

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CASE NUMBER: 2017-CP-46-1149

Suzette LeFebvre,)
Plaintiff,)

v.)

Blanco GmbH+CO.KG,)
Defendant.)

ORDER FOR
SUMMARY JUDGMENT

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SC Court of Appeals

This matter came before the Court on January 18, 2018, upon Defendant's Motion for Summary Judgment. Plaintiff was represented by P. John Freeman. The Defendant was represented by Robert A. Bernstein. Based on the record in this case and the arguments of counsel, I make the following findings and conclusions. Based on the extensive record in this case and related cases, I make the following findings and conclusions.

FACTUAL-PROCEDURAL BACKGROUND

The present action seeks a declaratory judgment, and partition of funds derived from the sale of certain real property that was the subject of another action. The matter is related to two cases earlier considered by this Court: *Blanco GmbH+CO.KG v. Vito Antonio Laera, et al*, Case No. 2014-CP-46-3272 ("*Blanco matter*"), and *Triple M Partners, L.P. v. Suzette LeFebvre, as individual and as Trustee of the Suzette LeFebvre Trust, N.A. and Blanco GmbH+CO.KG*, Case No. 2016-CP-46-3382 ("*Triple M matter*").

In the *Blanco* matter, this Court ruled that the Defendant in this action, Blanco GmbH+CO.KG, the Defendant in this action, had properly filed and served its foreign judgment, which constituted a lien against a parcel of real estate in the name of Vito Antonio Laera ("*Laera*") as of the date of the filing of the foreign judgment. In the *Triple M* matter, this Court ruled that Plaintiff in this action was in default, and that Blanco was entitled to a priority claim to the proceeds of the sale of real estate referenced above. It was ordered that the funds be disbursed to Blanco. Plaintiff has appealed this Court's ruling in the *Triple M* matter, and that appeal is currently pending before the South Carolina Court of Appeals.

Plaintiff thereafter brought the present action, seeking a declaration that she had a prior

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right to the disputed funds, and asking that the funds be partitioned between the claimants. Blanco has moved for summary judgment.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 228, 797 S.E.2d 387, 390 (2016); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), SCRCP. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Simmons, supra*; *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997).

In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct.App. 1994). "Where . . . the record is devoid of any allegation or evidence tending to show there is a material fact in issue, the moving party is entitled to summary judgment as a matter of law." *Milligan v. Liberty Life Ins. Co.*, 313 S.C. 478, 443 S.E.2d 381, 382 (1994).

DISCUSSION

The facts in this action are not in dispute. The parties have filed a Stipulation of Facts addressing the salient facts underlying this litigation.

Plaintiff has asserted that she is the former spouse of Laera. On May 23, 2007, during the period of this marriage, real property located at 419 York Southern Road, Fort Mill, South Carolina ("York Southern" property), was deeded to Laera. On March 26, 2014, Plaintiff filed a Complaint for divorce against Laera in the Family Court for York County. Neither Plaintiff, nor anyone on her behalf, filed a notice of *lis pendens* pertaining to the York Southern property at any time during the divorce proceedings.

On October 3, 2014, Blanco filed an exemplified copy of a foreign judgment against Laera with the York County Court of Common Pleas. On October 31, 2014, the York County Family Court entered a final Decree of Divorce, including an Order that the York Southern property be awarded to Plaintiff in the divorce. On January 7, 2015, Laera executed a deed

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transferring title to the York Southern property to himself and Plaintiff. On May 16, 2016, Laera executed another deed transferring his remaining one-half interest in the York Southern property to the Suzette LeFebvre Trust N/A.

On August 30, 2016, Plaintiff entered into a contract to sell the York Southern Road property to Triple M Partners, L.P. ("Triple M"). Thereafter, Triple M brought an action to compel specific performance, seeking to require Plaintiff to consummate the sale of the property. Plaintiff failed to file an Answer in that litigation, and Defendant, Blanco GmbH+CO.KG ("Blanco"), moved for, and was granted, permission to intervene in that case. Following a hearing, this Court ordered that Plaintiff execute a deed to the York Southern property in favor of Triple M, and further ordered that the net proceeds, after the payment of the first mortgage and customary closing costs, be deposited with the Court pending further Order of the Court.

Subsequently, by Order dated April 3, 2017, this Court ordered that the proceeds be distributed to Blanco up to the amount of its judgment lien. On April 5, 2017, the Clerk of Court distributed the proceeds to Blanco. Thereafter, Plaintiff appeared in that action, and moved that this Court reconsider its ruling regarding the distribution of those funds. That motion was denied. Plaintiff has appealed the judgment entered in that action.

On April 18, 2017, Plaintiff brought the present action seeking a declaration that she had a priority interest in the proceeds that were distributed under the prior Order of this Court, and further seeking an order partitioning those funds. Blanco has asserted that it is entitled to summary judgment on these claims.

A. Plaintiff's Present Action Is Barred by Res Judicata.

The present action is in effect a collateral attack of the ruling in the prior *Triple M* matter, and thus is barred by the doctrine of res judicata.

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. *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992). 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." *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish res judicata, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.

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Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992); *Sealy v. Dodge*, 289 S.C. 543, 347 S.E.2d 504 (1986).

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34-35, 512 S.E.2d 106, 109 (1999).

