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Res Judicata Where First Litigation Dismissed on Jurisdictional Grounds

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RECENT CASES

RES JUDICATA WHERE FIRST LITIGATION DISMISSED ON JURISDICTIONAL GROUNDS

Plaintiff, a citizen of Virginia, sold land located in Virginia, to defendant, a citizen of North Carolina. For part of the purchase price, defendant executed notes secured by a deed of trust. Upon default of one of the notes, plaintiff, acting upon an acceleration clause causing all notes to become due, directed the trustee to sell the land. The proceeds of the sale were insufficient to satisfy the notes, and plaintiff brought an action in a lower North Carolina court to recover the resulting deficiency. To the complaint filed in this action, defendant demurred on the ground that recovery was precluded by a statute of North Carolina. The statute provided that in sales of real property by trustees under power of sale contained in a deed of trust, the trustee or holder of the notes shall not be entitled to a deficiency judgment. Plaintiff raised federal questions by contending that the United States Constitution precluded North Carolina from shutting the doors of its courts to him. Upon his demurrer being overruled, defendant appealed to the Supreme Court of North Carolina, which reversed the lower court and dismissed the action,[1] holding that the statute was a limitation on the exercise of jurisdiction by the state courts, depriving them of competence to entertain the cause of action. Plaintiff thereupon began suit on the same cause of action in the United States District Court for the Western District of North Carolina. Defendant entered a plea that the judgment of the North Carolina Supreme Court was a bar to the present action. The federal district court rejected the defense and gave judgment for plaintiff, which was affirmed by the

1. Bullington v. Angel, (1941) 220 N.C. 18, 16 S.E. (2d) 411, 136 A.L.R. 1054. The North Carolina Supreme Court, in this opinion, said: "The legislature has exercised its prerogative to so limit the jurisdiction of the courts of this state that holders of notes given for purchase price of real estate are not entitled to a defiiciency judgment thereon in such courts. We cannot hold that this action upon part of the legislative branch of our government impinged the full faith and credit clause of the constitution of the United States, or the general doctrine that the validity of a contract is determined by the law of the place where made, the lex loci contractus as distinguished from the lex fori. Both the constitutional provision urged and the general doctrine invoked by the appellee are substantive law and the statute involved, as aforesaid, relates solely to the adjective law. No denial of the full force and credit of the Virginia contract is made, and no interpretation or construction of the contract involved is attempted. The court, being deprived of its jurisdiction, has no power to render a judgment for the plaintiff in the cause of action alleged."

   The North Carolina Supreme Court decision was annotated and discussed in 136 A.L.R. 1054. At page 1063, the annotation, expressing what was probably the accepted view at that time, said: "The court took the view that the North Carolina statute deprived the North Carolina courts of jurisdiction in all actions to recover a deficiency arising in cases of purchase-money mortgages; . . . It was therefore concluded that upon defendant's demurrer, the action for the deficiency should have been dismissed. This procedure, of course, amounted merely to declining to assume jurisdiction of the action, without undertaking to pass upon the substantive merits of the plaintiff's claim, which it would seem, could still be enforced in another appropriate forum whose laws did not provide against recovery of deficiency judgments in such cases."

2. Walden v. Bodley, (1840) 14 Pet. 156, 10 L. Ed. 398; Hughes v. United States, (1866) 4 Wall. 232, 18 L.Ed. 303; Gould v. Evansville & Crawfordsville R.R. Co., (1875) 91 U.S. 526, 23 L.Ed. 416; Swift v. McPherson, (1913) 232 U.S. 51, 34 Sup. Ct. 239, 58 L.Ed. 499; see Restatement, Judgments, sec. 48, 49 (1942).

Circuit Court of Appeals for the Fourth Circuit. On certiorari, the United States Supreme Court *held,* three justices dissenting, that the judgment be reversed. It was held that the decision of the Supreme Court of North Carolina was conclusive upon the North Carolina federal court—i.e., it was a bar to the prosecution of the action in the latter court, by application of the doctrine of res judicata. *Angel v. Bullington (1947), 67 S. Ct. 657.*

