a lien on most of the Debtor's assets.¹⁹ During the bankruptcy case, Debtor sold most of its assets to International Keg, LLC, a designee of White Oak, and confirmed a plan of liquidation.²⁰ Both the plan and sale order preserved Schaefer Sudex's rights, if any, to the European Kegs, pending this Court's resolution of this dispute.²¹

Schaefer Sudex now seeks stay relief to proceed with its Title Retention Claim to get possession of the European Kegs,²² using the exact same purchase order, order confirmation, and invoices attached to the amended complaint and resolved in the District Court Action. White Oak opposes stay relief and seeks summary judgment arguing the doctrines of *res judicata*, merger, and election of remedies preclude Schaefer Sudex from pursuing the Title Retention Claim.

¹⁷ All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et seq.*

¹⁸ Doc. No. 109. Summary of Assets and Liabilities.

¹⁹ Doc. No. 109. Schedule D.

²⁰ Doc. Nos. 231 and 371.

²¹ The Order Authorizing Sale provides the purchaser shall not dispose of the kegs sold to the Debtor by Schaefer Sudex that are in purchaser's actual possession or control until such time as there is an adjudication on the merits by this Court (or a court of appeals if the ruling of this Court is appealed) in favor of Schaefer Sudex on the merits of the motion for relief from stay. Doc. No. 231, ¶ HH. The Chapter 11 Plan of Liquidation provides the retention of title claims shall be satisfied in full in accordance with this Court's adjudication (or a court of appeal if the ruling of the Bankruptcy Court is appealed), and if the retention of title claims are not fully satisfied through the adjudication, then Schaefer Sudex shall have deficiency claims that will be included in, and if allowed, treated in accordance with Class 5, which are allowed unsecured claims. Doc. No. 291. Chapter 11 Plan of Liquidation, Art. IV,B,4.3.

²² Doc No. 208.

Summary Judgment Standard

Rule 56(a) provides that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”²³ The moving party must establish the right to summary judgment.²⁴ A “material” fact is one that “might affect the outcome of the suit under the governing law.”²⁵ A “genuine” dispute means that “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”²⁶ Once the moving party has met its burden, the nonmovant must set forth specific facts showing there is a genuine issue for trial.²⁷ In determining entitlement to summary judgment, “facts must be viewed in the light most favorable to the nonmoving party only if there is a ‘genuine’ dispute as to those facts.”²⁸

Res Judicata

White Oak is entitled to summary judgment based on the doctrine of *res judicata*. “The general principle of *res judicata* prevents the relitigation of issues and claims already decided by a competent court. ‘Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel.’ *Res judicata* comes in two forms: claim preclusion (traditional ‘*res judicata*’) and issue preclusion (also known

²³ Fed. R. Civ. P. 56(a).

²⁴ *Fitzpatrick v. Schlitz (In re Schlitz)*, 97 B.R. 671, 672 (Bankr. N.D. Ga. 1986).

²⁵ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986); *Find What Investor Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011).

²⁶ *Anderson*, 477 U.S. at 248, 106 S. Ct. at 2510.

²⁷ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 10 S. Ct. 1348 (1986).

²⁸ *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

as ‘collateral estoppel’).”²⁹ For prior federal decisions, federal preclusion law applies.³⁰ Here, the Court will apply federal preclusion law as the District Court entered the judgment.

The Eleventh Circuit explained the doctrine of *res judicata*: “The doctrine of claim preclusion serves several important policy functions, and the analysis we undertake to measure the identity of claims promotes these ends. One of the chief concerns of *res judicata* is the prevention of inconsistent results.”³¹ “Ultimately, courts applying *res judicata* seek ‘to strike a delicate balance between, on the one hand, the interests of the defendant and of the courts in bringing litigation to a close and, on the other, the interest of the plaintiff in the vindication of a just claim.’”³²

Under the federal test: “‘*Res judicata* applies not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact.’”³³ Four elements must be met: “(1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action.”³⁴ If these

²⁹ *Cnty. State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011) (internal citations omitted).

³⁰ *Moore v. Pak*, 402 F. App’x 491, 493 (11th Cir. 2010).

³¹ *Borrero v. United Healthcare of New York, Inc.*, 610 F.3d 1296, 1307 (11th Cir. 2010).

³² *Id.* at 1308.

