**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

| | | |
|---|---|---|
| WILLIAM METCALF T/A EURO CLASSICS, | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellant | : | |
| | : | |
| v. | : | |
| | : | |
| | : | |
| JEEVE TRIKA, | : | |
| | : | |
| Appellee | : | No. 1206 MDA 2013 |

Appeal from the Order May 22, 2012
In the Court of Common Pleas of Lycoming County
Civil Division No(s).: 11-02062

BEFORE: ALLEN, LAZARUS, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED JULY 07, 2014**

Appellant, William Metcalf T/A Euro Classics, appeals from the order entered in the Lycoming County Court of Common Pleas granting summary judgment in favor of Appellee, Jeeve Trika. Appellant contends the trial court erred in granting the motion for summary judgment based upon *res judicata*. We affirm.

This Court summarized the facts of this case in the prior appeal.

> Appellee lives in the state of Indiana and owns a Porsche replica. Appellant owns a business in Williamsport, Pennsylvania, where he, *inter alia*, builds replica automobiles. He built Appellee's Porsche replica. In the fall of 2010, Appellee damaged his Porsche and

* Former Justice specially assigned to the Superior Court.

> attempted to have it repaired in Indiana. He, however, eventually had it delivered to Appellant's place of business for repairs. Appellee filed a lawsuit in Indiana against a former mechanic and requested an estimate from Appellant to use in that case. Appellant provided an estimate. Appellant, however, advised Appellee that Appellant needed additional parts to repair the vehicle. Appellee subsequently sent $3,000 to Appellant. However, the additional costs, including storage costs, exceeded the $3,000.00 payment, and Appellee has refused to make any additional payments to Appellant. Appellant claimed damages in excess of $15,000.00.
>
> Appellee initially responded to the complaint by filing an answer, New Matter, and Counterclaim. Appellee claimed, *inter alia*, that he filed suit against Appellant in Indiana. According to Appellee, Appellant failed to appear for the case, and the Indiana court granted Appellee's request for possession of the Porsche and entered a default judgment in the amount of $3,000.00. In the New Matter, Appellee maintained, *inter alia*, that the doctrines of accord and satisfaction, *res judicata*, and estoppel barred Appellant's claims. In his Counterclaim, Appellee averred that Appellant breached the parties' agreement to repair the vehicle for $3,000.00. He further contended that Appellant has wrongfully retained the vehicle. Appellee asked that the court award him immediate possession of the vehicle, $3,000 for the payments Appellee made to appellant, and attorney's fees.
>
> After Appellant filed a response to Appellee's New Matter and counterclaim, Appellee filed a motion for summary judgment. . . . Appellee argued that the doctrine of accord and satisfaction, *res judicata*, and estoppel barred Appellant's claims. . . .

***Trika***, 1138 MDA 2012 at *1**-***3.

Appellant admitted that Appellee sent his car to him. ***See*** Appellant's Resp. to Appellee's New Matter and Answer to Counterclaim, 1/11/12, at 1. Appellant concedes that he "failed to appear in Indiana . . . ." ***Id.*** at 2. It is

undisputed that Appellee filed a civil complaint for immediate possession of his car and judgment in the amount of $3,000 in Indiana. Appellant's Resp. to Appellee's Mot. for Sum. Judg., 5/1/12, 1. Appellant did not answer the complaint filed by Appellee in Indiana.

On May 22, 2012, the trial court granted Appellee's motion for summary judgment. On June 21, 2012, Appellant filed a notice of appeal from the May 22, 2012 order. This Court quashed the appeal on November 19, 2012 because the trial court's order did not dispose of Appellee's counterclaim. We found that the order granting summary judgment was not a final order. ***William Metcalf T/A Euro Classics v. Jeev Trika***, 1138 MDA 2012 (unpublished memorandum at *4) (Pa. Super. Nov. 19, 2012). On June 6, 2013, Appellee withdrew the counterclaim. Thus, the instant appeal filed on Monday July 8, 2013 was timely. ***See*** 1 Pa.C.S. § 1908 (providing that when last day of any period of time referred to in any statute falls on Saturday, Sunday, or legal holiday, such day shall be omitted from computation). Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. On July 16, 2013, the trial court filed a Pa.R.A.P. 1925(a) opinion incorporating its May 22, 2012 opinion.

Appellant raises the following issue for our review:

> 1. Whether a foreign judgment that is not transferred to Pennsylvania and entered as a judgment can act as *res judicata* of a claim pending in the Commonwealth of Pennsylvania?

Appellant's Brief at 2.[1]

Appellant argues that the doctrine of *res judicata* should not bar his claim in Pennsylvania for additional costs to repair the vehicle and storage fees because the state of Indiana did not have jurisdiction over him in Appellee's action. ***Id.*** at 5. Appellant contends the trial court erred in granting summary judgment based upon *res judicata* in the absence of an inquiry into the validity of the judgment entered in Indiana, based upon lack of *in personam* jurisdiction.[2] ***Id.*** at 6.

