

1988

John E. Arrington and Mary E. Arrington v. Robert W. Mitchell and Karen G. Iversen : Brief of Respondent Karen G. Iversen

Utah Court of Appeals

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Robert W. Mitchell; Pro Se; Dennis K. Poole; Poole & Smith; Attorney for Respondent- Iversen.
Steve L. Godwin; Attorney for the Plaintiffs-Appellants.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 880033-CA IN THE UTAH COURT OF APPEALS

JOHN E. ARRINGTON AND MARY	:	
E. ARRINGTON,	:	
	:	
Plaintiff-Appellant,	:	Case No. 880033-CA
	:	
ROBERT W. MITCHELL and	:	
KAREN G. IVERSEN,	:	
	:	
Defendants-Respondents.	:	
	:	

ARGUMENT PRIORITY CLASSIFICATION
(15)

BRIEF OF THE RESPONDENT KAREN G. IVERSEN

APPEAL FROM PARTIAL SUMMARY JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH

HONORABLE SCOTT DANIELS, PRESIDING

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FILED
MAY 9 1988
Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

JOHN E. ARRINGTON AND MARY	:	
E. ARRINGTON,	:	
	:	
Plaintiff-Appellant,	:	Case No. 880033-CA
	:	
ROBERT W. MITCHELL and	:	
KAREN G. IVERSEN,	:	
	:	
Defendants-Respondents.	:	
	:	

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STATEMENT OF JURISDICTION

The Utah Supreme Court issued an Order dated January 15, 1988, transferring the appeal of this matter to the Court of Appeals. Therefore, jurisdiction is proper.

STATEMENT OF THE NATURE OF PROCEEDINGS

On or about the 10th day of September, 1986, the Plaintiff John E. Arrington, by Affidavit, commenced an action on behalf of the Plaintiffs in the Circuit Court, State of Utah, Salt Lake County, Sandy Department, Small Claims Number 860031055SC. Mr. and Mrs. Arrington made claim against the Defendants Robert W. Mitchell and Karen G. Iversen for unpaid rentals for real property located at 1255 East Miller Avenue, Salt Lake City, Utah, for the months of July, August and a portion of September, 1986. (A copy of Plaintiff's Small Claims Affidavit and Order is included within in the Addendum.)

On or about October 1, 1986, Mr. Dirk Eastman, as Judge Pro-Tempore, entered a Small Claims Judgment against the Defendant Robert W. Mitchell holding him liable in the sum of \$984.25 (representing rentals for the months of July and August, 1986), together with costs. The Small Claims Judgment specifically provided as follows:

"No Sept. obligation owed because of Plaintiff's failure to take steps to reasonable mitigate damages. No further rent owing."

Judgment was not entered against the Defendant Iversen although she was served with process. (A copy of the Small Claim Judgment is included within the Addendum.)

On or about December 18, 1986, Plaintiffs commenced a separate action in the Third Judicial District Court, in and for Salt Lake County, State of Utah, alleging additional damages arising out of the breach of the lease agreement by Defendants with respect to the real property located at 1255 East Miller Avenue, Salt Lake City, Utah. As set forth in Plaintiffs' First Claim For Relief, Plaintiffs sought a judgment against Defendants for unpaid rentals for the months of September and October, 1986, and attorney's fees as provided in the lease agreement. Plaintiffs, by their Second Claim For Relief sought a judgment for damages resulting from Defendants' alleged failure to pay taxes, utility bills and insurance premiums for periods during the years 1986 and 1987. Plaintiffs' Third Claim For Relief asserted entitlement to a judgment against Defendants for damages resulting from alleged waste committed to the property. Plaintiffs' Fourth Claim For Relief asserted entitlement to rentals for a period necessary to repair damages to the property and Plaintiffs' Fifth Claim for Action asserted damages for severe mental and emotional

anguish resulting from Defendants' alleged failure to perform the lease and for the destruction of the premises.

