

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2019-001676
Trail Court Case No. 2018-CP-07-1559

Charles E. Houston Jr.....Appellant,

v.

Shirley J. Boone, as Administrator of the Estate of Dean B Bell, individually;
Law Offices of Dean B. Bell, LLC; and
B. Hammel Properties, LLC,.....Defendants,

Of which Law Offices of Dean B. Bell, LLC and
B. Hammel Properties, LLC, are the.....Respondents.

REPLY BRIEF

March 12, 2021

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Appellant, *Pro Se*

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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TREATISES

THE STATE OF SOUTH CAROLINA
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ISSUES

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Argument 1

RESPONDENT'S AFFIRMATIVE DEFENSES OF COLLATERAL ESTOPPEL AND RES ADJUDICATA ARE NOT APPLICABLE DEFENSES IN THIS CASE

Though the affirmative defenses of collateral estoppel and Res Adjudicata are quite recognized and often employed they are not applicable in this case. The doctrine of collateral estoppel is intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the notion that it is unfair to permit a party to relitigate an issue that has already been decided. Beall v. Doe 281 S.C. 363, 315 S.E.2d 186(Ct. App 1984) citing Snavelly v. AMISUB of S.C. , Inc. 379 S.C. 386, 665 S.E.2d 222(Ct. App.2008). Since it is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.

The Beall, decision however quoted the South Carolina Supreme Court decision of Graham v. State Farm

Fire and Casualty Ins. Co., 277 S.C. 389, 391, 287 S.E. (2d) 495, 496 (1982), that "the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action." citing also Watson v. Goldsmith, 205 S.C. 215, 31 S.E. (2d) 317 (1944); Jenkins v. Atlantic Coast Line R. Co., 89 S.C. 408, 71 S.E. 1010 (1910); Cooper v. John Hancock Mutual Life Ins. Co., 248 S.C. 534, 151 S.E. (2d) 668 (1966); Kirby v. Gulf Oil Corp., 230 S.C. 11, 94 S.E. (2d) 21 (1956). This legal axiom has been consistently followed uniformly in other jurisdictions. . 50 C.J.S. Judgments § 779 (1997 and the New York State case of In re Juan C., 89 N.Y.2d 659, 679 N.E.2d 1061, 657 N.Y.S.2d 581 (1997), ruling that even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded.

ARGUMENT 2

THE MASTER -IN- EQUITY EXCEEDED HIS

JURISDICTIONAL AUTHORITY

The question now then becomes whether, in the underlying case of Hall et.al. v Houston 1) the issues of whether the Master -in Equity exceeded his jurisdictional authority by assigning the Appellant's proprietary rights in the property to the Plaintiff Hall and the constitutionality of this ruling(R. p. 414-419) was fairly litigated and 2) whether by the trial court denying Appellant's SCRCP, Rule 59(e) Motion for Reconsideration(R. p. 442-445) and Appellant's appealed being withdrawn and a remittitur (R. p. 412) issued back to the trial court; the order of the trial court properly acquired *res judicata* or preclusion status.

The Appellant asserts that no fair hearing was held upon the issue for the following reasons:

1) The issue was not raised as an assertive allegation or prayer for relief in either the plaintiffs' original (R pp. 424-431) or First Amended Complaint.(R. pp. 434-439)

2) There was no testimony or evidence taken upon the matter, and

3) This was inserted into the Order extrajudicially, when drafted by the Plaintiff's counsel,(R. pp. 414-419) the Respondent herein, for the Master -in – Equity's signature.

4) The Respondents' Dean B. Bell, Esquire and the Law offices of Dean B. Bell, failing, upon request of the Appellant, to reveal the name of the court reporter retained by he and/or his firm to transcribe the hearing held before the Master -in- Equity(R. pp. 414-419) and afterwards his falsely representing to the trial court that the court reporter at the hearing was the Master -in Equity's standing reporter. (R. pp. 414-419)

Being denied access to obtaining the transcript, was unfair and prejudicially unethical towards the Appellant's

receiving a fair hearing as the transcript was necessary to make a supportive showing of the absence of any testimony or argument pertaining to the Master -in- Equity assigning his proprietary rights to the plaintiff in his Motion for Reconsideration. (R. pp. 414-419)

Likewise, the above actions of the Respondent Bell of withholding the name of the court reporter from the Appellant was a prejudicial stumbling block to the appellant's desires and efforts to precede with an appeal to this Court. The Appellant had to abort the appeal when he could not comply with SCRAP, Rule 207 as a direct and proximate result of Respondent Bell purposefully not revealing the name of the court reporter to the Appellant.

