

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON ) IN THE COURT OF COMMON PLEAS

Mario Escalante, )  
 )  
Plaintiff, ) ORDER GRANTING DEFENDANTS'  
 ) MOTION FOR SUMMARY JUDGMENT

vs. ) C.A. No.: 2013-CP-04-1700

David L. Rodgers and Janice W. Rodgers, )  
d/b/a Whitehall Express Mart, )  
 )  
Defendants. )  
RECEIVED  
MAR 08 2018  
SC Court of Appeals

This matter is before the court on the motion of the defendant, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as to the complaint of the plaintiff, Mario Escalante. A hearing on this motion was held before me on January 5, 2018, in the Anderson County Court of Common Pleas. Present at the hearing were Donald L. Smith of the Donald Smith Law Firm, attorneys for the plaintiff, and Nicholas A. Farr of the firm Gallivan, White & Boyd, P.A., attorneys for the defendants. Based upon the arguments of counsel, pleadings, exhibits, applicable law and the record in this case, I grant the defendants' motion for summary judgment.

**LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. When plain, palpable and indisputable facts exist upon which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 431 S.E.2d 565 (1993). In considering a motion for summary judgment, this court "must view the facts in the light most favorable to the non-moving

party. Nonetheless a court “cannot ignore facts unfavorable to that party and [it] must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” Bloom v. Ravoira, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000). Citations omitted. Further, “[i]n order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. NationsBank v. Scott Farm, 320 S.C. 299, 303, 565 S.E.2d 98, 100 (Ct. App. 1995).

### **STATEMENT OF FACTS**

This matter arises out of an incident which occurred on Sunday, May 5, 2013, at the Whitehall Express Mart (“Whitehall”) owned by David and Janice Rodgers and located 704 Whitehall Road in Anderson, South Carolina. The plaintiff alleges that on that date the defendants wrongfully accused him of shoplifting a case of beer. As a result of the incident, the plaintiff was arrested and spent one night in jail. The charges against the plaintiff were dismissed for failure to prosecute when the defendants did not appear on his court date due to an alleged lack of notice.

On July 22, 2013, the plaintiff initiated this action against the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart (“the State Action”). In the complaint, the plaintiff asserts false imprisonment, invasion of privacy, defamation, negligence, false arrest, outrage, malicious prosecution, conspiracy, conversion, and fraud causes of action. On January 13, 2015, the plaintiff filed suit in the United States District Court for the District of South Carolina, Anderson Division, against Mr. and Mrs. Rodgers d/b/a Whitehall Express Mart, the Anderson’s County Sheriff’s Department, Sheriff John Skipper, Sergeant Andrew Hyslop, Deputy Brandon Surratt, the City of Anderson Police Department, and James S. Stewart (hereinafter referred to as “the Federal Action”). The complaint in the Federal Action contains nearly identical allegations as in State Action and, with the exception of negligence which was

not clearly pled in the Federal Action, asserts the same causes of action against Mr. and Mrs. Rodgers. In addition, the complaint in the Federal Action asserts assault, battery, civil rights, and abuse of process claims against the police defendants.

Each defendant moved for summary judgment in the Federal Action. By order dated August 16, 2016, U.S. District Judge Mary G. Lewis granted summary judgment in the Federal Action to Mr. and Mrs. Rodgers and the police defendants as to each cause of action asserted by the plaintiff, finding:

(1) that Plaintiff has produced no evidence to support his entirely speculative contention that the shop owner defendant David Rodgers manufactured the shoplifting allegation against Plaintiff in order to shield his store from possible punishment for a Sunday alcohol sale ordinance violation; and

(2) that probable cause ultimately supported Plaintiff's shoplifting arrest.

The plaintiff appealed the order granting summary judgment to the defendants in the Federal Action. On October 12, 2017, the Fourth Circuit Court of Appeals affirmed the order granting summary judgment to the defendants.

Following the Fourth Circuit Court of Appeals' affirmation of the order granting summary judgment in the Federal Action, the defendants moved for summary judgment in this action on the grounds that the plaintiff's claims are barred by the doctrines of res judicata and collateral estoppel.

### **CONCLUSIONS OF LAW**

“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.” S.C. Pub. Interest Found. v. Greenville County, 401 S.C. 377, 737 S.E.2d 502 (Ct. App. 2013) (quoting Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011)). “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.” Id. (citation and quotation

marks omitted). “Res judicata bars relitigation of the same cause of action while collateral estoppel bars relitigation of the same facts or issues necessarily determined in the former proceeding.” S.C. Pub. Interest Found., 401 S.C. at 386, 737 S.E.2d at 506 (quoting Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997)).

“Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action.” S.C. Pub. Interest Found., 401 S.C. at 386, 737 S.E.2d at 507 (quoting Yelsen Land Co. v. State, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012)). “The doctrine of collateral estoppel, or issue preclusion, on the other hand, rests generally on equitable principles.” Town of Sullivan's Island v. Felger, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) (citing Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944)). In Watson, the Supreme Court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation) . . . Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

205 S.C. at 221-22, 31 S.E.2d at 319-20 (citations omitted) (emphasis added); see also First Nat'l Bank of Greenville, 207 S.C. at 24, 35 S.E.2d at 56-57 (citing Watson) (contrasting the origins of res judicata and collateral estoppel).

Here, it is clear that the State Action and the Federal Action arise out of the same transaction or occurrence – the plaintiff’s May 5, 2013 arrest for allegedly shoplifting from Whitehall. While the complaint in the Federal Action includes additional parties and causes of action, the factual allegations of the federal complaint essentially mirror those contained in the complaint in the State Action. Moreover, with the exception of negligence, the plaintiff asserts

the same causes of action against the Rodgers in the complaint in the Federal Action as he does in the State Action. Because the State and Federal Actions arise out of the same transaction or occurrence and the defendants obtained summary judgment as to all causes of action in the Federal Action, res judicata bars the plaintiff from re-litigating those causes of action in the State Action.

Nonetheless, the plaintiff contends that the negligence claim contained in the complaint in the State Action is not barred by res judicata because it was not raised in the Federal Action and, thus, was not adjudicated. Under the doctrine of res judicata, however, 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.” S.C. Pub. Interest Found., 401 S.C. at 385, 737 S.E.2d at 506 (emphasis added). The negligence claim asserted in the State Action arises out of the same transaction or occurrence and could have been raised by the plaintiff in the Federal Action along with the other state-law claims. The Court finds that there was nothing to prevent the plaintiff from raising his negligence claim in the Federal Action and, thus, it, too, is barred by res judicata.

Because the State and Federal Actions arise out of the same transaction or occurrence and the defendants obtained summary judgment as to all causes of action in the Federal Action, the State Action is hereby barred by the doctrine of res judicata. Accordingly, the defendants’ motion for summary judgment as to all causes of action is hereby granted.

### **CONCLUSION**

The Court has thoroughly reviewed the entire record, including the defendants’ motion for summary judgment, exhibits, and the applicable law. For the reasons state above, the Court grants the defendants’ motion for summary judgment as to all causes of action.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the motion of the defendants, David L. Rodgers and Janice W. Rodgers d/b/a Whitehall Express Mart, for summary judgment be, and it is hereby, GRANTED.

IT IS SO ORDERED.

Anderson, South Carolina

January \_\_\_\_, 2018

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The Honorable R. Lawton McIntosh, Presiding  
Judge Anderson County Court of Common Pleas



Anderson Common Pleas

**Case Caption:** Mario Escalante VS David L Rodgers , defendant, et al

**Case Number:** 2013CP0401700

**Type:** Order/Summary Judgment

S/R. LAWTON McINTOSH

S/R. LAWTON McINTOSH

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**FORM 7  
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No.: 2018-000289

Mario Escalante,

Appellant,

v.

David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart

Respondents.

**PROOF OF SERVICE**

I certify that I have served a copy of the Formal Order, dated January 16, 2018, upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and Respondents, by and through their counsels of record, Phillip Reeves, Esquire and Nicholas A. Farr, Esquire, at Gallivan White and Boyd, P.A., Post Office Box 10589, Greenville, SC 29603, by depositing a copy of it in the United States Mail, postage prepaid, on March 5, 2018.

March 5, 2018



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FORM 8  
LETTER TO THE APPEALS COURT CLERK  
FILING A COPY OF FORMAL ORDER

March 5, 2018

The Honorable Jenny Abbott Kitchings  
Clerk of Court South Carolina Court of Appeals  
Post Office Box 11629  
Columbia SC 29211

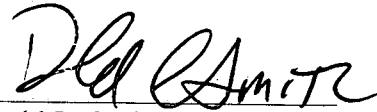
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**RE: Mario Escalante v. David L. Rodgers and Janice W. Rodgers,  
d/b/a Whitehall Express Mart  
Appellate Case No. 2018-000289  
C.A. No.: 2013-CP-04-1700**

Dear Honorable Kitchings:

In compliance with the Court's Order, dated March 1, 2018, Appellant hereby attaches a copy of the Formal Order, dated January 16, 2018. Said formal order is reflected in the Form 4 order, dated January 9, 2018, which was submitted by the Appellant in its Notice of Appeal, dated February 20, 2018. Attached as well is proof of service of same.

Sincerely,

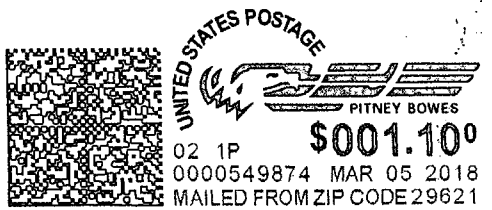


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**MAR 08 2018**  
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The Honorable Jenny Abbott Kitchings  
Clerk of Court South Carolina Court of Appeals  
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