

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

Hon. Perry H. Gravely, Circuit Court Judge

MAY 29 2018

SC Court of Appeals

Appellate Case No. 2016-001691
Case No. 2015-CP-23-06023

iStar Tara LLC, Respondent,

v.

Stevens Aviation, Inc., Greenville County,
South Carolina, and City of Greenville,
South Carolina, Defendants,

Of whom

Stevens Aviation, Inc., is the Appellant.

**REPLY OF RESPONDENT IN SUPPORT OF MOTION TO DISMISS
APPEAL AS MOOT**

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iStar Tara LLC*

Appellant Stevens Aviation, Inc.'s ("Stevens") Opposition (the "Opposition") admits that if the Ohio court's entry of Final Judgment¹ adjudicated the same issues raised by Stevens' South Carolina counterclaims, the doctrine of res judicata would apply to foreclose the possibility of pursuing those counterclaims.² Here, Stevens asserted its South Carolina counterclaims in the Ohio action as defenses, and those defenses were rejected by the Ohio court when it entered Final Judgment in favor of Respondent iStar Tara, LLC ("iStar"). Accordingly, the doctrine of res judicata applies and the Court should dismiss Stevens' appeal of the dismissal of its South Carolina counterclaims as moot.

The Ohio court heard—and rejected—Stevens' defenses. As a preliminary matter, Stevens misapprehends the nature of iStar's argument. iStar does not argue, as Stevens claims, that "Stevens [] waived the counterclaims against iStar by failing to assert them in an Ohio foreclosure action." [Opp. at 2]. In reality, iStar contends that Stevens *did* assert the identical claims that formed its counterclaims in the South Carolina action—in the Ohio Lawsuit, however, Stevens simply labeled them "defenses." *Cf.* R. pp. 393-98 and App. Br. p. 3 (asserting counterclaims for breach of contract based on the existence of a Discounted Payment Contract and negligent misrepresentation and promissory estoppel based on iStar's alleged promise to accept a certain amount in satisfaction of Stevens' default) with Lindahl Decl. ¶ 5 and Exh. B at 2 (asserting as defenses the existence of an agreement to obtain refinancing—in other words, the Discounted Payment Contract—and unclean hands). Stevens admitted as much in its opposition to iStar's motion for summary judgment in the Ohio proceeding:

In the South Carolina case and South Carolina appeal, Stevens disagrees that it defaulted on the Loan with iStar because it is Stevens' position, as evidenced by

¹ All capitalized terms used in this Reply take the same definitions given to them in iStar's Motion to Dismiss Appeal.

² "Res judicata applies only if the claims were adjudicated in the former case." [Opp. at 6-7].

Stevens' counterclaims in the South Carolina case, that Stevens and iStar entered into an oral agreement that replaced the then-existing Loan between the parties. This oral agreement is the basis for Stevens' counterclaims against iStar in the South Carolina Case as well as Stevens' affirmative defenses in this case.

iStar Tara, LLC v. Stevens Aviation, Inc., et al, No. 2016-cv-03332, Stevens' Opposition to iStar's Motion for Summary Judgment at 2 (attached hereto as **Exhibit 1**) (emphasis added).

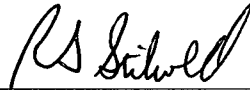
Stevens concludes that its appeal of the circuit court's dismissal of those counterclaims is not moot because "[t]he Ohio court did not adjudicate, or in any way address, the counterclaims." [Opp. at 4]. Because it ignores the fact that it asserted the identical defenses raised in the South Carolina counterclaims in the Ohio proceeding,³ Stevens' argument misses the mark. The doctrine of res judicata provides that "a final judgment . . . is conclusive of *rights, questions, and facts in issue* as to parties . . . in all other actions or suits in the same or any other jurisdictional tribunal of concurrent jurisdiction." *Arthur v. Witmeyer*, 53 N.E.2d 915, 920 (Ohio Ct. App. 1943) (emphasis added). It makes no difference whether Stevens calls its assertions "defenses" in Ohio or "counterclaims" in South Carolina—the Ohio court adjudicated the "rights, questions, and facts in issue" Stevens raised when it entered Final Judgment in favor of iStar.

Accordingly, even if the Court grants the relief Stevens seeks through this appeal, Stevens will not be able to pursue its counterclaims in the South Carolina litigation, meaning that

³ To the extent Stevens takes issue with iStar's initiation of litigation in multiple jurisdictions, iStar points out that its Loan Agreement with Stevens is secured by, among other things, leasehold mortgages on real property located in Greenville and Spartanburg Counties in South Carolina, Montgomery County in Ohio, and Davidson County in Tennessee. (R. pp. 10-14). iStar filed contemporaneous *in rem* proceedings in the jurisdictions in which its secured collateral is located, though each proceeding arises from the same Loan Agreement and default. This procedure acknowledges the limits of each court's *in rem* jurisdictional authority, is entirely proper, and does not affect the mootness of Stevens' appeal. See *Domby v. Domby*, 97 N.E.2d 104, 105 (Ohio Com. Pl. 1951) (actions brought for the recovery of real property or of an estate or interest therein must be brought in the county where the property is situated); *Barrow v. Gowdy*, 114 S.C. 122, 122, 103 S.E. 477, 477 (1920) (same).

“a judgment, if rendered, will have no practical legal effect” on the existing controversy. *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). The appeal is moot and should be dismissed.

Respectfully submitted,



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May 25, 2018
Greenville, South Carolina

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Court of Common Pleas

Hon. Perry H. Gravely, Circuit Court Judge

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Of whom

Stevens Aviation, Inc., is the Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing Motion on the Appellant Stevens Aviation, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on May 25, 2018, addressed to its Attorneys of Record:

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May 25, 2018

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: iStar Tara LLC, a Delaware limited liability company v. Stevens Aviation, Inc., a Delaware corporation; Greenville County, South Carolina, and the City of Greenville, South Carolina
Appellate Case No. 2016-001691
Civil Action No. 2015-CP-23-06023
NMRS File No. 46944/01500

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the Reply of Respondent In Support of Motion to Dismiss Appeal As Moot in the above-referenced matter. Please return a file stamped copy in the enclosed envelope.

With kind regards, I remain

Very truly yours,

Rivers S. Stilwell

RSS:ap

Enclosures

cc: Kirsten E. Smith, Esq. (w/encl.)
Julio E. Mendoza, Esq. (w/encl.)
Kyle Brannon, Esq. (w/encl.)

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05/25/2018

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