The decision included a holding that the state court had adjudicated the merits of plaintiff's claimed substantive rights, by denying plaintiff's asserted federal claims. Courts have uniformly held that a former adjudication will not bar a subsequent suit on the same cause of action between the same parties or their privies unless such former adjudication was a final judgment on the merits,[2] and the holding of the instant case seems to recognize the validity of this doctrine ,insofar as it purports to be a general prerequisite to the application of the doctrine of res judicata. Courts have not always agreed, however, as to just what judgments will be considered judgments on the merits. Generally, a dismissal for lack of jurisdiction over the subject of the action has not been considered a judgment on the merits.[3] The American Law Institute seems to have adopted this view in its restatement of the law of judgments, as indicated by the following language: "Where a demurrer to the plaintiff's complaint is sustained upon a ground other than his failure to state a cause of action, he is not precluded from bringing a new action upon the same cause of action. This is true, for example, where the demurrer is sustained on the ground that the complaint showed that the court had no jurisdiction of the person of the defendant or of the subject of the action, ... Although these are defects of substance, they do not relate to the merits of the plaintiff's cause of action."[4]

Several decision of recent years would seem to indicate a trend toward extension of the doctrine of res judicata into the field of jurisdictional adjudications in that class of cases in which the court has assumed jurisdiction over the subject matter, even though such assumption may have been erroneous. As early as 1897, the Supreme Court indicated, in *Forseyth v. City of Hammond,*[5] that conclusive effects of res judicata might be applicable to such adjudications, but it was not until 1938 that the Court gave real impetus to the application of res judicata to jurisdictional issues. In *Stoll v. Gottlieb,*[6] a bankruptcy court confirmed a release of the defendant as a guarantor of bonds of the debtor, after contest of the issue of the court's jurisdiction to cancel the guaranty. In a subsequent action in a state court, defendant pleaded its release by the bankruptcy court as a bar. The state court considered the bankruptcy court's action invalid and rejected defendant's contention. On certiorari, the United States Supreme Court held

3. Walden v. Bodley, (1840) 14 Pet. 156, 10 L.Ed. 398; Murray v. City of Pocatello, (1912) 226 U.S. 318, 33 Sup. Ct. 107, 57 L.Ed. 239; Weigley v. Coffman, (1891) 144 Pa.St. 489, 22 Atl. 919; see Note, 13 A.L.R. 1104; 2 Freeman on Judgments (5th Ed.) (1925) sec. 751, 753; Restatement, Judgments, sec. 49, 50 (1942).
4. Restatement, Judgments, sec. 50 comment b (1942).
5. (1897) 166 U.S. 506, 17 Sup. Ct. 665, 41 L.Ed. 1095.
6. (1938) 305 U.S. 165, 59 Sup. Ct. 134, 83 L.Ed. 104; see Boskey and Braucher, Jurisdiction and Collateral Attack: October Term, 1939, (1940) 40 Col. L. Rev. 1006; Comment, The Effect of Extra-Jurisdictional Decisions, (1940) 34 Ill. L. Rev. 567.

that the state court had erred in refusing to find the order of the bankruptcy court conclusive between the parties in this subsequent action, without deciding the validity of the bankruptcy court's assumption of jurisdiction. In *Davis v. Davis*,[7] a Virginia divorce decree had been entered after an unsuccessful special appearance by the wife for the purpose of contesting the jurisdiction of the court. In a subsequent action brought in a District of Columbia federal court in an attempt to secure a modification of the decree, the Supreme Court held, on appeal, that the Virginia divorce decree was conclusive between the parties and thus precluded the parties from raising any inquiry, in this later action, as to the jurisdictional competence of the Virginia court. There had also been, prior to 1938, at least three cases[8] holding that the principles of res judicata would prevent collateral attack of decisions of a court as to its jurisdiction over the person of a party. This newly dominant doctrine of res judicata has received support and affirmation in subsequent cases,[9] and seems to have been even further extended in the case of *Chicot County Drainage District v. Baxter State Bank*,[10] wherein the court seems to say that the res judicata doctrine shall be equally applicable to jurisdictional as to non-jurisdictional issues, even to the extent of applying it in cases where opportunity to litigate jurisdictional issues exsted even though an actual litigation was not had of such issues. Other recent cases have shown, however, that the Court does not intend that the extension shall comprehend every jurisdictional field. In at least three specific types of cases, a party has been permitted to relitigate jurisdictional adjudications. In *Kalb v. Feuerstein*,[11] a state court had assumed jurisdiction of the subject matter, but the defendant was permitted to again raise the question of the jurisdictional competence of the court in a subsequent proceeding in a federal bankruptcy court, apparently on the theory that the Bankruptcy Act had vested the bankruptcy court with exclusive jurisdiction, thus depriving the state court of *any* jurisdiction over the subject of the action. *United States v. United States Fidelity & Guaranty Co.*[12] holds that the United States is not precluded from bringing into issue (on grounds of its sovereign immunity from suit) the jurisdictional competence of a court which had rendered judgment aganist it on a cross-claim, in a subsequent action against the United States to enforce the judgment so obtained. *Kloeb v.*

