KATHLEEN G. SHAZES, Plaintiff, v. MICHAEL J. SHAZES, Defendant, in the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Docket No. 1999-20685

Preliminary objections to a complaint sounding in breach of contract and fraud based on doctrine of res judicata. Demurrer sustained and complaint dismissed with prejudice.

1. The doctrine of res judicata precludes a party from litigating previously adjudicated claims.

2. The doctrine applies where the former and latter suits possess the following common elements: (a) identity in things sued upon; (b) identity in the causes of action; (c) identity of persons and parties to the action; (d) identity of the capacity of the parties suing or being sued.

3. Where a plaintiff brings an action sounding in breach of contract, fraud and estoppel alleging ownership of property under an antenuptial agreement between herself and her ex-husband, and the court previously addressed the agreement in ordering equitable distribution in the context of a prior domestic relations action between the same parties, the plaintiff's tort and breach of contract action must be dismissed under the doctrine of res judicata.

Appearances:
Kathleen G. Shazes, for herself
Janice M. Hawbaker, Esq., counsel for the defendant

OPINION AND ORDER

Herman, J., September 19, 2000

Introduction

Before the court is defendant's preliminary objection in the nature of a demurrer to plaintiff's complaint. The objection is based on the defense of res judicata. The parties submitted briefs and argument was held on July 6, 2000. For the reasons which follow, we sustain the demurrer and dismiss the complaint.

Background

The parties married in 1976 and separated in September 1992. Litigation over divorce and property matters ensued in this court for the next four years. The court on March 14, 1997, ruled the majority of disputed assets were plaintiff/wife's separate property under a July 16, 1992, postnuptial agreement and were not subject to equitable distribution. We held the remaining assets were marital and should be divided 40 percent to plaintiff/wife and 60 percent to defendant/husband.

Both parties filed an appeal to the Superior Court alleging, among other things, that we erred in distributing defendant's pension according to the immediate offset method rather than the deferred distribution method. The Superior Court affirmed our ruling on May 22, 1998. Plaintiff's petition for allocatur was denied by the Pennsylvania Supreme Court. She filed for a writ of certiorari with the United States Supreme Court which was denied on or about April 19, 1999, rendering our March 14, 1997, Order a final Order. Plaintiff then filed an action in the United States District Court for the Eastern District of Pennsylvania which was dismissed by the Honorable J. Curtis Joyner on December 20, 1999, for lack of subject matter jurisdiction.

The instant action filed December 28, 1999, avers breach of agreement, fraud and estoppel. Count one alleges defendant breached the July 16, 1992, postnuptial agreement which provided plaintiff "owns everything that is in the house and around the house." According to plaintiff this provision gave her sole ownership of all those assets which eventually became the subject of the property distribution, including certificates of deposit, savings bonds, stocks, insurance policies, 401(k) funds and bank accounts. (Complaint, paragraph 15.)

Count two, also labeled "breach of agreement," alleges defendant through his counsel represented to Superior Court that the parties agreed the deferred distribution of defendant's pension was preferable to the immediate offset method of distribution imposed by the court. Plaintiff alleges Superior Court, based on the parties being of one mind on this issue, declined to examine the merits of those two pension distribution methods or to rule on whether we erred in our approach to that asset. The "breach" occurred when defendant's counsel did not contact plaintiff to work out a modification of this court's March 14, 1997, Order. These averments also form the basis for count three sounding in fraud and count four sounding in estoppel. Plaintiff demands all the assets listed in postnuptial agreement, a qualified domestic relations Order to implement the deferred distribution of defendant's pension, interest and increased value of those assets, compensatory damages, attorney's fees, costs and expenses in excess of $75,000.[1]

[1] The defendant initially filed two preliminary objections, the first being a request to dismiss the complaint for improper service. The defendant withdrew this objection at argument and now pursues only the remaining objection in the nature of a demurrer based on the doctrine of res judicata. Consequently we need not address the service issue.

In addition plaintiff objects to defendant raising the defense of res judicata in preliminary objections and not in new matter. Where a complaint sets forth in detail the essential facts and issues at issue in the prior action, the defense of res judicata may be raised through preliminary objections. *Del Turco v. Peoples Home Sav. Association*, 478 A.2d 456 (Pa.Super. 1984). Plaintiff pleads in the instant complaint that "this cause of action resulted from proceedings previously filed in this Court in case No. F.R. 1992-970" (Complaint, paragraph 4) and therefore defendant's raising of res judicata via preliminary objections is appropriate. We further note that this court can take judicial notice of the entire record in F.R. 1992-970 because plaintiff herself refers in detail to that case in her current action and incorporates it by reference. *The 220 Partnership v. Philadelphia Electric Co.*, 650 A.2d 1094 (Pa.Super. 1994).

Discussion

A demurrer should be sustained where, considering all well-pleaded, material and relevant facts and every inference deducible from those facts, it is clear no recovery is possible under any theory of law. Any doubt as to whether the demurrer should be sustained must be resolved in favor of the nonmoving party. *Willet v. Pennsylvania Medical Catastrophic Loss Fund*, 702 A.2d 850 (Pa.1997).

Defendant argues the complaint should be dismissed because plaintiff is trying to relitigate claims and issues which have already been litigated in the domestic relations action. The doctrine of res judicata precludes a party from litigating previously adjudicated claims:

> Where there has been previously rendered a final judgment on the merits by a court of competent jurisdiction, the doctrine of res judicata will bar any future suit on the same cause of action between the same parties...Invocation of the doctrine of res judicata (claim preclusion) requires that both the former and latter suits possess the following common elements: (1) identity in things sued upon; (2) identity in the cause of action; (3) identity of persons and parties to the action; and (4) identity of the capacity of the parties suing or being sued.

