

Franklin County Legal Journal
Volume 23, No. 50, pp. 213-219
Choice One v. Johnston

CHOICE ONE COMPANIES, INC. and CODY CARBAUGH, Plaintiffs,
v. PAUL M. JOHNSTON and ANGELA L. JOHNSTON, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action - Law, No. 2005-3108

Motion for Judgment on the Pleadings; Res Judicata; Four Conditions of Res Judicata; Effect of Settlement Agreement at Final Disposition of Matter; New Legal Arguments and Res Judicata

Res Judicata Generally:

1. The doctrine of res judicata is well established by this Commonwealth's case law. The Doctrine reflects the refusal of the law to tolerate a multiplicity of litigation due to the public policy of preventing an individual from being vexed twice for the same cause.
2. As per the Doctrine, an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.
3. Four conditions must be fulfilled before the doctrine will be implemented to bar subsequent proceedings: (1) same identity of issues, (2) same identity of causes of action, (3) same identity of persons and parties to the action, and (4) same identity of the quality or capacity of the parties suing or sued.

Count I: Specific Performance of Settlement Agreement

4. Judgment on the pleadings may not be granted unless movant's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise.
5. Case precedent clearly shows that an oral agreement, by and between parties to litigation, to compromise and settle the litigation is specifically enforceable.
6. However, where the Court officially disposed of the case by way of a previous Motion for Judgment on the Pleadings, Plaintiff cannot now create a separate cause of action for enforcement of a settlement agreement. The granting of the previous Motion for Judgment on the Pleadings finally pulled down the curtain on the case; there is no "settlement" to enforce.

Count II: Specific Performance of Original Contract

7. The Plaintiffs asserted this same cause of action in Civil Action No. 1352-2005. In this case, the Court entered final judgment for the Defendants. With this final judgment, the doctrine of res judicata most certainly comes into play.
8. All four conditions of the doctrine are present. Therefore, the Court is presented with a classic

situation for which res judicata applies.

9. Where the Plaintiffs initiate another action against the Defendants because they have now become aware of other legal arguments but have not argued that new facts have arisen or they did not have the capacity to raise the arguments before this point, res judicata applies and precludes the litigation of this second claim.

Appearances:

William C. Cramer, Esquire, *Attorney for Plaintiffs*

J. Edward Beck, Jr., Esquire, *Attorney for Defendants*

OPINION

Van Horn, J., March 10, 2006

Factual Background

This matter comes before the Court as a result of a foiled real estate transaction between the parties. The Defendants are owners, as tenants by the entirety, of two parcels of real estate^[1] which are the subject matter of this lawsuit. On February 25, 2005, Plaintiffs and Defendants entered into an Agreement of Sale ("Agreement") for the real property. Plaintiffs, as per the Agreement, would purchase the two parcels of land from the Defendants for a total sum of \$280,000. At the time of the Agreement, Plaintiffs paid a deposit of \$1,000. When it came time to move forward to actual settlement, the parties experienced difficulty and assert different factual summaries of the events.

Plaintiffs contend that at all relevant times they were ready and willing to comply with all the provisions of the contract, and in anticipation for the completion of settlement, the Plaintiffs even moved to obtain acquisition financing, ordered a title search and proceeded with other closing details. However, the Plaintiffs argue that the Defendants failed to permit the pre-settlement inspection mandated by the Agreement. Without this inspection, the parties did not move towards final closing. On the other hand, the Defendants argue that it was the Plaintiffs that caused the settlement to be postponed by not attending scheduled settlements for a variety of excuses. As for the failure to permit inspection, the Defendants assert that the Plaintiffs' executing individual to the Agreement rejected the need to inspect the property. Therefore, each party in this matter assigns the blame to the other for the failure to settle.

With the failure to proceed to final closing and transfer of the subject real estate, the Plaintiffs initiated an action and requested the Court to order the Defendants to specifically perform their responsibilities under the Agreement.

Procedural History

1. Choice One Companies, as the sole Plaintiff, commenced a legal action against the Defendants, filed as Case No. 2005-1352, by way of a filed Writ of Summons on May 19, 2005. Shortly thereafter, on July 6, 2005, the Plaintiff filed an initial Complaint for Specific Performance of Agreement of Sale asserting claims that the Defendants had failed to perform their part of the Agreement.

2. In response, the Defendants filed Preliminary Objections to the Plaintiff's Complaint on August 1, 2005 asserting that the Plaintiff was a nonexistent entity, and therefore, the Agreement for Sale would be *void ab initio*.

3. On September 9, 2005, the Plaintiff filed an Answer to the Preliminary Objections which gave the clear date of March 14, 2005 for the filing date of the Articles of Incorporation and the business being declared a Pennsylvania corporation.