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7. (1938) 305 U.S. 32, 59 Sup. Ct. 3, 63 L.Ed. 26.
8. Chicago Life Insurance Co. v. Cherry, (1917) 244 U.S. 25, 37 Sup. Ct. 492, 61 L.Ed. 966; Baldwin v. Iowa State Traveling Men's Association, (1931) 283 U.S. 522, 51 Sup. Ct. 517, 75 L.Ed. 1244; American Surety Co. v. Baldwin, (1932) 287 U.S. 156, 53 Sup. Ct. 98, 77 L.Ed. 231; see, Note, (1933) 42 Yale L. J. 427.
9. Treinies v. Sunshine Mining Co., (1939) 308 U.S. 66, 60 Sup. Ct. 44, 84 L.Ed. 85; Sunshine Anthracite Coal Co. v. Adkins, (1940) 310 U.S. 381, 60 Sup. Ct. 907, 84 L.Ed. 1254; Jackson v. Irving Trust Co., (1941) 311 U.S. 494, 61 Sup. Ct. 326, 85 L.Ed. 297; see, Roche v. Evaporated Milk Ass'n, (1943) 319 U.S. 21, 26, 63 Sup. Ct. 938, 941, 87 L.Ed. 1190; Prudence Realization Corporation v. Ferris, (1945) 323 U.S. 650, 654, 655, 65 Sup. Ct. 539, 541, 89 L.Ed. 533.
10. (1940) 308 U.S. 371, 60 Sup. Ct. 317, 84 L.Ed. 329.
11. (1940 308 U.S. 433, 60 Sup. Ct. 343, 84 L.Ed. 370. For a somewhat different concept of the theory of this and other cases cited herein, see, Frederick Green, Res Judicata and its Applicability to Judgments, (1944) 28 Minn. L. R. 77.
12. (1940) 309 U.S. 506, 60 Sup. Ct. 653, 84 L.Ed. 894.

Armour & Co.[13] seems to except adjudications of federal removal jurisdiction from the recent doctrine of extension of res judicata to jurisdictional fields.

The above cases considered the applicability of res judicata only to adjudications in which the first court had assumed jurisdiction in favor of plaintiff. The instant decision seems to sanction the application of res judicata principles to adjudications in which the first court denied itself jurisdiction over plaintiff's contention that the court was compelled, by federal considerations, to exercise jurisdiction over the subject matter. The instant case would thus seem to present a new concept, but it is submitted that the foreging line of cases, so far as they extend res judicata to jurisdictional issues, are at least of persuasive authority in support of the instant case.

The decision of the instant case was restricted by invoking the doctrine of *Erie Railroad v. Tompkins*,[14] which held that, as to federal courts, "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the state . . ." The doctrine of the *Erie* case was subsequently extended by the decision in *Guaranty Trust Co. v. York*,[15] which held that federal courts sitting in equity, in diversity cases, could not grant relief when the local state courts were precluded from doing so by a state statute of limitations, because "a statute that would completely bar recovery in a suit if brought in a State court bears on a State-created right vitally and not merely formally or negligibly. As to consequences that so intimately affect recovery or non-recovery a federal court in a diversity case should follow State law." The predominant theme of both the *Erie* case and the *York* case seems to be that there can be no harmonious reign of law if courts having concurrent territorial jurisdiction may follow separate, and often differing, systems of justice.[16] It may be argued, however, that in cases such as the instant one, in which conflict of laws questions are involved, the last mentioned policy should perhaps be outweighed by a countervailing policy—viz., that the very purpose for which diversity of citizenship jurisdiction was granted to federal courts was to afford an impartial tribunal free from local prejudices, and this policy should not be defeated by perpetuating in the federal system an accepted infirmity of the prevailing conflict of laws system which permits a state to refuse relief when suit is brought in its courts on a foreign cause of action.[17]