> On appellate review, a trial court's grant of a motion for summary judgment will only be disturbed upon a finding that a genuine issue of material fact exists or where the moving party was not entitled to such a judgment as a matter of law. In conducting our review, the record must

---

[1] Notwithstanding Appellant's statement of the issue, he avers

> it should be noted that the purported judgment from Indiana has never been transferred to the Commonwealth of Pennsylvania and specifically, not to Lycoming County where the underlying action in this matter was filed. Therefore, this case does not involve the interpretation of whether [Appellant] is barred from challenging the judgment under the Uniform Enforcement of Foreign Judgment Act (42 Pa.C.S. § 4306(b)) but rather, whether *res judicata* should bar his claim in the commonwealth of Pennsylvania.

***Id.*** at 5.

[2] Appellant contends "[a] summary judgment motion is not the proper avenue to raise the defense of *res judicata*. *Res judicata* is an affirmative defense that must be pled in new matter." ***Id.*** at 6. This claim is unavailing because Appellant raised the defense of *res judicata* in new matter. ***See*** Answer, New Matter and Counterclaim, 12/28/11, at 4 ¶ 32.

> be construed in a light most favorable to the non-moving party and any doubt as to the existence of a genuine issue of material fact must be construed against the moving party. We review pure matters of law *de novo*.

***Wilkes ex rel. Mason v. Phoenix Home Life Mut. Ins. Co***., 902 A.2d 366, 375 (Pa. 2006) (citations omitted).

As a prefatory matter, we consider whether to apply Pennsylvania or Indiana's doctrine of *res judicata*.

> This Court's precedent on the question of which jurisdiction's *res judicata* doctrine should prevail in an instance in which the prior lawsuit arose in another jurisdiction has been unclear. For example, in ***Commonwealth ex. rel. McClintock v. Kelly***, 287 Pa. 139, 134 A. 514, 516 (1926), this Court applied its own *res judicata* doctrine to decide if the decision of a Maryland court should be provided *res judicata* effect. Nearly a half century later, however, this Court gave *res judicata* effect to an Ohio judgment without applying Pennsylvania *res judicata* doctrine; there we rejected a challenge to the validity of an Ohio divorce decree. ***Barnes v. Buck***, 464 Pa. 357, 346 A.2d 778, 782 & n. 11 (1975). Although each opinion cites to the U.S. Supreme Court's Full Faith and Credit Clause jurisprudence, ***McClintock***, 134 A. at 515-16; ***Barnes***, 346 A.2d at 781, different approaches were ultimately employed in the two cases.
>
> The divergence in view found in this Court's precedent is mirrored in the academic authority which exists on the question. Thus, some commentators have argued that the Full Faith and Credit Clause does not dictate that courts must employ the foreign state's *res judicata* doctrine in cases such as this. ***See***, e.g., Howard M. Erichson, Interjurisdictional Preclusion, 96 Mich. L. Rev. 945 (1998) (analyzing different approaches to choice of law issue). It also has been argued that no authority precludes a state from using its own *res judicata* analysis when that state's preclusion law would give at least as much, or more, preclusive effect as the out-of-state court's law would mandate. ***E.g.***, Comment, Gregory S. Getschow, If At

First You Do Succeed: Recognition of State Preclusion Laws in Subsequent Multistate Actions, 35 Vill. L. Rev. 253, 276 (1990); ***see also*** Gene R. Shreve, Preclusion and Federal Choice of Law, 64 Tex. L. Rev. 1209, 1227-28 (1986) (discussing ability of federal courts to give greater preclusive effect to state court judgments). Finally, it has been argued that differing circumstances may warrant a court in declining to follow an immutable rule that the out-of-state's *res judicata* analysis must be used in every case. 188 Alan Wright *et al*., Federal Practice and Procedure § 4467 (2d ed. 2002) (providing several examples of when it may be wise to depart from *res judicata* rules of out-of-state court).

On the other hand, there is ample authority weighing in favor of the proposition that the court should apply the *res judicata* law of the state that rendered the prior judgment. For example, the Restatement (Second) of Conflicts provides as follows:

> When a court has jurisdiction over the parties, the local law of the State where the judgment was rendered determines, subject to constitutional limitations, whether the parties are precluded from collaterally attacking the judgment on the ground that the court had no jurisdiction over the thing or status involved or lacked competence over the subject matter of the controversy.

