1979

International Resources, A Utah Corporation v. C. Robert Dunfield and Lynn S. Dunfield : Brief of Plaintiff-Appellant

Utah Supreme Court

IN THE

SUPREME COURT

OF THE

STATE OF UTAH

INTERNATIONAL RESOURCES,
a Utah corporation,

Plaintiff-Appellant,

vs.

C. ROBERT DUNFIELD and
LYNN S. DUNFIELD,

Defendants-Respondents.

BRIEF OF PLAINTIFF-APPELLANT

APPEAL FROM THE JUDGMENT OF THE
JUDICIAL DISTRICT COURT FOR SAN
COUNTY, STATE OF UTAH
HONORABLE DAVID B. DEE, JUDGE

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

INTERNATIONAL RESOURCES, a Utah corporation, Plaintiff-Appellant, vs. C. ROBERT DUNFIELD and LYNN S. DUNFIELD, Defendants-Respondents.	Case No. 16127

BRIEF OF PLAINTIFF-APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE DAVID B. DEE, JUDGE

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BRIEF OF PLAINTIFF-APPELLANT

STATEMENT OF NATURE OF CASE; DISPOSITION IN THE LOWER COURT; RELIEF SOUGHT ON APPEAL

This action was brought by Plaintiff, International Resources, to recover $6,647.10 paid to Defendants as last and first month's rental on a Lease Agreement. Plaintiff was not allowed to occupy the building pursuant to the lease, and the Defendants have refused to return the advance payment of $6,647.10. The Court below granted a summary judgment of dismissal. From this summary judgment of dismissal, the Plaintiff appeals and seeks a reversal in order to litigate its cause of action on the merits.

STATEMENT OF FACTS

1. On June 12, 1975, Snellen M. Johnson, claiming to be an assignee of the Plaintiff, filed a complaint against the Defendants alleging that Plaintiff and Defendants had entered into a lease agreement by which Plaintiff paid to Defendants the amount of $6,647.10 for the first and last months of the lease period, and by which Defendants agreed to provide certain premises for the occupancy of the Plaintiff. Johnson also alleged that Defendants failed to provide to Plaintiff the premises, and that Plaintiff was therefore entitled to a return of the $6,647.10. Johnson also alleged that Plaintiff had assigned to him its cause of action against Defendants.

2. After Johnson's complaint had been filed, the Defendants moved the Court for an Order permitting the Defendants to add International Resources as a Plaintiff in the case. The Court granted the Defendants' motion. Defendants, however, did not obtain service of International Resources and no jurisdiction over International Resources was ever acquired.

3. A trial was then held to litigate the merits of Johnson's cause of action. The minute entry of the trial states that Johnson put on his evidence, and after he put on his evidence, the Defendants then moved the Court to dismiss for failure to prove the allegations in the

complaint. The Court granted Defendants' motion to dismiss. The minute entry also shows that Johnson's counsel offered an Exhibit designated as 2-P, and specified as "Assignment," but that the Court refused to receive this evidence.

4. After the trial of Johnson's cause of action, the attorney for Defendants submitted a document entitled "Order of Dismissal", which was then signed by the Honorable Bryant H. Croft.

5. After Judge Croft had signed said Order of Dismissal, Johnson's counsel objected to the form of the Order, and moved the Court for a modification on the grounds that International Resources was never joined as a party; that the order should not run to a dismissal of prejudice as to International Resources. The Court granted Johnson's motion. The Court then signed a second Order of Dismissal submitted by Johnson's counsel.

6. The second Order of Dismissal states in part, as follows:

a. " . . . International Resources has never been formally advised that it had been joined as a party plaintiff in the above entitled action, nor no Summons nor Service of Process ever having been served on International Resources, International Resources is

dismissed from the case as a party plaintiff, and as a counterclaim defendant."

b. "The matter thereupon went to trial . . . (and) the evidence was presented on behalf of the Defendant . . . Defendant made a motion to dismiss based upon Plaintiff's failure to prove allegations as prayed for in the complaint . . . (T)he complaint of the Plaintiff, Snellen M. Johnson, . . . is hereby dismissed with prejudice . . . "

7. After the trial of Johnson's cause of action, the Court made no findings of fact, nor did it enter any conclusions of law.

