

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-0667

Equivest Financial, LLC,

Respondent,

v.

Mary B. Ravenel and AAA
Plumbing, Inc.,

Defendants,

Of whom Mary B. Ravenel is the Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Without restating the issues or repeating arguments which have been set forth in the initial brief, the Appellant offers the following points in response to the arguments and statements made by Respondent.

- I. NO CREDITORS OF APPELLANT HAVE MADE ANY CLAIMS THAT THEY WERE DEFRAUDED NOR IS RESPONDENT A CREDITOR OF THE APPELLANT, THEREFORE, RESPONDENT'S UNCLEAR HANDS ARGUMENT IS NOT APPROPRIATE

Respondent asserts that Ms. Ravenel defrauded creditors and she should not be granted relief due to having unclean hands. (Respondent's Brief, p. 6.) The Court should note that no creditor has ever claimed or filed an action against Ms. Ravenel stating that they were defrauded by Ms. Ravenel's actions, nor is the Respondent a creditor of Ms. Ravenel.

While it is true that the doctrine of unclean hands prevents a party from recovering in equity if the party acted "unfairly in a matter that is the subject of the litigation to the prejudice of the defendant," the doctrine does not apply in the present situation. *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511 S.E.2d 372, 379 (Ct. App. 1998). In order to use a defense of unclean hands, the Appellant should have a clean record with respect to the transaction with the Respondent and not with respect to others. See *Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735, 738 (S.C., 1943). Here, the Respondent is attempting to use the actions of Ms. Ravenel in her bankruptcy to claim she has unclean hands. However, the Respondent was not a party or creditor in the bankruptcy action, and no creditor, who may assert an unclean hands argument, has come forward. As such, Respondent's unclean hands argument is not appropriate.

II. RESPONDENT INCORRECTLY ARGUES THAT COLLATERAL ESTOPPEL BARRS A NUMBER OF APPELLANT'S ARGUMENTS WHEN THOSE ISSUES WERE NOT ADDRESSED OR LITIGATED IN THE PREVIOUS ACTION

Respondent argues that a number of Appellant's arguments are barred due to collateral estoppel and due to those arguments not being presented as a part of the 2010 case.

However, under the doctrine of collateral estoppel, the only issues that are precluded are issues "actually and necessarily litigated and determined in the first suit." *Pye v. Aycock*, 325 S.C. 426, 435, 480 S.E.2d 455, 459 (S.C. App., 1997) (citing *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984) (explaining the differences between res judicata and collateral estoppel)). In order to be successful in asserting collateral estoppel, "the party seeking issue preclusion still must show that the issue was actually litigated and directly determined in the prior action and that the matter or fact directly in issue was necessary to support the first judgment." *Id.* at 436, 460.

Respondent states that Ms. Ravenel is collaterally estopped from raising such outstanding issues as to whether Ms. Ravenel was the true owner at the time of the tax sale due to the defect of the deed, whether the tax sale was void for failure of the delinquent tax collector to provide notice to Ms. Ravenel as the defaulting taxpayer, and whether the statute of limitations runs against her. Respondent fails to show that these issues were actually litigated and directly determined in the previous action. Rather, Respondent's argument is that the Plaintiffs in the 2010 case could have addressed these issues and failure to do so means that Ms. Ravenel is collaterally estopped from bringing them. As previously stated, the Court in *Pye v. Aycock* found only issues actually litigated in a previous suit would be

issues that could not be raised in the present case due to collateral estoppel. Appellant maintains that she was not a party to the previous case and, therefore, not bound by the order.

However, even if the Court finds Ms. Ravenel is bound by the previous ruling, collateral estoppel does not prevent the Appellant or the Court from addressing the issues mentioned above as those issues were not addressed and litigated in the 2010 case.