³³ *Moore v. Pak*, 402 F. App’x at 493 (quoting *Manning v. City of Auburn*, 953 F.2d 1355, 1358–59 (11th Cir. 1992)); *See also TVPX ARS, Inc. v. Genworth Life and Annuity Insurance Company*, 959 F.3d 1318, 1325 (11th Cir. 2020) citing *Trustmark Inc. Co. v. ESLU Inc.*, 299 F.3d 1265, 1270 n.3 (11th Cir. 2002).

³⁴ *Moore v. Pak*, 402 F. App’x at 493 (quoting *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001); *See also Russell v. Redstone Fed. Credit Union*, 710 F. App’x 830, 832 (11th Cir. 2017), cert. denied, No. 18-5765, 2018 WL 4190076 (U.S. Nov. 5, 2018) (setting out test for *res judicata*); *Borrero*, 610 F.3d at 1306 (setting out test for *res judicata*).

elements are met, the Court then must determine whether the claim could have been raised in the prior suit.³⁵ When considering whether the cases involve the same cause of action, the Court evaluates any commonality in the “nucleus of operative facts.”³⁶ The Eleventh Circuit instructs “[courts should] line up the former and current cases side-by-side to assess their factual similarities.”³⁷

Res judicata, however, is modified somewhat when a court enters a judgment under a settlement agreement.³⁸ When applicable, courts look to the matters specified in the settlement agreement, and not the complaint, to determine which claims are barred.³⁹ Courts then attempt to effectuate the parties’ intent as to the claim and whether *res judicata* should apply.⁴⁰ Traditional contract principles govern the Court’s interpretation of the settlement agreement and the parties’ intent.⁴¹

Res Judicata Requires Denial of Stay Relief with Prejudice

Schaefer Sudex’s Title Retention Claim is barred by the doctrine of *res judicata*. Schaefer Sudex argues modified *res judicata* applies here because the District Court entered the judgment under the Settlement Agreement, which does not specifically release the Title Retention Claim. As such, Schaefer Sudex argues the Title Retention Claim survives the settlement. Alternatively, Schaefer Sudex argues an issue of fact remains as to their *intent* to release the Title Retention Claim in the Settlement

³⁵ *Moore v. Pak*, 402 F. App’x at 493.

³⁶ *Borrero*, 610 F.3d at 1308.

³⁷ *Id.* at 1309.

³⁸ *Northfolk Southern Corp. v. Chevron*, 371 F.3d 1285, 1288 (11th Cir. 2004).

³⁹ *Id.* at 1290.

⁴⁰ *Id.* at 1289.

⁴¹ *Id.* at 1289-90.

Agreement precluding summary judgment as a matter of law. The Court rejects both of these arguments.

The real issue is whether the Settlement Agreement demonstrates the parties' intent to *resolve* the Title Retention Claim, not merely release it. And here, I find the Settlement Agreement unambiguously and definitively demonstrates the parties intended to resolve all claims between them relating to the European Kegs, including the Title Retention Claim.

The Settlement Agreement provides Florida law governs its interpretation and enforcement.⁴² Under Florida law, construction of written contracts is a question of law where the language is unambiguous,⁴³ and extrinsic evidence is admissible only if the contract is ambiguous.⁴⁴ When the contract's terms are clear and unambiguous, a "court is bound by the plain meaning of those terms," and the parties' intent "must be discerned from within the 'four corners of the document.'"⁴⁵

Several unambiguous provisions of the Settlement Agreement demonstrate the parties' intent to resolve all claims, including the Title Retention Claim. First, the parties agree traditional *res judicata* applies to the judgment, which bars *all* legal theories and claims arising out of the same operative nucleus of fact, and not those more particularly addressed in the Settlement. The parties agreed the judgment is

⁴² Doc. No. 274. Exh. C, Release and Settlement Agreement at ¶15.

⁴³ *Friedman v. Virginia Metal Products Corp.*, 56 So.2d 515, 516 (Fla.1952).

⁴⁴ *Carlton v. Southland Diversified Company*, 381 So.2d 291, 293 (Fla. 4th DCA 1980), *reh'g denied*, citing, *Pearson v. Pearson*, 342 So.2d 1018 (Fla. 4th DCA 1977); *see also University of Miami v. Intuitive Surgical, Inc.*, 166 Fed. App'x 450,453 (11th Cir. 2006)(applying Florida law).