8. Subsequent to the entry of said second Order of Dismissal of Johnson's cause of action, Plaintiff, International Resources, then filed a complaint against the Defendants alleging that it was entitled to a return of said $6,647.10 for breach of said lease agreement by Defendants. At this point, Defendants moved the Court for an Order dismissing the Plaintiff's complaint on the grounds that the issue had been previously litigated in Snellen Johnson versus Dunfield, Civil No. 228490. From that Order, the Plaintiff appeals.

ARGUMENT

POINT I.

THE DOCTRINE OF RES JUDICATA DOES NOT BAR PLAINTIFF FROM LITIGATING ITS CAUSE OF ACTION ON MERITS

An examination of the above facts leads to the conclusion that the doctrine of res judicata should not bar Plaintiff's cause of action against Defendants merely because Defendants face a similar lawsuit from another Plaintiff. It is the general rule of law that res judicata cannot be applied against strangers to the prior action. Clark v. Wilson, (Ky) 316 SW 2d 693; Mays v. District Ct., 34 Idaho 200, 200 P. 115; Morrissey v. Bologna, 240 Miss. 284, 123 So. 2d 53 cert. den. and app. dismd., 366 U. S. 212; O'Hara v. Pittston Co., 186 Va. 325, 42 SE2d 269; Simmons v. Parrent, 71 Wyo. 207, 256 P2d 101. This rule is stated in 46 Am. Jur. 2d Judgments 518, p. 670-671 as follows:

> It is also well settled that, with certain exceptions hereinafter noted, that the doctrine of res judicata does operate to effect strangers to a judgment, that is, to effect the rights of those who are neither parties nor in privity with a party therein, whether the judgment is attempted to be used in connection with the cause of action previously litigated, or connection with particular issues determined therein. This is particularly true where the doctrine of res judicata is sought to be applied as against strangers to the prior action, whether the stranger is a

> plaintiff or a defendant in the latter action. It has also been applied regarldess of the fact that the stranger knew of the prior action and might have been intervened therein, or that he offered to become a party but was denied the privilege, or that he attempted to enjoin prosecution of the prior action.

In explicating this rule of law, the Supreme Court of Utah in Tanner vs. Bacon, 136 P.2d 957, 959-60 (Utah, 1943), stated:

> It is well settled that the doctrine of res judicata does not operate to affect strangers toward a judgment; that it only affects the parties, and their successors in interest, and those who are in privity with a party thereto . . . This court has defined the word "privity" as "a mutual or successive relationship to the same right or property. As applied to judgments or decrees of courts, the word means one whose interests have been legally represented at the time."

Also, the Supreme Court of Utah, in In re Town of West Jordan, Inc., 326 P.2d 105, 107 (Utah, 1958) stated the following:

> . . . in the ordinary case where a judgment has been granted on issues which have been litigated between the same parties, such issues under the doctrine of collateral estoppal cannot be relitigated in a subsequent but different cause of action . . . That doctrine only applies where a question of fact essential to and determinative of the judgment is actually litigated and determined by a valid or final judgment which is conclusive as between the parties to a subsequent action on a different cause of action. (Emphasis added.)

From the foregoing discussion of law, it is apparent that res judicata cannot possibly bar the Plaintiff from litigating its cause of action on the merits. This is because International Resources by order of the Court was dismissed from the previous lawsuit. The order of the Court specifically states that International Resources was dismissed as a party plaintiff and as a counter-claim defendant because service of process over International Resources was never effected. Thus, International Resources was not a party to the previous action, and therefore res judicata is not applicable. It should also be noted that the privity exception as defined by the Utah Supreme Court is not applicable to the instant case because there is no evidence in the record showing any type of privity between the Plaintiff and Snellen M. Johnson.

POINT II.

THE COURT IN THE PREVIOUS LAWSUIT FOUND THAT THERE HAD BEEN NO VALID ASSIGNMENT FROM PLAINTIFF TO SNELLEN M. JOHNSON, AND THEREFORE PLAINTIFF CANNOT BE PRECLUDED FROM LITIGATING ITS CAUSE OF ACTION ON THE MERITS

The facts show that the previous court on the issue of assignment of the cause of action from the Plaintiff to Snellen M. Johnson found that there was no valid assignment. The Order of Dismissal, as well as the Minute Entry states that Johnson put on his evidence before the previous Court and then Defendants

moved to dismiss for failure to prove the allegations in the complaint, and that the Court granted the Motion to Dismiss. The Minute Entry also shows that an "Assignment" was offered by Johnson's counsel, but refused by the Court. One of Mr. Johnson's allegations was that there had been a valid assignment from International Resources to Snellen M. Johnson. If Mr. Johnson failed to prove this allegation, then the Court must have determined that there was no valid assignment. Also, it is apparent that the Court found that there was no valid assignment because the supposed "Assignment" itself was refused by the Court. 46 Am. Jur. 2d. Judgments 508, p. 662 states a rule of law which is applicable to these facts:

> The general rule is that a judgment rendered because of a defect of parties does not operate to bar subsequent action. This rule prevails whether the judgment is based upon a want of parties, a misjointer of parties, a temporary disability of the plaintiff to sue or a mistake of the plaintiff as to the character or capacity in which he brings the suit.