Restatement (Second) of Conflicts of Laws § 97 (1998). In addition, it is certainly safe to say that the U.S. Supreme Court and several state courts have generally applied the *res judicata* doctrine of the court where the judgment under collateral attack was rendered to determine if and when a collateral attack on that judgment is permissible. ***See***, e.g., ***Migra v. Warren City School District Board of Education***, 465 U.S. 75, 87, 104 S. Ct. 892, 899, 79 L. Ed. 2d 56 (1984) (remanding to District Court to apply Ohio claim preclusion law); ***Omega Leasing Corp. v. Movie Gallery, Inc.***, 859 So.2d 421, 424 (Ala. 2003) (looking to Virginia law to determine if judgment was final); ***O'Connell v. Corcoran***, 1 N.Y.3d 179, 770 N.Y.S.2d 673, 676, 802 N.E.2d 1071 (2003) (according preclusive effect to Vermont divorce decree based on

> Vermont's *res judicata* law); ***Jordache Enters., Inc. v. Nat'l Union Fire Ins. Co.***, 204 W.Va. 465, 513 S.E.2d 692, 703 (1998) ("the full faith and credit clause generally requires the courts of this State to give the New York judgment at least the res judicata effect which it would be accorded by the New York courts"); ***Smith v. Shelter Mut. Ins. Co.***, 867 P.2d 1260, 1265 (Okla. 1994) (applying Arkansas claim preclusion law); ***Nottingham v. Weld***, 237 Va. 416, 377 S.E.2d 621, 623 (1989) (holding that Virginia courts must give federal court judgment same preclusive effect federal court would have given that judgment). ***But see***, e.g., ***Ditta v. City of Clinton***, 391 So. 2d 627, 629 (Miss. 1980) (applying preclusion law of Mississippi where Louisiana judgment was argued to have preclusive effect); ***Finley v. Kesling***, 105 Ill. App. 3d 1, 60 Ill. Dec. 874, 433 N.E.2d 1112, 1117 (1982) (declining to apply collateral estoppel rules of Indiana).

***Id.*** at 376-77.

Instantly, the parties have not raised the issue of whether Pennsylvania or Indiana law on *res judicata* applies in this case. The instant claim, however, would be barred under either Indiana's or Pennsylvania's doctrine of *res judicat*a.

This Court has stated:

> The doctrine of *res judicata* has been judicially created. It reflects the refusal of the law to tolerate a multiplicity of litigation. It holds that "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." "'The original cause is "barred" by a judgment for the defendant and "merged" in one for the plaintiff. [The doctrine] forbid[s] relitigation of matters actually decided, on the ground that there is no assurance the second decision will be more correct than the first. **Moreover, a party is commonly 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.'" For the doctrine of *res judicata* to prevail there must be a concurrence of four conditions: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or sued. "The doctrine of *res judicata* applies to and is binding, not only on actual parties to the litigation, but also to those who are in privity with them. A final valid judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies on the same cause of action."

***Day v. Volkswagenwerk Aktiengesellschaft***, 464 A.2d 1313, 1316-17 (Pa. Super. 1983) (citations omitted and emphasis added).

In Indiana, the court applies the doctrine as follows:

> *Res judicata* serves to prevent repetitious litigation of disputes that are essentially the same. "Nor are the *res judicata* consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case." To hold otherwise would constitute an "unprecedented departure from accepted principles of *res judicata*."
>
> The doctrine of *res judicata* consists of two distinct components, claim preclusion and issue preclusion.
>
> Claim preclusion is applicable when a final judgment on the merits has been rendered and acts to bar a subsequent action on the same claim between the same parties. **When claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action.** Claim preclusion applies when the following four factors are present: (1) the former judgment was rendered by a court of competent jurisdiction; (2) the former judgment was rendered on the merits; (3) the matter now at issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former

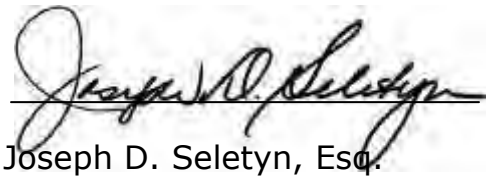
> action was between parties to the present suit or their privies.

***Perry v. Gulf Stream Coach, Inc.***, 871 N.E.2d 1038, 1048 (Ind. App. 2007) (citations omitted and emphasis added); ***accord Luxury Townhomes, LLC v. McKinley Properties, Inc.***, 992 N.E.2d 810 (Ind. App. 2013).

Instantly, the trial court reasoned "[w]ith respect to the issue of *res judicata*, however, the court does find [Appellant's] claim for storage fees to be barred by that doctrine. . . . He should have brought that claim in the Indiana lawsuit." Trial Ct. Op. at 1-2. We agree. Appellant's claim is barred based upon the doctrine of *res judicata*. ***See Perry***, 871 N.E.2d at 1048; ***Day***, 464 A.2d at 1316-17.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/7/2014