⁴⁵ *Real v. Goodell*, Case No: 2:19-cv-35-FtM-29UAM, 2019 WL 2211111, *5 (M.D. Fla. May 22, 2019) (quoting *Emerald Pointe Prop. Owners' Ass'n, Inc. v. Commercial Const. Indus., Inc.*, 978 So. 2d 873, 877 (Fla. 4th DCA 2008)(citation omitted).

“intended as a final judgment of the Complaint” and has “the same *res judicata* effect... as if it had been entered following a full trial of all issues raised in the Complaint filed in the [District Court] Lawsuit.”⁴⁶ Ascribing traditional *res judicata* to the judgment demonstrates an intent to resolve **all** legal theories and claims relating to the European Kegs, including the Title Retention Claim.

The Settlement Agreement also unambiguously refers to other actions or claims, although not defined, which are included in the Settlement Agreement. For example, Schaefer Sudex agrees to “forbear from and not take *any further action* to collect on” the judgment “*or otherwise* in respect of the Claims,”⁴⁷ including that [Schaefer Sudex] shall not seek any Attachments in Europe.”⁴⁸ (Of course, that is exactly what Schaefer Sudex now seeks by requesting stay relief to get possession of the European Kegs in Europe.)

The parties also agreed that upon a breach, Schaefer Sudex “shall be entitled to pursue *all available remedies* to collect” on the judgment and may recover their fees and cost incurred in connection with enforcing the Settlement Agreement “and taking *any other action* that may be necessary to collect the amounts due” under the judgment.⁴⁹ Upon payment in full, Schaefer Sudex agreed to satisfy the judgment and “agrees that

⁴⁶ Doc. No. 274. Exh. C, Release and Settlement Agreement at ¶3.

⁴⁷ The Settlement Agreement defines “Claims” as “WHEREAS, in the Lawsuit [District Court Action], Plaintiffs allege claims for relief against Global Keg for account stated, breach of contract and unjust enrichment in the total sum of Four Million Seventy-Nine Thousand Nine Hundred Forty-Two Dollars and Eighty cents (\$4,079,942.80) plus prejudgment interest.”

⁴⁸ Doc. No. 274. Exh. C, Release and Settlement Agreement at ¶ 4.

⁴⁹ Id. at ¶ 5.

[Debtor] shall have no further obligations to [Schaefer Sudex] in respect of the Claims”—which are based on the documents attached to the amended complaint.⁵⁰

Finally, and perhaps most important, the parties agreed the Settlement Agreement constituted “the entire agreement made by and between the Parties pertaining to the *subject matter* hereof” and that “[t]here are no understandings between the Parties *related to the subject matter* of this Agreement except as can be found expressly in writing in this Agreement.”⁵¹ Although the Settlement Agreement does not define “subject matter,” the parties necessarily must be referring to any and every dispute between them relating to the European Kegs. The Title Retention Claim is inseparably intertwined with the European Kegs and, if Schaefer Sudex intended to preserve its Title Retention Claim, it needed to expressly state this reservation in the Settlement Agreement. But no such reservation is contained in agreement.

An ambiguous contract exists when it is “susceptible to two different interpretations, each one of which is reasonably inferred from the terms of the contract....”⁵² Because “fanciful, inconsistent, and absurd interpretations of plain language are always possible,” reasonableness guides this analysis.⁵³ So, “a true ambiguity” does not exist simply because a contract “can possibly be interpreted in more than one manner.”⁵⁴ And, here the Court finds no *reasonable* ambiguities,

⁵⁰ *Id.* at ¶ 3.

⁵¹ *Id.* at ¶ 18.

⁵² *Real v. Goodell*, Case No: 2:19-cv-35-FtM-29UAM, 2019 WL 2211111, *5 (M.D. Fla. May 22, 2019)(quoting *Commercial Capital Res., LLC v. Giovannetti*, 955 So. 2d 1151, 1153 (Fla. 3d DCA 2007).

⁵³ *Id.* (quoting *Vyfvinkel v. Vyfvinkel*, 135 So. 3d 384, 385 (Fla. 5th DCA 2014).

⁵⁴ *Id.* (quoting *Lambert v. Berkley S. Condo. Ass'n, Inc.*, 680 So. 2d 588, 590 (Fla. 4th DCA 1996)(citations omitted).

preventing Schaefer Sudex's from introducing extrinsic evidence on the parties' intent. The unambiguous language of the Settlement Agreement demonstrates the parties' intent to resolve all claims as to the European Kegs, *including* the Title Retention Claim.

