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. 2017-001130

Tom Efland ..... Appellant,

vs.

Randy L. Mills and Richland County ..... Respondents.

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE CASE

Appellant Tom Efland ("Appellant Efland") commenced this action against Respondent Randy L. Mills ("Respondent Mills") and the City of Columbia ("City") on or about August 29, 2016. (R. pp. 179-184). Respondent Mills and the City timely answered Appellant's Complaint. (R. pp. 8-15; pp. 169-178). Respondent Mills incorporated numerous exhibits into his Answer pursuant to Rule 10(c) of the South Carolina Rules of Civil Procedure. (R. pp. 8-15).

Respondent Mills subsequently moved for judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. (R. pp. 198-202). The City also moved to dismiss Appellant's Complaint. (R. pp. 203-204). These motions were argued before the Honorable L. Casey Manning, Presiding Judge of the Fifth Judicial Circuit on January 5, 2017. (R. pp. 215-234). Because Respondent incorporated exhibits into his Answer and made them part of the pleading itself pursuant to Rule 10(c) of the South Carolina Rules of Civil Procedure, the Lower Court considered them in ruling upon Respondent's Motion to Dismiss. (R. pp. 1-3). Judge Manning also took judicial notice of the Court files in the matter which forms the basis of the present lawsuit. (R. pp. 4-7).

Following the hearing, both sides prepared and submitted memoranda and proposed orders. (R. pp. 205-207; pp. 208-210). On April 14, 2017, Judge Manning issued two orders granting Respondent Mill's Motion for Judgment on the Pleadings and the City of Columbia's Motion to Dismiss. (R. 1-3; pp. 4-7). Appellant's appeal timely followed. (R. p. 214).

STATEMENT OF THE FACTS

This appeal presents a unique question of law involving incomplete relief granted by the Arbitrator, Attorney Walt Todd of the Richland County Bar. This matter was referred to Attorney Todd with the expectation of the parties and their counsel that all of the issues would be ruled on and disposed. This was not the case, thus resulting in this Appeal.

In 2008, Respondent Mills brought an action against Appellant Efland alleging cause of action for breach of a lease agreement. (R. pp. 192-197). Appellant Efland answered and asserted counterclaims against Respondent Mills for breach of contract, nuisance, and trespass. (R. pp. 185-191; p. 217, ll. 3-4). The parties agreed to arbitrate before Attorney Walt Todd of the Richland County Bar. (R. p. 218, ll. 8-10). Attorney Todd ruled on the issues raised by Respondent's Complaint, awarding Respondent sixty thousand and no/100 dollars ($60,000) for the value of improvements made to the property following a wrongful eviction by the Respondent by Appellant. (R. pp. 155-156).

Attorney Todd did not rule on the matters raised by Appellant Efland's counterclaims. (R. p. 221). He did not rule upon issues pertaining to the alleged nuisance. He did not rule upon the issues pertaining to trespass. He did not rule upon issues pertaining to the driveway. (R. pp. 155-156). Appellant subsequently paid sixty thousand and no/100 dollars ($60,000) to Respondent Mills to satisfy this Judgment. (R. p. 218).

After receiving the arbitrator's decision, counsel for Appellant contacted him concerning the incomplete relief granted by his Award. (R. p. 222). The arbitrator agreed with counsel for Appellant that there were outstanding issues which had not been ruled

upon in his Award. However, he did not believe he had the jurisdiction to reopen arbitration to rule upon these issues and declined to do so. (R. p. 222).

On July 20, 2015, Appellant filed a Motion to Remand, seeking to return this matter to the arbitrator on the grounds that all of the issues in the underlying case had not been ruled upon by the Arbitrator. (R. pp. 158-159). Appellant Efland's motion was heard by the Honorable DeAndrea Benjamin, Presiding Judge for Richland County. Judge Benjamin issued her order on December 14, 2015, denying Appellant's Motion to Remand. (R. pp. 160-161; pp. 8-168). After receipt of Judge Benjamin's order, Appellant Efland subsequently commenced the action which forms the basis of this appeal. (R. pp. 180-184).

STANDARD OF REVIEW

Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. *Russell v. City of Columbia,* 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. *Firemen's Ins. Co. v. Cincinnati Ins. Co.,* 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990).

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. *Russell,* 305 S.C.

at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Falk v. Sadler,* 341 S.C.281, 533 S.E.2d. 350 (S.C. App. 2000).

DISCUSSION OF LAW

A. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION TO DISMISS

The Lower Court erred in granting Respondent's Motion to Dismiss. South Carolina Courts have consistently held that a Rule 12 Motion to Dismiss must be based solely upon the allegations set forth on the face of the complaint and the motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Brown v. Leverette,* 291 S.C. 364, 353 S.E.2d 697 (1987). Respondent, in this case moved for a judgment on the pleadings under Rule 12(c). (R. pp. 203-204). A judgment on the pleadings pursuant to Rule 12(c) shall be granted "where there is no issue of fact raised by the complaint that would entitle the plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.,* 386 S.C. 143, 687 S.E.2d 47 (2009) citing *Russell v. City of Columbia,* 305 S.C. 86, 406 S.E.2d 338 (1991). A judgment on the pleadings is also considered "a drastic procedure." *Russell, supra,* cited in *Falk v. Sadler,* 341 S.C. 281, 533 S.E.2d 350 (Ct.App.2000).

Respondent initiated an action against the Appellant. Appellant answered and counterclaimed against the Respondent for causes of action including Breach of Contract (arising out of construction, among other things, of a building and septic tank), nuisance,

and the improper construction of a driveway. (R. pp. 8-168). These issues were not addressed by the Arbitrator. (R. pp. 8-168). Even the Court's Order granting the Respondent's Motion for Judgement on the Pleadings acknowledges this fact. (R. pp. 4-7).

