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Ralph Nichols Riley, Jr.
Amber Cary Fulmer
Sarah Taylor Cassidy
Justin Thomas Williams

Robert D. Hazel
OF COUNSEL
Billy C. Coleman
RETIRED

May 18, 2017

RECEIVED

MAY 22 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk
P.O. Box 11629
Columbia, SC 29211


RE: Tom Efland v. Randy L. Mills and Richland County
Appellate Case No.: 2017-001130

Dear Ms. Kitchings:

Please find enclosed a copy of the Notice of Appeal with regard to the above matter which has been filed in the Richland County Clerk's office.

Thank you for your assistance in this matter.

Sincerely,


Diane M. L. Corley
Legal Assistant to S. Jahue Moore

/dc

Enclosure

cc w/encl.: Desa Ballard, Esquire
Mitchell Willoughby, Esquire

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-05336

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MAY 11 2017

SC Court of Appeals

Tom Efland Appellant,

vs.

Randy L. Mills and Richland County Respondents.

NOTICE OF APPEAL

Tom Efland, appeals the Order of the Honorable L. Casey Manning, dated April 14, 2017. Appellant, Tom Efland, received written notice of entry of this Order on April 17, 2017.

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SC Court of Appeals

RICHLAND COUNTY
FILED
2017 MAY 18 PM 3:19
JANETTE W. HARRIS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2016-CP-40-05336

RECEIVED

MAY 11 2017

SC Court of Appeals

Tom Efland Appellant,

vs.

Randy L. Mills and Richland County Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by mail, to Desa Ballard, Esquire, Ballard & Watson, Post Office Box 6338, West Columbia, SC 29171 and Mitchell Willoughby, Esquire, Willoughby & Hoefler, Post Office Box 8416, Columbia, SC 29202 on May 10th, 2017.

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ATTORNEYS FOR APPELLANT

RICHLAND COUNTY
FILED
2017 MAY 18 PM 3:19
JEANETTE W. McBRIDE
C. P. & S.S.

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MAY 22 2017

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Tom Efland,)
)
Plaintiff,)
)
Vs.)
)
Randy L. Mills and Richland County,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-05336

**ORDER GRANTING
MOTION FOR JUDGMENT ON THE
PLEADINGS AS TO PLAINTIFF'S CLAIMS**

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MAY 22 2017

SC Court of Appeals

2017 MAY 11 11 14 AM
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

Defendant Randy L. Mills (hereafter "Mills") moved for judgment on the pleadings pursuant to Rule 12(c), SCRPC. The matter was initiated by a complaint ostensibly seeking a declaratory judgment (Paragraph 8 of complaint). However, the complaint sought damages for alleged violation of an easement. Mills answered, and submitted as part of his answer a number of exhibits which were incorporated into his answer pursuant to Rule 10(c), SCRPC. The matter was therefore presented as a motion for judgment on the pleadings, rather than summary judgment. The motion is granted.

A motion for judgment on the pleadings should be considered on the basis of the allegations of the complaint, which, for purposes of the motion, are presumed to be true. Home Builders Association of South Carolina v. School District No. 2 of Dorchester County, 405 S.C. 458, 748 S.E.2d 230 (2013). Normally when documents beyond the complaint are introduced, the matter would be construed as one for summary judgment. . Preferred Research Inc. v. Reeve, 292 S.C. 545, 357 S.E.2d 489 (Ct.App. 1987). However, because the defendant incorporated the documents into his answer and made them a part of the pleading itself pursuant to Rule 10(c), SCRPC, the motion can be considered as one to dismiss and the Court can address both the complaint and the answer, with exhibits in deciding the legal issues presented. See Gregory v. Gregory, 292 S.C.

587, 358 S.E.2d 147 (Ct.App. 1987). In addition, the Court can take judicial notice of its own files upon request of a party. Rule 201(d), SC Rules of Evidence.