III. RESPONDENT ARGUES THAT COLLATERAL ESTOPPEL IS THE REASON MS. RAVENEL'S ARGUMENTS ARE BARRED, BUT THEN CITES THE ELEMENTS OF RES JUDICATA

Even though Respondent repeatedly claims collateral estoppel applies, Respondent relies on the elements of res judicata, rather than collateral estoppel, when it asserts that Ms. Ravenel cannot present arguments that were not raised in the previous action. Res judicata, rather than collateral estoppel, "bars a litigant from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Pye* at 435, 459. The Court has stated, "[t]he doctrines of res judicata and collateral estoppel are, of course, two different concepts." *Pye* at 435, 459. To be successful in establishing res judicata, the Respondent must show: "(1) the identities of the parties is the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." *Pye* at 432, 458. Further, the purpose of res judicata is to "ensure that no one should be twice sued for the same cause of action." *S.C. Pub. Interest Found v. Greenville Cnty.*, 401 S.C. 377, 737 S.E.2d 502, 507 (Ct. App., 2013) (quoting *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012)).

In the 2010 action, the Plaintiffs attempted to have the tax sale set aside. Appellant

maintains that she was not a party to the previous action and, therefore not bound by it. Subsequently, the Respondent brought the current action to quiet title against Ms. Ravenel. If the purpose behind the doctrine of res judicata is to prevent a party from being sued twice on the same cause of action, the Respondent should not be allowed to bring this action and then assert that Ms. Ravenel cannot present any defenses because she is barred by a previous case to which she was not a party.

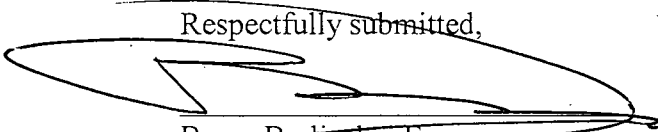
Appellant contents the first element of res judicata, the requirement of the parties being the same in the prior litigation, is not met. However, even if the Court finds that the Respondent's argument has met the first and second element of res judicata, the issues were not fully adjudicated as is evidenced by the fact that Respondent had to bring this action due to the 2010 case leaving the property with a cloud on the title and creating questions and outstanding issues that must be litigated in this suit. The 2010 ruling, that the deed was not effective, changed not only the necessary parties to the action, but also changed the arguments and issues to be raised. Therefore, the issues and arguments raised by Appellant are not barred by res judicata.

CONCLUSION

Based on the foregoing and the arguments presented in the initial brief, the Appellant respectfully submits that the ruling of the Trial Court should be reversed.

April 6th, 2016

Respectfully submitted,



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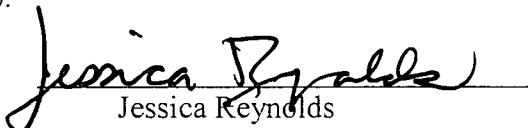
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I, Jessica Reynolds, legal assistant to Bruce A. Berlinsky, Esquire, do hereby certify that I have this date mailed a true and correct copy of the foregoing and **REPLY BRIEF OF APPELLANT**, postage prepaid, and deposited with the United States Postal Service as follows:

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Dated this 7th day of April, 2016.


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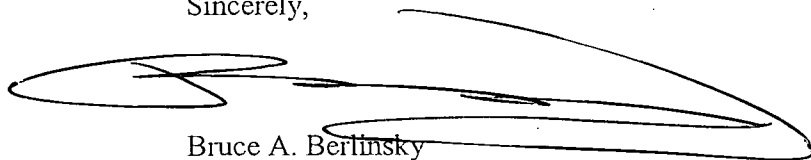
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Sincerely,



Bruce A. Berlinsky

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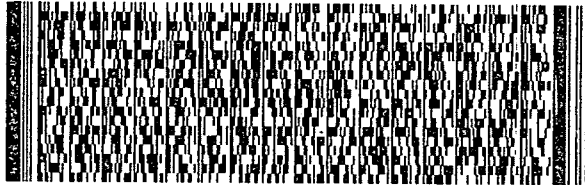
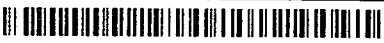
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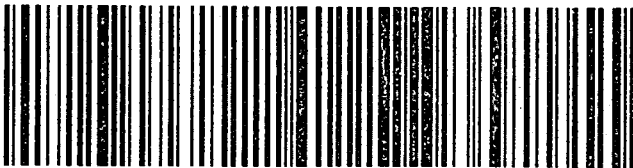
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