Chada v. Chada, 756 A.2d 39, 41-42 (Pa.Super. 2000), citing *Matternas v. Stehman*, 642 A.2d 1120, 1123 (Pa.Super. 1994). Plaintiff does not dispute the parties are identical and are proceeding in the same capacity as in the first suit — as individuals. What we must decide is whether the things being sued upon and the causes of action are identical to those in the domestic relations case.

Plaintiff alleges in count one (breach of agreement) she is entitled to certain assets based on the postnuptial agreement which provided she "owns everything that is in the house and around the house." Clearly these were the same assets in controversy in the domestic relations action. Simply relabeling her claim as a "breach of agreement" does not preclude it from being a target for a demurrer based on res judicata where plaintiff herself admits "this cause of action resulted from proceedings previously filed in this Court in case No. F.R. 1992-970." (Complaint, paragraph 4.) This same result applies to the remaining counts. Labeling them as breach of agreement, fraud and estoppel cannot disguise the fact that plaintiff's true objective in bringing this action is to relitigate ownership of the identical assets already adjudicated in the domestic relations case.

In *Chada*, supra, the parties litigated ownership of a parcel of real estate during their divorce action and reached a final settlement. The plaintiff later filed an action sounding in breach of contract and fraud to recover that same parcel of real estate. The Superior Court, refusing to be distracted by the labels placed on the counts by the plaintiff, held the second action was barred by res judicata. Couching the claims in different language could not disguise the fact that the plaintiff's purpose was to relitigate ownership of an asset where such ownership had already been adjudicated. "We cannot and will not elevate form over substance." *Id.* at 43. "The form in which two actions are commenced does not determine whether the causes of action are identical." *Id.* at 44, citing *Dempsey v. Cessna Aircraft Co.*, 653 A.2d 679, 682 (Pa.Super. 1995), appeal denied.

We likewise refuse to elevate form over substance in determining whether plaintiff's claims are barred by res judicata. That doctrine clearly applies to preclude plaintiff from claiming in count one that those assets ruled to be marital and distributed to defendant are actually her sole property under the postnuptial agreement. The doctrine also applies to the remaining counts. Plaintiff argues counts two, three and four are not subject to dismissal because they arise from circumstances post-dating the March 14, 1997, Order. We find her argument disingenuous insofar as those counts have no independent basis of their own but are wholly dependent upon whether count one withstands dismissal. Plaintiff is not entitled to proceed with such meritless claims simply because she disagrees with the property distribution scheme ordered by this court.

Plaintiff further argues defendant cannot raise the doctrine of res judicata as a defense to the current complaint because the federal court already ruled that doctrine does not apply. She also alleges Judge Joyner dismissed the federal action without prejudice to allow her to bring an action in this court so that we may "fix the problems that occurred in this case." (Complaint, paragraph 7.) This is a complete mischaracterization of Judge Joyner's decision which reads as follows:

> Federal courts lack subject matter jurisdiction over domestic relations matters...The case is...dismissed without prejudice for lack of subject matter jurisdiction. Because dismissal is without prejudice, this Order will not preclude plaintiff from further state court proceedings — **if she is not completely precluded from further litigating this matter, an issue on which this Court takes no position.**

(Order of Court entered December 20, 1999, by J. Curtis Joyner, exhibit E of plaintiff's motion for summary judgment, emphasis supplied.) As is clear from the plain language of the Order, the federal court did not even reach the issue of whether res judicata applied to plaintiff's action because she was in the wrong court in the first place and had no right to argue her domestic relations claims before a court lacking jurisdiction to consider them. Furthermore, nowhere in his Order does Judge Joyner state or even imply there are in fact problems with the domestic relations case which need to be "fixed." That false rendition is simply a reflection of plaintiff's ongoing dissatisfaction with our March 14, 1997, Order. Defendant's demurrer will be sustained and the complaint dismissed.

In response to defendant's preliminary objections, plaintiff filed a motion for summary judgment. The court issued an Order on May 2, 2000, staying consideration of the (premature) motion because defendant's preliminary objections had not yet been argued and ruled upon. On June 2, 2000, plaintiff filed a motion to dismiss the preliminary objections, raising the same claims and arguments already set out in the complaint and the motion for summary judgment. We issued an Order on June 12, 2000, staying consideration of the motion to dismiss insofar as the preliminary objections were set for oral argument on July 6, 2000, and all arguments would be addressed at that time.

In addition to the motion to dismiss, plaintiff filed a petition on June 2, 2000, alleging defendant was in contempt of Judge Joyner's Order by raising the defense of res judicata. The petition also alleged defendant was in contempt of our May 2, 2000, stay Order by attempting to enforce the March 14, 1997, Order by sending her a check on May 22, 2000, for amounts we directed him to pay under the 1997 Order. On June 12, 2000, we issued an Order staying consideration of the petition until such time as we ruled on the preliminary objections.

This court's decision to sustain the defendant's demurrer on grounds of res judicata and the dismissal of the instant complaint carries with it a denial of the motion for summary judgment and the motion to dismiss. As for the petition for contempt, we summarily dismiss that petition because its averments do not constitute prima facie grounds for a finding of contempt insofar as they rely on claims and arguments appearing in the instant complaint which we have determined plaintiff is not entitled to pursue as a matter of law.[2]

[2] We are constrained to point out that plaintiff's claim for attorney's fees in connection with this action is without merit insofar as she is proceeding pro se.

ORDER OF COURT

Now this 19th day of September 2000, the preliminary objection in the nature of a demurrer filed by defendant to plaintiff's complaint is hereby sustained with prejudice. The plaintiff's motion for summary judgment, motion to dismiss preliminary objections, and petition for contempt are hereby denied with prejudice.