Based on a review of the complaint and the answer with exhibits, as well as reference to the Court's own files, these parties have previously litigated a number of issues which arose after the current plaintiff Efland may or may not have agreed to sell some real property to the current defendant Mills. In the prior case, Randy Mills v. Thomas D. Efund Jr., Case No. 2005-CP-40-04535 was filed in 2005, the plaintiff Mills sought compensation for construction of improvements he had made on real property that was owned by the then defendant Efund. After an answer and counterclaim, that action was dismissed without prejudice.

The action was refiled in 2008 as Mills v. Efland, Case No. 2008-CP-40-00876. In that action, defendant Efund counterclaimed raising many of the same counterclaims from the first action. All of Efund's counterclaims related to the dispute over use of the road/easement and Mill's use of the property that Mills had expected to purchase and on which he had constructed improvements. Exhibit C to the answer which is incorporated by reference and made a part of that pleading.

The 2008 action was fully litigated and the parties agreed to binding arbitration. The award of arbitrator filed on or about July 6, 2015 found in favor of Mills and awarded Mills judgment against Efland in the amount of \$60,000. The award did not specifically address the counterclaims. A copy of the Award of Arbitrator is attached to the answer as Exhibit F. Judgment was entered in favor of Mills against Efland on or about July 6, 2015.

On or about July 20, 2015, Efland, through counsel, made a motion to remand the 2008 matter to the arbitrator alleging "[t]he Arbitrator simply failed to deal with any of the issues raised in the Counterclaims of[Efland]. Before this Award becomes final those issues should be resolved." On

or about December 16, 2015, Judge DeAndre Benjamin denied Eflund's Motion to Remand, concluding and finding that Eflund had failed to seek relief in a timely manner and was barred from proceeding to litigate his counterclaims. After supplemental proceedings, Eflund paid Mills the judgment awarded, which was recompense for the construction work that Mills had done on the real estate that he had expected to purchase before Eflund declined to sell. Satisfaction of judgment was filed in July, 2016, approximately one year after Judge Benjamin ruled that Eflund had waited too long to seek additional relief for the counterclaims he had asserted in the 2008 action.

The instant action was filed in September, 2016. It does not mention the prior litigation at all. The complaint reads as if this is a new dispute, not previously addressed by the courts. Upon review, however, it is clear that the issues raised in this action are virtually identical to the issues which were previously raised by Eflund in the 2005 and 2008 action and which were decided adversely to him by the arbitrator.

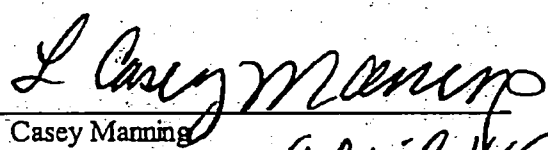
Collateral estoppel "prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Kunst v. Loree, 404 S.C. 649, 653, 746 S.E.2d 360 (Ct.App. 2013) (internal citations omitted). The terms "issue preclusion" and "claim preclusion" (both of which are elements of *res judicata*) are often used interchangeably, but they are different. Crestwood Golf Club Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826, 845 (Ct.App. 1997) (internal citations omitted). "Issue preclusion only bar relitigation of particular issues actually litigated and decided in the prior suit . . . Claim preclusion. . . bars plaintiffs from pursuing successive suits where the claim litigated was or could have been litigated." *Id.* See also Zurcher v. Bliton, 379 S.C. 132, 666 S.E.2d 224 (2008).

Both doctrines apply here and bar Efund's suit. Efund claimed by counterclaim in both the 2005 and the 2008 action that Mills had trespassed on the easement and had otherwise abused his right of access the easement, all in defense of Mills' claim against him. The arbitrator necessarily decided these issues adversely to Efund. Even if he had not, Efund waited too long, per Judge Benjamin, to ask for the matter to be resubmitted to the arbitrator. Judge Benjamin's order is the law of the case and this court cannot disagree with her conclusion on that issue.

This court understands the precedent that judgment on the pleadings is a "drastic" remedy, but it is warranted in this case. Home Builders Association of South Carolina, supra. For the reasons set forth above, Defendant's motion for judgment on the pleadings is granted and plaintiff's claims are dismissed with prejudice.

It is so ordered.

January 5, 2017


L. Casey Manning
Circuit Court Judge

April 18, 2014