There are a litany and plurality of factually similar cases emanating within South Carolina jurisprudence that support the Appellant's argument that the doctrine of collateral is not applicable under the facts of this case. In Kunst v. Loree 404

S.C. 649 746 S.E.2d 360 (S.C. Ct. App. 2013) this court held "The party asserting collateral estoppel must demonstrate 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." *Id.* "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." The Virginia case of Slagle v. Slagle, 11 Va. App. 341, 398 S.E.2d 346, 349 (1990).was cited as authority in the unpublished decision of the Fourth Circuit case of Davani v. Clement, No. 06-1781 (4th Cir. Feb. 6, 2008). This decision held that for the doctrine to apply, the party asserting it bears the burden of proving by a preponderance of the evidence that the issue is precluded by a prior

judgment. *Id.* Among other things, that party must establish that the issue sought to be litigated in the subsequent action (1) was actually litigated in the prior action and (2) was essential to the judgment in the prior action. Moreover, collateral estoppel does not apply when the party against whom it is asserted did not have a "full and fair opportunity" in the prior action to litigate the issue sought to be precluded. As far back as 1877 the U.S. Supreme Court the court emphasized in ruling in *Russel v Place* 94 US 606, 24 L.ed 214 (1877) that collateral estoppel does not apply the party against whom it is asserted did not have a "full and fair opportunity" in the prior action to litigate the issue sought to be precluded.

In recapitulation, the matter of the Master -in Equity assigning Appellant's proprietary interest in the property to the plaintiff sibling was not set forth in either complaints, no testimony was taken or rendered upon the matter, it was not prayed for as a relief, the plaintiff did not request

or consent to receive the assignment, there was no finding of fact on this point in the Order of the Master-in Equity.(R. pp. 414-419) It only and first appears solely as a matter of relief granted to the plaintiff in the ruling section of the order.(R. pp. 414-419) The order was drafted by attorney Bell without the Appellant's knowledge after Attorney Bell had an ex parte communication with the Master -in Equity. Neither the Master-in Equity (R. Emails pp. 83-86) nor the Appellant was aware that the communication was being conducted ex parte because Attorney Bell purposefully sent a copy of his correspondence with the Master -in Equity to an email address known by him to be the incorrect one. (R. Emails pp. 83-86) Clearly, the defense of collateral estoppel would not be applicable under these facts and the defense of res adjudicata would not apply to Appellant's constitutional challenges.

Argument 3

Withdrawal of Particular Issues

The Appellant withdraws, for appellate review, those allegations set forth in his Second Cause of Action alleging that the Master in Equity did not acquire jurisdiction of the case for lack of an Order of Reference. At the time the Complaint in this action was filed, the Appellant had received no knowledge of a proposed Order of Reference being submitted, signed nor filed with the court. The existence of the order was first made known to the Appellant when a copy was produced at the time of the taking of his deposition. (R. pp. 267-370)

The Appellant further withdraws the allegations in the complaint alleging that the Master in Equity committed error by superseding and modifying the prior order of the Circuit Court. There was no transcript taken at the hearing on Plaintiff's Motion for Summary Judgment in the underlying case of Hall et.al. v .Houston and though case law supports the ruling of the Circuit Court and the Court did demand that the plaintiffs amend their complaint the Order of Reference with the Circuit Courts ruling that actions pertaining to

rents and sharing of expenses for the upkeep of the property be filed with the Probate Court and that the action would only proceed by public sale not being included in the Order of Reference left the Master in Equity to act solely upon what was included in the Order of Reference.

ARGUMENT 4

COMMON LAW FRAUD NOT REQUIRED UNDER

SCRCP RULE 60 (B) (3)

The Appellant purposefully did not set forth an action for common law fraud as the Respondent's Bell's and the Bell Law Firm's declarations of misrepresentations were made to the Court, a third party and not to him. Additionally, the mode, content, time, and place of the misrepresentations were not made knowledgeable to the Appellant until after the lawsuit was filed and the Appellant was served with Respondent's responsive pleadings. Albeit, the Appellant through the exercise of extraordinary due diligence, and though he suspected fraud had occurred the elements and factual assertions

necessary to establish common law fraud sufficient enough to survive over a motion to dismiss objection for failure to state a cause of action were concealed from him. Fraud is set forth along with *misrepresentation, or other misconduct of an adverse party*; under South Carolina Rules of Civil Procedure, Rule 60(b) (3) and (4). Therefore, the setting forth all nine elements of common law fraud is not required provided, as in this case, the misrepresentation or misconduct (i.e. fraud upon the Court) is adequately set forth.

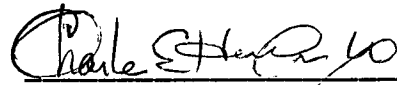
The Appellant does persevere and continues in this appeal upon the issues of 1) the court not having jurisdiction to order a private sale, 2 that the Order of Reference and the Final Order were procured through fraud upon the court that was extrinsic in nature as set forth in South Carolina Rules of Civil Procedure, Rule 60(b)(3) and (4) as it directly and proximately negated and nullified appellant's opportunity to fully and fairly prosecute his cause and 3) That the Master in Equity did not acquire jurisdiction to transfer appellant's proprietary rights to the plaintiff and 4] that the Master in Equity

transferring Appellant's proprietary rights to the plaintiff was unconstitutionally decreed.

CONCLUSION

The Respondents in their respective briefs have neglected to include the complete holdings of the cases they have cited in support of their argument for the affirmative defenses of collateral estoppel and Res Adjudicata to apply. These cases they cite are authority only applicable in part; the missing factor that these cases hold, omitted by the Respondents, is that they are only applicable if the issue sought to be precluded was fairly litigated in the trial court.

Respectfully submitted



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