The elements of *res judicata* are present in this action. Both Plaintiff and Blanco were parties in the *Triple M* matter. The subject matter of that case included the issue of who had the superior claim to the proceeds of the sale of the York Southern property. This Court ruled that the proceeds would be distributed to Blanco, based on the priority of its judgment lien over Plaintiff's claim arising out of the Family Court/case. The declaratory nature of the present action does not alter the application of the doctrine of *res judicata*.

A different remedy, however, does not alter the fact that the claims are identical in both [actions]. *Evans v. Creech*, 187 S.C. 371, 197 S.E. 365 (1938)(prayer for relief is not a test of the identity of the cause of action); see also 46 Am.Jur.2d *Judgments* § 536 (1994)("[a] claim for damages is a claim for relief rather than an assertion of a different cause of action for purposes of determining the applicability of *res judicata*.") 50 C.J.S. *Judgment* § 756 (1997)("if HN2 the other elements of an estoppel are present, a mere difference in the relief sought in the subsequent action will not operate to nullify the effect of a judgment as *res judicata*."). We conclude *res judicata* applies.

Id. See Also, Judy v. Judy, 393 S.C. 160, 712 S.E.2d 408 (2011).

The doctrine of *res judicata* applies even though Plaintiff was held in default in the prior proceeding. Plaintiff did actually appear and litigate the issue of the priority of claims to the funds in the prior action. If Plaintiff prevails on her appeal, the priority issue will be reconsidered in the remand. If her appeal is unsuccessful, she is not entitled to reconsideration of the issue. Because there was an identity of parties, identity of the subject matter, and a determination on the merits, Plaintiff cannot seek declaratory relief in a separate action to attack collaterally the ruling in the prior case. Blanco is therefore entitled to summary judgment in the present action based on the operation of *res judicata*.

B. The Priority of Blanco's Claim.

Blanco is also entitled to summary judgment upon the additional grounds that its claim had priority over Plaintiff's claim to the subject proceeds of sale as a matter of law. Plaintiff has asserted that she had an equitable interest in the York Southern property by reason of her marital

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relationship to Laera, pursuant to S.C. Code Ann. §20-3-610 (1976 as amended), and that this property right has priority over the judgment lien interest of Blanco.

S.C. Code Ann. §20-3-610 provides:

During the marriage a spouse shall acquire, based upon the factors set out in Section 20-3-620, a vested special equity and ownership right in the marital property as defined in Section 20-3-630, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in Section 20-3-620.

In a subsequent section, however, the right to claim this equitable marital interest as against third party interests is qualified. S.C. Code Ann. §20-3-670(A)(1) provides:

In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other's property created by this article are not effective against third parties:

(a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in Section 15-11-10 with the clerk of court of the county in which such parcel of real property is situated (Emphasis added).

Plaintiff's claim arises solely under S.C. Code Ann. §20-3-610. The parties have stipulated, however, that a notice of *lis pendens* was never filed at any time by, or on behalf of, Plaintiff. On October 3, 2014, Blanco filed its foreign judgment against Laera, who was the sole record owner of the subject property at that time. Thus, pursuant to S.C. Code Ann. §15-35-810, the judgment of Blanco became a lien against all real property of Laera located in York County as of the filing date. This included the York Southern property. The failure of Plaintiff to file a notice of *lis pendens* against the property rendered her claim “. . . not effective against third parties: (a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed.” S.C. Code Ann. 20-3670(A)(1). Because Blanco had recorded its judgment lien against the subject property, effective as of October 3, 2014, and because Plaintiff's interest was not effective against the rights of third parties until title to the property was thereafter transferred to her, Blanco's judgment lien had priority over any claim of Plaintiff in the York Southern property as a matter of law. For this reason, Blanco is entitled to summary judgment on this issue as well.


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Plaintiff argues that it was unnecessary to file a notice of *lis pendens* in order to create her property interest, and that her statutory interest in the property, as it relates to other potential claimants or lienholders, arose as of the date when her ex-husband acquired the property. While her equitable claims *vis-a-vis* her ex-husband may have arisen during the course of their marriage, by express statutory provision, the asserted property right is not effective against claims of third parties until a notice of *lis pendens* is filed.

The property right that Plaintiff seeks to assert against Blanco arises solely by statute. Strict compliance with statutory procedures is required to perfect that interest. Where a right is created by statute, it “. . . may be acquired and enforced only in accordance with the terms and conditions set forth in the statutes creating them.” *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Protection, LLC*, 409 S.C. 331, 340, 762 S.E.2d 561, 565 (2014).

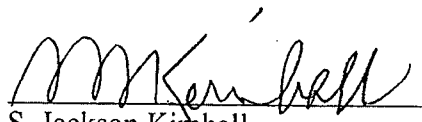
Based on the statutory procedure discussed herein, Plaintiff’s claim to the York Southern property, and the net proceeds derived from the sale thereof, is subordinate to, and subject to, the Blanco’s judgment lien as a matter of law. Thus, court-ordered disbursement of those proceeds in the *Triple M* matter was appropriate. Since Blanco has an interest in the net proceeds superior to Plaintiff, and since those proceeds were properly distributed to it, Blanco is entitled to summary judgment.

CONCLUSION

Based on the findings and conclusions herein, it is ordered that Blanco GmbH+CO.KG, the Defendant herein, be granted summary judgment, and that Plaintiff’s Complaint be dismissed with prejudice.

AND IT IS SO ORDERED.

February 6, 2018


S. Jackson Kimball
Special Circuit Court Judge
York County

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