On the 25th day of August, 1987, the Honorable Scott Daniels heard Defendants' Motion For Summary Judgment and ruled that any and all claims of the Plaintiffs against the Defendants which arose prior to October 1, 1986, were "barred by the doctrine of res judicata as a result of the entry of the Small Claims Judgment". (See Order of Partial Summary Judgment in Addendum)

Plaintiffs-Appellants have appealed the order of partial summary judgment.

STATEMENT OF ISSUES

1. Is a ruling of a Small Claims Court judgment res judicata upon the parties thereto?

2. Does the doctrine of res judicata bar claims that existed but were not filed at the time of the small claims action because of the limited jurisdiction of the Small Claims Court?

STATEMENT OF THE CASE

A. Nature of Case. This is an action commenced by the Plaintiff-Appellants for monetary damages arising out of the lease of real property.

B. Course of Proceedings. On September 10, 1986, Plaintiffs-Appellants filed a Small Claims Affidavit and Order in the Circuit Court, State of Utah, Salt Lake County,

Sandy Department, Small Claims Number 860031055SC seeking a judgment for lease payments for the months of July, August and a portion of September, 1986. On October 1, 1986, a Small Claims Judgment was entered against the Defendant Robert W. Mitchell in the sum of \$984.25 together with costs. The Court also entered a ruling that no September rent was due because of the Plaintiffs' failure to take steps to reasonably mitigate damages and that no further rents were due and owing.

On December 18, 1986, Plaintiffs-Appellants filed a Complaint in the Third Judicial District Court making a claim for unpaid rentals for the months of September and October, 1986, damages for failure to pay taxes, utility bills and insurance premiums for periods during the years 1986 and 1987, damages for waste committed to the property, rentals for the period necessary to repair the property and damages for severe mental and emotional anguish resulting from Defendants' alleged failure to perform the lease and destruction of the premises.

C. Disposition at Trial Court. On October 25, 1987, the District Court granted an Order of Partial Summary Judgment holding that all claims of the Defendants which arose prior to October 1, 1987, were barred by the doctrine of res judicata as a result of the entry of the Small Claims Judgment dated October 1, 1987.

C. Relevant Facts. There are no other facts relevant to the determination of the issues before this Court.

SUMMARY OF THE ARGUMENT

The doctrine of res judicata applies to bar relitigation of issues which were actually litigated or could have been litigated in prior proceedings. The final adjudication of these issues is binding upon all parties and their privies and precludes subsequent adjudication of the same claims. Although the Plaintiffs elected to commence their action in the Small Claims Court, principals of res judicata are still applicable and the rulings of the Small Claims Court are nevertheless binding upon the parties. The election of the Plaintiffs to commence their action in the Small Claims Court constitutes a bar to further claims which could have been litigated had the Plaintiffs elected to choose a different forum.

DETAIL OF ARGUMENT

POINT I

Rulings of Small Claims Courts are res judicata upon parties and their privies with respect to issues before the Court. Penrod v. Nu Creation Creme, Inc., 669 P.2d 873, 875 (Utah 1983). The parties to this action are in agreement that a Small Claims Court is a Court of limited jurisdiction. Utah Code Annotated, Section 78-6-1 (1986). The Small Claims Court has jurisdiction and is permitted to enter

orders for the recovery of money where the amount claimed does not exceed \$1,000.00 and where the Defendant resides within the jurisdiction of the Court. Consequently the judgment in favor of the Plaintiffs and against the Defendant Mitchell as set forth in the Small Claims Judgment dated October 1, 1986, is enforceable.

To apply the doctrine of res judicata, it is appropriate to examine the issues before the Small Claims Court at the time of rendering its decision. The Small Claims Affidavit and Order and the subsequent Small Claims Judgment discloses that the matters at issue were: (i) the Defendants' rental obligations for the months of July, August and September, 1986, (ii) mitigation, and (iii) enforceability of the Lease. The Court adjudicated these claims and ruled that Defendant Mitchell was obligated for a portion of the rentals (July and August) but had no obligation for the month of September because of Plaintiffs' failure to mitigate damages. The Court further ruled that no additional rents were owing. Whether or not mitigation and enforceability of the lease were issues properly before the Court (and Defendant-Respondent believes that they were), such issues were ruled upon, were not appealed, and are now binding upon the parties. Based upon these rulings, additional claims for rentals, arguably even after October 1, 1986, are now barred.