The instant situation fits squarely into this rule of law, which is an exception to the doctrine of res judicata. In the previous case, the Court found that there had been no valid assignment. Therefore, Johnson was under a disability to bring the cause of action in the first place. In other words, the rule of law is that if a cause of action does not belong to the party bringing suit, then the findings of fact

and judgment cannot possibly be res judicata against the proper party bringing suit. Obviously, Plaintiff is the proper party bringing suit in the instant case, and the doctrine of res judicata is not applicable.

It should also be noted that if the doctrine of res judicata is a bar to the bringing of the cause of action by International Resources now, then it was also a bar to International Resources at the time of Johnson's trial. Thus, if the Court would have thought that International Resources was precluded from bringing another lawsuit, the Court would not have dismissed International Resources from the previous case, but would have determined that the judgment was conclusive as to International Resources. It should also be noted that the Court's dismissal of International Resources from the prior lawsuit, is perfectly consistent with the rest of the Order of Dismissal and the Minute Entry since the Order of Dismissal and the Minute Entry show that there had been no valid assignment. Thus, the Court had no choice but to dismiss International Resources from the case with the intention that it would be allowed to litigate its cause of action in a subsequent lawsuit.

POINT III

THE DOCTRINE OF RES JUDICATA BARS THE DEFENDANTS FROM RAISING THE ISSUE OF WHETHER THE PLAINTIFF MAY LITIGATE ITS CAUSE OF ACTION ON THE MERITS

46 Am. Jur. 2d Judgments 518, p. 669 - 70 states:

> With regard to the persons as to whom the doctrine of res judicata is applicable, the rule is well settled that a judgment is binding in favor of or against all parties to the proceedings in which it is rendered, and their privies, whether the doctrine is asserted on behalf of the plaintiff, or defendant in a subsequent action.

From this rule of law, it is apparent that the order of dismissal of Johnson's cause of action in the prior lawsuit, is beinding upon the Defendants since the Defendats were a party to the prior lawsuit. The order of dismissal specifically states that the Plaintiff was dismissed from the prior lawsuit for failure to obtain jurisdiction over the Plaintiff. Thus, the issue as to whether the Plaintiff may now litigate its cause of action on the merits was decided in a previous lawsuit in favor of the Plaintiff. Obviously, the previous Court would not have dismissed International Resources from the lawsuit had it determined that International Resources was precluded from litigating its cause of action in another lawsuit. In short, Defendants are now barred by the doctrine of res judicata from relitigating an issue previously decided by a court of law.

POINT IV

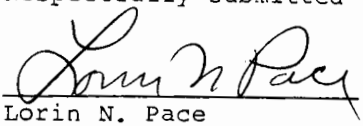
DEFENDANTS ARE ESTOPPED FROM ASSERTING THE DEFENSE OF RES JUDICATA

The Order of Dismissal of Johnson's cause of action in the prior lawsuit states that International Resources was dismissed because of the fact that service of process had never been effected. The failure to join International Resources, therefore, was the fault of the Defendants. Obviously, if Defendants had served International Resources with process, International Resources would have been brought into the case, and the judgment of the Court would have been res judicata against International Resources precluding it from bringing another lawsuit against the Defendants. Defendants, therefore, should not now be allowed to assert the defense of res judicata since it was their fault and not the fault of anyone else that International Resources was never brought into the case. In short, Defendants should be estopped from asserting the defense of res judicata.

CONCLUSION

The summary dissmissal of the Plaintiff's cause of action was not consistent with the law and facts. The Judgment of dismissal should be reversed.

Respectfully submitted



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I certify that I mailed a copy of the foregoing brief of appellant to Steven C. Vanderlinden, 137 East State Street Farmington, Utah 84025, Attorney for Defendant, postage pewpaid, this 8th day of January, 1979.