4. In light of the specific date being provided by the Plaintiff, the Defendant filed a Motion for Judgment on the Pleadings on September 28, 2005. The Motion argued that if the date of incorporation was proper then the Plaintiff, as Choice One, did not exist as of the date the contract was executed. Therefore, the contract should be rendered *void ab initio*, and the Defendants would be entitled to judgment on the pleadings alone.

5. The Court met with counsel for the parties, reviewed the record and further provided with information confirming that the corporation was not in existence at the time the contract was executed. The Defendants' Motion for Judgment on the Pleadings was granted on October 7, 2005. With this ruling, the Court dismissed the Plaintiff's Complaint and entered final judgment for the Defendants.

6. Following the above dismissal, a second Complaint was filed as Case No. 2005-3108 on November 11, 2005. However, this second Complaint listed both Choice One Companies and Cody Carbaugh as Plaintiffs. This Complaint asserted the same facts as the original Complaint; however, Count I was a request for Specific Enforcement of a Settlement Agreement and Count II, in the alternative, was a second request for Specific Enforcement of the Original Contract.

7. The Defendant filed an Answer to the new Complaint and also filed another Motion for Judgment on the Pleadings.

Discussion

The Defendants' Motion for Judgment on the Pleadings is now before the Court for decision. Defendants argue that the doctrines of res judicata and collateral estoppel preclude Plaintiffs from succeeding with their second action. In response, Plaintiffs argue that res judicata and collateral estoppel principles are not appropriate in this case for three separate and distinct reasons. First, in an effort to prevent Count I (Specific Enforcement of Settlement Agreement) from being disposed of by this Motion, Plaintiffs argue that the cause of action presented is entirely separate and distinct from the previous cause of action of the first Complaint; therefore, the doctrines would not be applicable in this case. Next, for Count II (Specific Enforcement of the Original Contract), Plaintiffs assert that an examination of all the pleadings in the previous litigation shows that there was no adjudication of, or even inclusion of, how an addendum signed by Choice One and Defendants on April 14, 2005 would affect the litigation. The Plaintiff Corporation was declared an entity on the April 14, 2005 date; therefore, the contract was re-executed by way of the addendum after the corporation was a proper entity. The Plaintiffs assert that this key fact plays a role in determining whether the contract was valid. Finally, again in regards to Count II (Specific Enforcement of the Original Contract), the Plaintiffs argue that the issues of **de facto incorporation** and **ratification** were not addressed in the previous litigation. It is the Plaintiffs' belief that, if addressed, these two legal arguments could have been asserted to "save" the Plaintiffs' claim in the previous action. Overall, if the Court would find one of the reasons valid, the Plaintiffs argue that it would be sufficient to overrule the Defendants' Motion for Judgment on the Pleadings and permit the case to move ahead to trial.

Doctrine of Res Judicata Generally

The doctrine of res judicata is well established by this Commonwealth's case law. The doctrine reflects the refusal of the law to tolerate a multiplicity of litigation due to the public policy

of preventing an individual from being vexed twice for the same cause. Stevenson v. Silverman, 208 A.2d 786 (Pa. 1965). Therefore, "an existing final judgment rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction." Day v. Volkswagenwerk, 464 A.2d 1313, 1316 (Pa. Super. 1983). The doctrine quite simply forbids relitigation of matters decided because there is no assurance the second decision will be more correct than the first. Four conditions must be fulfilled before the doctrine will be implemented to bar subsequent proceedings: (1) same identity of issues, (2) same identity of causes of action, (3) same identity of persons and parties to the action, and (4) same identity of the quality or capacity of the parties suing or sued.

Motion for Judgment on the Pleadings:

Count I (Specific Performance of Settlement Agreement)

"Judgment on the pleadings may not be granted unless movant's right to succeed is certain and the case is so free from doubt that trial would clearly be a fruitless exercise." Jones v. Travelers Insurance Co., 514 A.2d 576, 578 (Pa. Super. 1986). In this case, the Court wholeheartedly believes that trial would be a fruitless exercise.