The fact that the decision was rendered by the Small Claims Court has no impact upon the doctrine. It has been held that the doctrine of res judicata extends to judgments of all Courts. Johnson Steel Street Rail Co. v. Warton, 152 U.S. 252, 38 L. Ed. 429, 14 S. CT 608 (1894). The doctrine has specifically been applied to a judgment rendered by a Court of limited jurisdiction. See Domestic and Foreign Petroleum Co. v. Long, 4 Cal 2d. 547, 51 P.2d 73 (1935).

POINT II

The doctrine of res judicata bars not only the re-litigation of claims which were previously adjudicated but also bars claims which should have been adjudicated in the initial proceeding but were not. Penrod v. Nu Creation Creme, Inc., 669 P.2d 873, 875 (Utah 1983); Church v. Meadowsprings Ranch, Inc. 659 P.2d 1045 (Utah 1983); and Peterson v. Peterson 645 P.2d 37 (Utah 1982).

Comparing the Small Claims Affidavit and Order and the Complaint of the Plaintiff it is apparent that a significant number of the claims of the Plaintiffs were in existence at the time of entry of the Small Claims Judgment. Plaintiffs either were aware or should have been aware of these claims and elected to assert only one of several claims which could have been brought. The claim asserted conveniently totals the jurisdictional limits of the Small Claims Court. The Plaintiffs could have selected any number of their claims

but elected to limit their recovery to \$1,000.00. Plaintiffs could also have elected to assert any one of their claims in the Circuit Court or in all of their claims in the District Court, and depending upon their election the amount of their claims could be limited or asserted in full. Plaintiffs' failure to select either the Circuit or District Court however was a voluntary act. Therefore Plaintiff could have asserted additional claims prior to October 1, 1986 had they so elected.


The rule of law that res judicata applies to all claims which should have been adjudicated is also supported by well established principles of law which permit land owners to sue for delinquent rental installments without declaring the default of a lease agreement, but do not permit severing of claims with respect to delinquent rental installments. A landowner is required to assert a claim for all delinquent rentals at the time of commencement of his action. He can not sue for only a portion of delinquencies without waiving them. See Hare v. Winfree, 131 Wash 138, 229 P.16 (1924) and In Re Garment Center Capital, 93 F.2d 667 (2nd Cir. 1938). Plaintiffs attempt to sue for a portion of the September rent and assert the balance of such rent and the remaining claims in the District Court would violate the rule against improper severance of claims. Consequently,

all claims of the Plaintiffs arising prior to October 1, 1986, are barred and Plaintiffs are further bound by the Court's ruling that no further rentals are due and owing.

CONCLUSION

The Small Claims Court Judgment dated October 1, 1986, is fully enforceable and is res judicata between the parties. Because the doctrines of res judicata bars all claims which were adjudicated and all claims which should have been adjudicated in the initial proceedings, all claims of Plaintiffs arising prior to October 1, 1986, are barred. The Small Claims Court's Order that no additional rents are owing would also preclude recovery of any further rents in the District Court action. Judge Daniels' grant of a Order of Partial Summary Judgment was therefore well supported in law and should not be overturned.

DATED this 25th day of May, 1988.