Appellant subsequently attempted to bring this matter to the Court's attention pursuant to his Motion to Remand to the Arbitrator. (R. pp. 158-159). This motion was made in order that all of the issues raised by the pleadings could be ruled upon and addressed by the arbitrator. This motion was denied, leaving these matters unruled on and still unresolved.

The Appellant commenced the present lawsuit (the 2016 lawsuit) in order to have the issues which should have been decided by the arbitrator finally decided by the Court. The Trial Court erred in concluding and ruling that the issues involved in the lawsuit before this Court were previously decided and ruled upon by the Arbitrator. South Carolina law recognizes that all cases should be decided on the merits. When a matter is properly litigated, it should be ruled upon and decided. See, *Stubbs v. City of Myrtle Beach*, 323 SC 395, 475 S.E.2d 754 (1996).

The Appellant is entitled to litigate the issues raised in his counterclaims in the 2008 lawsuit and in the lawsuit that forms the basis of this appeal. The Trial Court's Order dismissing Appellant's lawsuit should be reversed and this case remanded to the Lower Court.

B. THE APPELLANT'S LAWSUIT IS NOT BARRED BY COLLATERAL ESTOPPEL/*RES JUDICATA*

The Trial Court's Order appears to have applied both the doctrines of collateral estoppel issue preclusion and *res judicata* issue preclusion to rule that Respondent was entitled to judgment on the pleadings. *Crestwood Golf Club, Inc. v. Potter,* 328 S.C.201, 493 S.E.2d. 826 (1997). The Court's Order was clearly erroneous as neither doctrine applies to the facts of this case.

As recognized by the Lower Court, under South Carolina law, "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." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.,* 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct.App.2009).

For an action to be barred by collateral estoppel, Respondent must show that the issue in the present lawsuit was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550. 554, 684 S.E.2d 779, 782 (Ct. App. 2009). The doctrine only bars particular issues that were actually litigated. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997). Collateral estoppel "issue preclusion" does not apply to this case as the issues raised by the Appellant's counterclaim were not addressed or ruled upon in the Order of the Arbitrator, a fact recognized by the Lower Court. (R. pp. 1-3; pp. 4-7).

However, the doctrine of *res judicata* is a distinguishable concept. *Beall v. Doe*, 281 S.C. 363, 315 S.E.2d 186 (S.C. App., 1984). *Res judicata* encompasses both issue preclusion and claim preclusion. *Crestwood Golf Club, Inc. v. Potter,* 328 S.C. 201 at 216, 493 S.E.2d at 826 (1997). However, *res judicata* is more commonly referred to simply as

claim preclusion. *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 449, 511 S.E.2d 48, 57 (S.C. 1998). Claim preclusion bars plaintiffs from pursuing a later suit where the claim (1) was litigated or (2) could have been litigated. *Crestwood Golf Club Inc. v. Potter*, 328 S.C. at 216, 493 S.E.2d at 835. The South Carolina Supreme Court recently recognized the doctrine by stating, "*Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of *res judicata*, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" *Plum Creek Dev. Co. v. City of Conway,* 334 S.C. 30, 34, 512 S.E.2d 106, 109 (S.C. 1999).

Res Judicata may be applied if (1) the identities of the parties are the same as in the prior litigation, (2) the subject matter is the same as in the prior litigation, and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-251, 452 S.E.2d 832, 833 (S.C. 1994). The doctrine of *res judicata* is not an "ironclad bar," however, to a later lawsuit. The South Carolina Court has recognized that there is no simple test to determine what constitutes the same clause of action for *res judicata* purposes. Each case presents different facts that must be assessed within the conceptual framework of the doctrine. *Judy v. Judy*, 93 S.C. 160, 712 S.E.2d 408 (2011); *Clark v. Aiken Cnty, Gov't*, 366 S.C. 102,109,620 S.E.2d 99, 102 (Ct. App. 2005).

The doctrine of *res judicata* does not act as a bar to Appellant's lawsuit. The issues raised by Appellant in this lawsuit were neither ruled upon nor litigated. There was no adjudication of these issues. The Lower Court incorrectly held that both doctrines are

applicable to the facts of this case. Contrary to the Lower Court's Order, the Arbitrator did not decide the issues raised by Appellant in his Answer and Counterclaim. Further, the Order of Judge Benjamin, denying the Appellant's Motion to Remand, did not decide these issues.

C. THE LAW OF THE CASE DOES NOT BAR APPELLANT'S CLAIMS

The Lower Court erred in ruling that the Appellant's lawsuit was barred by the Law of the Case. Under the law of the case doctrine, "The doctrine of the law of the case prohibits issues which have been decided in a prior appeal from being re-litigated in the trail court in the same case." *Ross v. Medical University of South Carolina*, 328 S.C. 51, 492 S.E.2d 62, 68 (1997). *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009). The law of the case doctrine does not apply to this present action.

Further, the doctrine of the law of the case is not applicable to a statement by the court which does not constitute a binding adjudication. *Weil v. Weil*, 299 S.C. 84, 382 S.E.2d, 481 (Ct. App. 1989). Judge Benjamin only ruled on the Appellant's Motion to Remand. The Order did not adjudicate the claims of the Appellant in this case which were not decided by the arbitrator and which remain unruled upon and undecided. The Law of the Case Doctrine does not apply to the facts of this subsequent case. The Trial Court erred in applying this doctrine to the facts of this case.

CONCLUSION

For the reasons set forth above, the Trial Court erred in granting Respondent's Motion for Judgment on the Pleadings/Motion to Dismiss. The Lower Court's Order should be reversed and this matter should be remanded to the Lower Court.

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

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