Plaintiffs argue that the parties entered into an oral settlement agreement to resolve the initial lawsuit, and therefore, they request that this agreement be enforced. This Court recognizes the validity of the Plaintiffs' case law that an oral agreement, by and between parties to litigation, to compromise and settle the litigation is specifically enforceable. See generally Standard Steel, LLC v. Buckeye Energy, Inc., 2005 W.L. 2403636 (U.S. Dist. Ct. W.D. Pa.); New England Petroleum Corp. v. American Mining and Exploration Corp., 480 A.2d 1153 (Pa. Super. 1984). However, the cases to which Plaintiffs cite involve factual situations where the courts made no final disposition on the merits of the case. The cases involve claims which were still **viable** in the system or claims that may have been previously **discontinued** only due to the parties' clear intention to settle, but the courts most definitely did not make a determination on the merits and then proceed to enforce a settlement agreement. In the original action between these parties, both parties' counsel were present with the Court as it entered the ruling on the Motion for Judgment on the Pleadings and neither brought up a possible settlement resolution. Plaintiffs now cannot create a separate cause of action for enforcement of a settlement agreement when the Court has officially disposed the case by way of the first Motion for Judgment on the Pleadings. A "settlement" has been defined as an "agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other; to fix or resolve conclusively; to make or arrange for final disposition." Hatfield v. Continental Imports, Inc. 610 A.2d 446, 451 (Pa. 1992); citing Black's Law Dictionary 1372 (6th Edition 1990). The "agreement" pointed to by the Plaintiffs cannot be described as a conclusive resolution of the matter when the Court finally pulled down the curtain and granted Defendants' Motion for Judgment on the Pleadings which resolved the matter conclusively.

Motion for Judgment on the Pleadings:

Count II (Specific Performance of Original Contract)

The Plaintiffs asserted this same cause of action in Civil Action No. 2005-1352. As stated above, this Court entered final judgment for the Defendants as a result of the Court's determination the Plaintiff was not a registered corporation at the time of execution, and therefore, the Agreement was deemed *void ad litio*. With this final judgment, the doctrine of res judicata most certainly comes into play. The doctrine serves to preclude relitigation, between the same parties or privies in interest, of same claims previously decided upon the merits. Plaintiffs try to avoid the implementation of the doctrine by arguing that three legal arguments were not made during the previous litigation: (1) effect of the re-execution of the contract by addendum; (2) ratification argument; and (3) de facto incorporation argument.

The Court is confident that all four conditions of the doctrine are present. First, the issue of the agreement being void is identical. Second, the cause of action of Specific Enforcement to Enforce Original Agreement remains the same. Next, the parties are the same with the exception of the additional Plaintiff, Cody Carbaugh. However, the "doctrine applies and is binding not only on actual parties to the litigation, but also to those who are in privity with them." Day, 464 A.2d at 1317. Privity includes all individuals who are so connected to a party of the judgment as to have the same legal rights and interest. Id.; citing Olivarez v. Broadway Hardware, Inc., 564 S.W. 2d 195, 197 (Tex. Civ. App. 1978). Mr. Carbaugh, at all times, has owned one hundred (100) percent of the stock and all other interest in Choice One. The Court clearly sees Mr. Carbaugh as being privity to Choice One. Finally, the parties hold the same capacity to argue the viewpoints as they held in the prior litigation.

Therefore, the Court is presented with a classic situation for which res judicata applies. The Plaintiffs cannot initiate another action against the Defendants because they have now become aware of other legal arguments to present. All three legal arguments could have been raised in the previous litigation; the Plaintiffs have not argued that any "new" facts have arisen or they did not have the capacity to raise the three arguments before this point in time. It is clear that "a party is forbidden to raise issues that could have been litigated in the first suit but were not, because of the desirability of settling the entire controversy in a single proceeding." Day, 464 A.2d at 1316. The Plaintiffs received "one bite at the apple" when they attempted to litigate the Agreement in the previous action and are not entitled to a second.

All of the conditions to apply the doctrine of res judicata exist; therefore, the Court will preclude the litigation of this second claim. The Defendants' Motion for Judgment on the Pleadings for Count II is hereby granted.

Conclusion

The Defendants' Motion for Judgment on the Pleadings is granted for all the reasons stated herein and the matter shall be disposed of in its entirety in favor of Defendants.

ORDER OF COURT

And now this 10th day of March, 2006, after consideration of Defendants' Motion for Judgment on the Pleadings, briefs submitted by counsel, and review of the overall record, it is hereby ordered that the Defendants' Motion for Judgment on the Pleadings is hereby granted. Plaintiffs' Complaint is dismissed and judgment is entered for Defendants. The hearing scheduled for April 25, 2006, is cancelled.

[1] The first parcel is located at 6288 Bikle Road (Guilford Township, Franklin County, Pennsylvania) and recorded in the Franklin County Recorder of Deeds Office at Deed Book Volume 1354, Page 572. The second parcel is known as Lot #22 on Bikle Road (Guilford Township, Franklin County, Pennsylvania) and recorded in Franklin County Recorder of Deeds Office at Deed Book Volume 2530, Page 22.