DENNIS K. POOLE
Attorney for Defendant-
Respondent Iversen

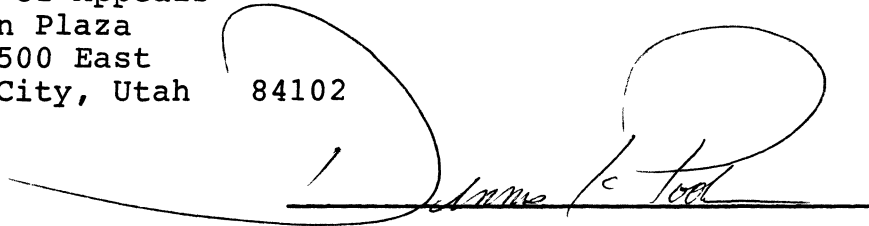
CERTIFICATE OF MAILING

I hereby certify that on the 25th day of May, 1988, I caused a true and correct copy of the Brief of the Respondent Karen G. Iversen to be mailed, postage prepaid to the following:

Steven L. Godwin, Esq.
4955 South 700 East, #106
Salt Lake City, Utah 84017

Robert Mitchell, Pr Se
4740 South 200 West
Murray, Utah 84107

Utah Court of Appeals
400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102

A handwritten signature in dark ink, appearing to read "Anne C. Tool", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

IV/MISC2

ADDENDUM

SERVE BOTH DEFENDANTS

Circuit Court, State of Utah

SALT LAKE COUNTY, SANDY DEPARTMENT

SEP 19 1986

John E. & Mary F. Arrington

TEL: 502-9211

Name 8974 So Wild Willow Circle

Address: Sandy, Utah

City & State Zip: 84092

vs

Name Robert W. Mitchell

99820

Defendant(s)

Address: 809 E. Pecos Drive Sandy, Utah 84070

and: KARFN IVERSEN 337 SHAMROCK DRIVE MURRAY, UTAH

City & State Zip: 84107

STATE OF UTAH

County of Salt Lake

AFFIDAVIT

The affiant being first sworn, deposes and says:

(1) That defendant is indebted to plaintiff in the sum of \$ 1,000.00, which debt arose on or during
plus \$ 15.80 toward the Sept 1, payment.
y \$ 492.10; Aug \$ 492.10 19 86, as follows: Loss for property at 1255 E. Miller Ave.
uly 1986; \$ 492.10 Aug 1986; \$ 492.10 and \$ 15.80 toward the Sept 1st Payment.
plus court costs of \$.

(2) That plaintiff has demanded payment of the above sum from defendant, who has refused to pay
the same, and no part thereof has been paid; and

(3) That defendant and plaintiff reside at the addresses shown in the above caption.

John E. Arrington

Affiant (Plaintiff)

Subscribed and sworn to before me on the date of 9-10, 1986.

WELDON NICHOLS
Clerk of the Circuit Court

By

Deputy Clerk

NOTICE
THIS AFFIDAVIT SHALL NOT BE SERVED MORE
THAN 20 DAYS NOR LESS THAN 5 DAYS FROM
THE DATE OF THIS ORDER.

ORDER

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT(S)
YOU ARE ORDERED to appear and answer the above claim on.

Date of trial 10-1-86

Place of trial: 440 East 8680 South, Sandy, Utah 84070.

Time of trial 6:31

and to have with you, then and there, all books, documents, records, papers, and witnesses needed to
establish your defense to plaintiff's claim.

You are further notified that if you do not appear as directed judgment may be given against you
for the amount of plaintiff's claim as stated in the affidavit above.

Dated 9-10-86

WELDON NICHOLS
Clerk of the Circuit Court

By

Deputy Clerk

Circuit Court, State of Utah
SALT LAKE COUNTY, SANDY DEPARTMENT

JOHN E. AND MARY F. ARRINGTON

Plaintiff

SMALL CLAIMS

vs

ROBERT W. MITCHELL

Defendant

JUDGMENT

Case No. 860031055 SC

This matter came before the court for hearing on the affidavit of plaintiff and the defendant has been served with the affidavit of plaintiff and order to defend, and return of service has been made. The following parties appeared at the hearing:

☐ Plaintiff only. The defendant failed to appear at the time set, and the defendant's default has been entered

☐ Both plaintiff and defendant appeared and presented evidence.

