

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

SHAWN JEFFERSON,)	No. ED96338
Plaintiff/Respondent,)	Appeal from the Circuit Court
v.)	of the City of St. Louis
LYON SHEET METAL WORKS,)	Honorable Bryan L. Hettenbach
Defendant/Appellant,)	Date: May 9, 2012
CHILIMACK'S UNION COURIERS, L.L.C.,)	
and DURWIN PETTERSON, JR., Defendants.)	

Defendant, Lyon Sheet Metal Works, appeals from a judgment entered on a jury verdict finding it liable for damages sustained by a pedestrian when he was hit by a Lyon trailer that detached from a Lyon truck as a result of the truck driver's negligence. On appeal, Lyon challenges the trial court's grant of motions in limine that prohibited it from asserting at trial that former codefendant Chilimack's Union Couriers, L.L.C., was liable.

REVERSED and REMANDED.

Division Two Holds:

1. As a procedural matter, a motion in limine should not be used to preclude a defendant from litigating a defense at trial.
2. Defendant Lyon was not an adverse party to its former codefendant Chilimack's in Chilimack's motion for summary judgment against plaintiff. It was not bound by the summary judgment in Chilimack's favor on the theory that it was an adverse party.
3. Lyon was not aggrieved by the summary judgment in Chilimack's favor, and it was not required to appeal from the summary judgment to avoid being bound by it.
4. The case of *Cook by Cook v. Willis*, 885 S.W.2d 791 (Mo.App. 1994), did not prohibit Lyon from arguing Chilimack's liability at trial because, unlike the defendant in Cook, Lyon did not litigate the question of Chilimack's liability with Chilimack's, and no decision on the merits was entered against Lyon on the question of Chilimack's liability.
5. Collateral estoppel did not apply to preclude Lyon from asserting Chilimack's liability at trial.
6. Lyon's remaining points assert errors that will necessarily arise in a different context in a new trial, and they are denied as moot.

Opinion by: Kathianne Knaup Crane, P.J.
Lawrence E. Mooney, J. and Kenneth M. Romines, J., concur.

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Attorneys for Appellant: John S. Sandberg and Timothy C. Sansone

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