

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable J. C. Nicholson, Jr., Circuit Court Judge

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SEP 04 2018
SC Court of Appeals

Appellate Case No. 2018-000653
Common Pleas Case No.: 2013-CP-10-1877

The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver,Respondents

vs.

Herman Bolds, Richard Brown Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller, and Payne Church,Appellants

**APPELLANTS' OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS**

Respondent raises res judicata on the basis of the prior Court of Appeals Order dated March 5, 2018. Respondents argue that the parties are precluded from relitigating an issue decided in one case in a subsequent case and that "Appellants simply seek to continue to litigate matters which were settled by mediation, ruled upon by Judge Nicholson and then affirmed by this Court".

Respondents have misstated some of the facts and most of the substance of this action. *Res judicata*, also known as claim preclusion, bars litigation in a subsequent action of any claims that were litigated or could have been asserted in a prior action. Under this doctrine, a final judgment on the merits in a prior action will conclude the parties and their privies in a second action based on the same claim as to the issues actually litigated and as to issues that might have been litigated in the first action. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E. 2d 569

(1992); Treadaway v. Smith, 325 S.C.367, 479 S.E.2d 849 (Ct. App. 1996); Foran v. USAA Cas. Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993).

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 the parties. Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E. 2d 106 (1999); Rogers v. Kunja Knitting Mills, U.S.A., 336 S.C. 533, 520 S.E.2d 815 (Ct. App. 1999). *Res judicata* ends litigation, promotes judicial economy and avoids the harassment of re-litigation of the same issue. where there is (1) a final judgment on the merits, (2) an identity of claims, and (3) identity or privity between parties. All factors must be met, otherwise, *res judicata* is inapplicable.

The issues previously appealed involved an Order issued on February 10, 2016 in which the Appellants argued that the lower court improperly ruled on ownership of property to the cemetery as set out in a deed. The Court of Appeals' ruling did not end the case. On March 5, 2018, the Court of Appeals affirmed Judge Nicholson's Order dated February 10, 2016 and remanded the case back to Charleston County Court of Common Pleas. This did not end the case.


Following the Appeal Court ruling, on April 4, 2018, the lower court held a status conference with the parties and reopened all issues of the case. The ruling was inconsistent. Specifically, Appellants raised arguments that the lower court failed to determine proper ownership of the physical church building and fellowship hall as the prior ruling was on a deed to the cemetery (which is located at a different address and not within the premises of the church).

In addition, Appellants raised objections to the lower court dismissing their counterclaims without due process or trial. Immediately prior to the non-jury trial, an agreement between the lower court and the parties stipulated that the Appellants' Counterclaims would be bifurcated to be tried separately before a jury at a later date so that the focus could be on the non-jury issues. This stipulation was on the record prior to the start of the non-jury trial. However, following the

case being remanded to the lower court a new hearing was held and a ruling was entered wherein Judge Nicholson dismissed the counterclaims and instructed the parties that the new order may be appealed.

A motion to enforce settlement agreement is not what was in the order. When the Court of Appeals remitted the case back to the lower court, the Court took it upon themselves to rule on separate issues and dismiss the counterclaims despite having previously agreed to bifurcate the counterclaims to a later date to be tried before a jury. The causes of action which were bifurcated were not related to the previous appeal and the judge ruled to dismiss the counterclaims without giving the Appellants due process and their right to a fair trial. The dismissal was improperly made by the judge's own accord and discretion without the opposing party filing a motion to dismiss, a motion for summary judgment or settlement on the issues of the counterclaims. To allow the Court to issue an order without due process deprives the Appellants of their right to a jury trial.

There were no new cases or new causes of actions filed as this matter continued forward in the Court of Common Pleas. Despite the fact that one Order was appealed and ruled on does not prevent a party their rights to appeal a ruling on a separate Order in the same case. The issues are not the same and are subject to review. Therefore, Respondents' Motion to Dismiss should be denied.


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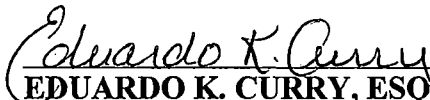
vs.

Herman Bolds, Richard Brown Cecil Parker, Theodore Miller, Carl Miller, Joan S. Roper, Martha Mathews, Thomasina G. Walker, Marilyn S. Washington, Jaree R. Stanley, Audrey Wilder, Derrick Lucas, Willie Parker, Jr., James Cromwell, James A. Roper, III, Elizabeth R. Parker, Jacqueline R. Miller, and Payne Church,Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Response in Opposition to Respondents' Motion to Dismiss to The RMUE through its General Officers Barbara B. Clark, Warren E. Hatcher, Cassie Keeton, Daniel Green, Powell Hampton, Amos Hatcher, Bobby Keeton, James Moseley, and Willie B. Oliver by depositing a copy of it in the United States Mail, postage prepaid, on July 20, 2018, addressed to their attorney of record, Darrell Thomas Johnson, Jr., PO Box 1125, Hardeeville, SC 29927.

August 30, 2018


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August 30, 2018

Clerk of Court – South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: RMUE vs. Herman Bolds, et al.
Appellate Case No.: 2018-000653

Dear Appeals Court Clerk:

Enclosed please find the original and two (2) copies of the following:

1. Appellants' Response in Opposition to Respondents' Motion to Dismiss; and
2. Proof of Service.

Please file the original and return two clocked copies to me in the self addressed stamped envelope provided for you.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Curry Law Firm, LLC
Eduardo K. Curry, Esquire

Enclosures

cc. **Darrell Thomas Johnson, Jr. Esquire**

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