\$ 984.25 Principal

\$ 30.00 Court costs, and

\$ 1014.25 TOTAL JUDGMENT

DATED OCTOBER 1 19 86

*No Sept obligation
owed because of the
failure to take steps
to reasonably mitigate
damages. No further
costs.*
M. R. Eastman
JUDGE

☐ Both Plaintiff and Defendant received copies of the Judgment at Hearing _____
Clerk

TO THE DEFENDANT ONLY:

If the above judgment was granted in favor of the plaintiff, you now have a judgment against you in the Circuit Court in the amount specified above. If you are dissatisfied with this judgment, you have only FIVE (5) DAYS from receipt of this notice to appeal the case to the District Court.

TO THE PLAINTIFF ONLY:

You should mail a copy of this judgment to the defendant IMMEDIATELY. The defendant has five days from receipt of the notice to appeal the case. You must complete the mailing certificate and file the original of this judgment with the court before you can proceed with any further court action.

I hereby certify that I mailed a copy of this judgment, postage prepaid, addressed to the above named defendant(s) at _____

Address & Zip Code

Dated _____

SIGNATURE

FILIVILL

9-22-87

Exh. G, + D

DENNIS K. POOLE (2625)
POOLE, CANNON & SMITH
Attorneys for Defendant
Karen G. Iversen
4885 South 900 East, Suite 306
Salt Lake City, Utah 84117
Telephone (801) 263-3344

SEP 11 1987

By Karen G. Iversen
Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

JOHN E. ARRINGTON and	:	
MARY F. ARRINGTON,	:	
	:	
Plaintiffs,	:	
	:	ORDER OF PARTIAL
vs.	:	SUMMARY JUDGMENT
	:	
ROBERT W. MITCHELL and	:	Civil No. 86-9482
KAREN G. IVERSEN,	:	
	:	Judge Daniels
Defendants.	:	
	:	

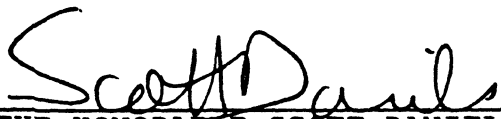
Defendants Iversen's and Mitchell's Motions For Summary Judgment having come on for hearing before the Honorable Scott Daniels on the 25th day of August, 1987, and the Plaintiffs being represented by their attorney Steven L. Godwin and the Defendant Karen G. Iversen being represented by her attorney Dennis K. Poole and the Defendant Robert W. Mitchell being represented by his attorney Loren E. Weiss and the Court having considered the pleadings of the parties and certified copies of a Small Claims Affidavit and Order

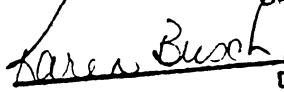
and a Small Claims Judgment entered October 1, 1986, in the Circuit Court, State of Utah, Salt Lake County, Sandy Department, Case Number 860031055 SC, and having heard the arguments of counsel and finding that there is no genuine issue of material fact as to the claims of the Plaintiffs which accrued prior to October 1, 1986, and for good cause appearing

ORDERS that the Defendants, and each of them are hereby granted partial summary judgment, no cause of action, with respect to any and all claims of the Plaintiffs against the Defendants which arose prior to October 1, 1986, such claims being barred by the doctrine of res judicata as a result of entry of the Small Claims Judgment identified above.

ORDER DATED this 11 day of ~~August~~^{Sept}, 1987

BY THE COURT:


THE HONORABLE SCOTT DANIELS
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk
By 
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of August, 1987,
I caused a true and correct copy of the foregoing Order of
Partial Summary Judgment to be mailed, postage prepaid to
the following:

Steven L. Godwin, Esq.
4055 South 700 East, Suite 106
Salt Lake City, Utah 84107

Loren E. Weiss, Esq.
Midtown Office Plaza, Suite 160
230 South 500 East
Salt Lake City, Utah 84102

A handwritten signature in black ink, appearing to read "Loren E. Weiss", is written over a horizontal line.

IVSN ORDER
PLEAD4