It should be noted, however, that the decision of the instant case is narrowly limited by the facts of the case. Because of the fusion of the res judicata doctrine with the doctrine of the *Erie* case, the case cannot be said to be authority for the application of the doctrine of res judicata except when the subsequent action is brought in a *local* federal court after the state court has dismissed, for lack of jurisdiction over the subject matter, an action in which federal issues

13. (1940) 311 U.S. 199, 61 Sup. Ct. 213, 85 L.Ed. 124; see, Comment, (1941) 25 Minn. L. Rev. 531.
14. (1938) 304 U.S. 64, 78, 58 Sup. Ct. 817, 822, 82 L.Ed. 1188, 114 A.L.R. 1487.
15. (1945) 326 U.S. 99, 108, 65 Sup. Ct. 1464, 1470, 89 L.Ed. 2079, 160 A.L.R. 1231.
16. Lehan Kent Tunks, Categorization and Federalism: "Substance" and "Procedure" After Erie Railroad v. Tompkins, (1939) 34 Ill. L. Rev. 271, 278.
17. Paul A. Wolkin, Conflict of Laws in the Federal Courts: The Erie Era, (1946) 94 U. of Pa. L. R. 293.

were raised. This qualification of the decision would seem to present another interesting problem, in view of the commonly accepted concept that if a former adjudication is held to be a bar to the prosecution of a subsequent action, it bars the subsequent action in every forum, whether that of a sister state or of the federal system.[18]

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LIABILITY OF AN INSURER FOR MORE THAN THE POLICY LIMITS

Defendant issued an insurance policy to plaintiff indemnifying it against loss to anyone injured in the operation of plaintiff's trucks. One of the trucks injured a minor child and a suit was brought against this plaintiff on behalf of the child and another suit on behalf of the child's father. Before the trial, insurer refused to accept an offer of settlement for $5500 which was within the policy limit of $10,000. The insurance company stated that it would only be liable for $5000 in any event, since it was reinsured for $5000, and refused to pay more than $4250 toward settlement, the balance of $1250 to be paid by the insured, which the latter refused to do. Plaintiff in the instant suit introduced evidence showing that the insurance company thought that this was a good offer of settlement in view of the serious injuries sustained by the child. Upon trial, verdict in excess of the policy limit was given, and again an offer to settle within the amount of the policy if no appeal was prosecuted was refused by the insurer. The plaintiff contends that insurer is liable for the total amount of the judgment. The lower court dismissed plaintiff's petition. *Held,* by the Court of Appeals of Ohio that judgment is reversed and remanded for further proceedings. An insurance company owes the duty of acting in good faith in conducting the settlement of claims within the limits of the insurance policy, and the negligent failure to settle may render insurer liable for the total judgment recovered against insured. *J. Spang Baking Co. v. Trinity Universal Ins. Co.,* (Ohio 1946) 68 N.E. (2d) 122.

A number of cases are in accord with the above decision in holding that the mere negligence of an insurer in failing to settle a claim within the amount of the policy will make the insurer liable for the total amount of the judgment although it exceeds the limitation of the policy.[1] The courts base their decisions on the ground that an insurer cannot act arbitrarily in refusing to make a settlement in absence of an explicit contract to that effect,[2] but must settle if that is

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18. See Chicago Cemetery Ass'n v. United States, (N.D. Ill 1937) 19 F. Supp. 228, 229; Bluefields S. S. Co., Limited v. United Fruit Co., (C.C.A. 3rd, 1917) 243 Fed. 1, 9; Weigley v. Coffman, (1891) 144 Pa. St. 489, 22 Atl. 919.

1. Cavanaugh Bros. v. General Accident Fire & Life Assur. Corp. (1919) 79 N.H. 186, 106 A. 604; Attleboro Mfg. Co. v. Frankfort Marine, Accident & Plate Glass Ins. Co., (1917) 153 C.C.A. 377, 240 F. 573; Douglas v. United States Fidelity & Guaranty Co., (1924) 81 N.H. 371, 127 A. 708, 37 A.L.R. 1477.

2. See, Douglas v. United States Fidelity & Guaranty Co., (1924) 81 N.H. 371, 127 A. 708, 37 A.L.R. 1477.