Even if a factual issue existed on the parties' intent to resolve the Title Retention Claim, Schaefer Sudex already agreed under the Settlement Agreement that traditional *res judicata* applies. And under traditional *res judicata* principles, the Title Retention Claim is barred. All four *res judicata* elements are easily met. The judgment is final, rendered by a court of competent jurisdiction, is between the same parties (Schaefer Sudex and the Debtor), and involves the same causes of action or “nucleus of operative facts”—the European Kegs.

Schaefer Sudex lastly argues the District Court lacks *in rem* jurisdiction over the claim because the European Kegs are located all over Europe. If so, the District Court lacked jurisdiction to enter any judgment resolving the Title Retention Claim. In support, Schaefer Sudex relies on Florida replevin cases determining a district court lacks *in rem* jurisdiction over personal property located outside its jurisdiction.⁵⁵ Although the Court agrees the District Court lacked *in rem* jurisdiction over the European Kegs themselves, the District Court had *personal* jurisdiction over Schaefer Sudex and the Debtor when it entered the judgment. And the District Court had jurisdiction to determine who holds title and the right to possess the European Kegs,

⁵⁵ Schaefer Sudex cites *Prou v. Giarla*, 62 F. Supp. 3d 1365, 1378 (S.D. Fla. 2014) and *Center Capital Corp. v. Gulfstream Crane, LLC*, 2009 WL 4909430, at *9 (S.D. Fla. Nov. 25, 2009).

which is the parties' dispute on the Title Retention Claim. So, although the District Court could not replevin kegs in Europe, it could decide who owned them.

In *Idoni v. Ungurean*,⁵⁶ the Plaintiff sought to replevin automobile parts located outside of Florida, and Defendants requested dismissal of the replevin claim for lack of jurisdiction. The District Court agreed it lacked *in rem* jurisdiction to issue a writ of replevin, but still denied dismissal. Under Florida law, the District Court determined it requires only personal jurisdiction to determine which party had the right to possession of the automobile parts. And, after the District Court made this determination, the writ could then issue from an appropriate forum with proper *in rem* jurisdiction.

Here, the District Court had jurisdiction to resolve the Title Retention Claim and to determine who had title and the right to possess the European Kegs. Schaefer Sudex could have preserved its Title Retention Claim (which it did not) in the Settlement Agreement, which then may have allowed it to sue in multiple courts throughout Europe to get the European Kegs. But that is not what happened.

Schaefer Sudex did not retain its Title Retention Claim in the Settlement Agreement. It consented to personal jurisdiction by the District Court, allowing the Court to enter the consent judgment. Schaefer Sudex's argument that it now can file multiple replevin-like actions in numerous European courts simply defies the purpose of *res judicata*, which is to limit duplicative lawsuits and avoid inconsistent results.

⁵⁶ Case No. 6:14-CV-102-Orl-41GJK, 2014 WL 12614498 (M.D. Fla. Dec. 16, 2014).

Schaefer Sudex already agreed *res judicata* applies under the Settlement Agreement. And it is bound by that decision. The District Court had ample personal jurisdiction to enter the consent judgment and, by extension, to preclude Schaefer Sudex from now asserting its Title Retention Claim in multiple European courts.

With all elements of *res judicata* met, the Title Retention Claim is barred by *res judicata*. Having found Schaefer Sudex is barred by *res judicata* from proceeding with the Title Retention Claim, the Court declines to address White Oak's remaining arguments under the doctrines of merger and election of remedies.

Conclusion

A review of the four corners of the Settlement Agreement demonstrates the parties intended to resolve all claims as to the European Kegs, including the Title Retention Claim. Because the principles of *res judicata*, both modified and traditional, permanently bars Schaefer Sudex from pursuing its Title Retention Claim as to the European Kegs, stay relief is not merited. Finding no material factual dispute, White Oak is entitled to summary judgment in its favor as a matter of law. Schaefer Sudex is denied stay relief with prejudice.

Accordingly, it is

ORDERED:

1. White Oak's Motion for Summary Judgment (Doc. No. 274) is

GRANTED.

2. Schaefer Sudex's Motion for Relief from Stay (Doc. No. 208) is **DENIED WITH PREJUDICE.**

3. Schaefer Sudex is barred by the doctrine of *res judicata* from asserting any Title Retention Claim it has to the European Kegs.

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Tiffany Payne Geyer will serve a copy of this order on all interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.