

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK )  
 )  
Jimmy Shaver, )  
 ) Plaintiff )  
 )  
v. )  
 )  
Donnie Shaver, )  
 ) Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

Case No.: 2020-CP-46-980

ORDER OF DEFAULT AND  
JUDGMENT AGAINST  
DONNIE SHAVER

**RECEIVED**

MAY 03 2021

**SC Court of Appeals**

This matter came before this Court for a damages hearing brought by the Plaintiff, Jimmy Shaver. Plaintiff filed a Summons and Complaint on March 11, 2020 and the Defendant was personally served on March 13, 2020. The Defendant failed to file any responsive pleadings. An Affidavit of Default was filed on June 15, 2020. The Defendant was served with the Affidavit of Default on June 15, 2020. A damages hearing was held on September 10, 2020 attended by Stephen D. Schusterman, attorney for the Plaintiff. The Defendant appeared *pro se*.

The Plaintiff testified that at the request of the Defendant, he performed work at the former residence of the Defendant's deceased mother ("residence") due to water damage caused by a water heater. The Plaintiff presented evidence of his South Carolina Labor, Licensing and Regulation license, as well as an estimate of the repairs showing an amount of \$9,500.00. There is no disagreement that the work was completed or the value of the work. Defendant did not object to any of these documents being entered into evidence nor did he present any evidence disputing the validity of these documents.

The Plaintiff previously filed an action, *pro se*, against the Defendant in the Magistrate Court, York County, seeking payment for the repairs to the residence. A hearing was held before the Honorable Clifford E. Berinsky on August 2, 2018. At that time, the Defendant argued that the mother's estate was still open and that Defendant should file a claim through the estate. The

Plaintiff presented evidence that the Mother's estate had been closed by order of the Honorable Carolyn Rogers on March 11, 2016. The Plaintiff argued that Defendant should be liable for the repairs as Defendant is the owner of the property upon the closure of Defendants' mother estate. At that time, Defendant disputed that he had any ownership interest in the residence. As a result of the Defendant disputing ownership, Judge Berinsky dismissed the case pursuant to Section 22-3-1150, South Carolina Code of Laws.

As this matter was previously brought before Judge Berinsky and now brought before this Court, it is imperative that this Court examine whether the dismissal of the magistrate action pursuant to Section 22-3-1150 is 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 the prior action between those parties. 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.'" Catawba Indian Nation v. State, 407 S.C. 526, 756 S.E.2d 900, 906 (S.C. 2014) *citing* Plum Creek Dev. Co. v. Conway, 334 S.C. 30,34, 512 S.E.2d 106, 109 (1999). (**Emphasis added**). In reviewing the Order of the Honorable Clifford E. Berinsky dated August 9, 2018, I find that the issues involved in this case have never been adjudicated. Instead, the matter was dismissed in compliance with Section 22-3-1150 once the Defendant disputed ownership. Allowing a litigant to avoid a judgment by contesting ownership would lead to illogical results if res judicata was applied. Therefore, this Court concludes that res judicata does not bar this subsequent action.

The next issue that must be examined is whether collateral estoppel (or issue preclusion) bars this subsequent action. "Issue preclusion bars the relitigation of only the particular issues that were **actually litigated** and decided in the prior suit." Catawba Indian Nation v. State, Id.

*citing Crestwood Golf Club, Inc., v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997). **(Emphasis added)**. The issues in the prior case were never actually litigated and therefore this Court finds that collateral estoppel does not bar this subsequent suit.

As this case can proceed against the Defendant and after listening to the testimony, reviewing the exhibits and pleadings, I find that the Defendant is in default. I further find that the Defendant owes the Plaintiff the sum of Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00).

Therefore, the total amount of the Judgment entered against Donnie Shaver is Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00).

**IT IS THEREFORE ORDERED:**

The Defendant, Donnie Shaver is hereby in default in this matter. An entry of judgment in the amount of Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00) shall be entered against the Defendant, Donnie Shaver.

**IT IS SO ORDERED.**

Teasa K. Weaver  
Master in Equity  
E-Signature Page to Follow



York Common Pleas

**Case Caption:** Jimmy Shaver , plaintiff, et al VS Donnie Shaver

**Case Number:** 2020CP4600980

**Type:** Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084