

**NO. 20-6359-16**

<b>AERO VALLEY PROPERTY OWNERS ASSOCIATION</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	<b>16<sup>TH</sup> JUDICIAL DISTRICT</b>
	§	
<b>CHARLES GLEN HYDE; CANDACE HYDE; DREAMSHIPS, INC.; HYDE-WAY, INC.; AND TEXAS AIR CLASSICS, INC.</b>	§	
<b>Defendants.</b>	§	<b>OF DENTON COUNTY, TEXAS</b>

**PLAINTIFF’S BRIEF IN SUPPORT OF TEMPORARY INJUNCTION**

Plaintiff Aero Valley Property Owners Association files this Brief in Support of Plaintiff’s Application for Temporary Injunction and to address the Court’s inquiry regarding the application of Defendants’ affirmative defenses of res judicata and collateral estoppel.

Both res judicata and collateral estoppel are common-law claim and issue preclusion principles derived from the overriding concept of judicial economy, consistency, and finality. The doctrines can apply to both the factual and legal questions that must be resolved in a legal action. Neither res judicata nor collateral estoppel bar the POA’s request for a temporary injunction against Hyde or trial on the merits as the analysis below will show.

**Collateral Estoppel:** The essential elements of collateral estoppel are: (1) the facts sought to be litigated in the second action were fully and fairly litigated in the prior action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *Cole v. G.O. Assocs., Ltd.*, 847 S.W.2d 429, 431 (Tex. App.—Fort Worth 1993, writ denied). Hyde cannot satisfy the first element. Hyde admitted in the injunction hearing that his northeast property is subject to the AVDCO restrictions. Neither the POA nor Hyde sought to

litigate the validity of the AVDCO restrictions in the prior action because all parties acknowledged them as valid.

The validity of the AVDCO restrictions was a fundamental assumption of the prior action and remains a fundamental assumption in this action. Neither the POA nor Hyde has challenged their validity. The issue before the Court now is what those restrictions mean by the ACC being given the right to govern the common areas. Whether the AVDCO restrictions are valid and the meaning of those restrictions was not fully and fairly litigated in the prior action. Therefore, collateral estoppel does not apply.

**Res judicata:** For res judicata to apply, the following elements must be present: (1) a prior final judgment on the merits by a court of competent jurisdiction, (2) the same parties or those in privity with them, and (3) a second action based on the same claims as were raised or could have been raised in the first action. *New Talk, Inc. v. Sw. Bell Tel. Co.*, 520 S.W.3d 637, 645 (Tex. App.—Fort Worth 2017, no pet.). Again, Hyde cannot satisfy the first issue, but focuses on the third issue, arguing that the POA could have litigated the validity of the AVDCO restrictions in the first action. This argument has no merit.

Texas follows the transactional approach to res judicata. *Note Inv. Grp., Inc. v. Assocs. First Capital Corp.*, 83 F. Supp. 3d 707, 725 (E.D. Tex. 2015) (citations omitted). “A subsequent suit is barred if it arises out of the same subject matter as the prior suit, and that subject matter could have been litigated in the prior suit.” *Id.* “A determination of what constitutes the subject matter of a suit necessarily requires an examination of the factual basis of the claim or claims in the prior litigation” as well as “an analysis of the factual matters that make up the gist of the complaint, without regard to the form of action.” *Id.* (quoting *Barr v. Resolution Trust Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 629 (Tex. 1992)). “This determination should be made

‘pragmatically ....’ *Id.* (citations omitted). “Any cause of action which arises out of those same facts should, if practicable, be litigated in the same lawsuit.” *Id.* (citations omitted). The policies behind this doctrine “reflect the need to bring all litigation to an end, prevent vexatious litigation, maintain stability of court decisions, promote judicial economy, and prevent double recovery.” *Id.* at 239.

Here, the subject matter before the court in the first action was the Integrated Deed Restrictions (“IDRs”). And the only facts in question and litigated were whether the POA acquired enough signatures to adopt the IDRs throughout the airport. This analysis necessarily required that the AVDCO restrictions were, in fact, valid. The number of signatures received versus the number required exhausted the factual matters that made up the gist of the first litigation. Neither party cited any facts related to the validity of the AVDCO restrictions.

The POA made no claims and Hyde made no counterclaims regarding the validity of the AVDCO restrictions. The court of appeals in turn did not render a final judgment on the merits regarding the validity of the AVDCO restrictions. Instead, both parties assumed and relied on the validity of the AVDCO restrictions to support their respective claims regarding the validity of the IDRs. The POA did not make a claim regarding the validity of the AVDCO restrictions because to do so would have meant undermining the basis of the entire lawsuit.

“The general rule is that a claim which is subject to a future condition is not precluded under principles of res judicata.” *Valley Forge Ins. Co. v. Ryan*, 824 S.W.2d 236, 238 (Tex. App.—Fort Worth 1992, no writ.). Here, even if the POA could have raised the validity of the AVDCO restrictions in the prior litigation, that claim became subject to a future condition: that the IDRs were held invalid; thus, returning all airport properties to the deed restrictions that applied before the IDRs. Neither the POA nor Hyde disputes that the AVDCO restrictions apply.

The Fort Worth Court of Appeals has dealt with and denied res judicata under similar circumstances. In *Valley Forge Ins. Co.*, the court quoted the Texas Supreme Court's treatment of res judicata in *Griffin v. Holiday Inns of America*, 496 S.W.2d 535 (Tex. 1973):

The *Griffin* court expressly refused to hold that "a judgment in a suit on one claim or cause of action is necessarily conclusive of all claims and causes of action against the same party, or relating to the same property, or arising out of the same transaction." *Griffin*, 496 at 538. The court went on to say that most courts agree that a judgment is conclusive regarding all matters that were considered or should have been considered in the suit, but that the difficulty is in determining whether the subsequent suit is on the same or different cause of action. *Id.* (citations omitted).

In reviewing the supreme court's treatment of res judicata, it is apparent that the supreme court has applied the doctrine on a functional ad hoc basis. *Gilbert*, 611 S.W.2d at 874. However, there are general policies that the doctrine of res judicata is based upon which include: promotion of judicial economy and the stability of judgments; and the prevention of vexatious litigation, double recoveries, and inconsistent judgments. *Id.* at 877.

We find that allowing Valley Forge to litigate its subsequent suit for its rights to the amount paid to the mortgage company does not violate the policies underlying the doctrine of res judicata.

824 S.W.2d at 238. Here, the causes of action are fundamentally different between the first litigation and the second. In the first action, the POA asserted the validity of the IDRs. The IDRs were held to have been invalid based on the votes received by the POA. In this, the second action, the POA asserts authority under the AVDCO restrictions that both parties agree are valid. Only the scope of the restrictions may be in question. Hyde cannot meet the third element for reasons similar to why Ryan could not meet them in *Valley Forge Ins. Co.*

To apply res judicata to the validity of the AVDCO restrictions against the POA would mean that the POA cannot enforce the AVDCO restrictions simply because the POA did not raise their validity as a claim in the prior litigation. Doing so would undermine the POA's ability to enforce the AVDCO restrictions against Hyde and create a tidal wave of property owners refusing

to pay maintenance assessments. Then another tidal wave of litigation would follow. Justice would get cut off at the knees and none of the general policies on which res judicata is based would be served: “promotion of judicial economy and the stability of judgments; and the prevention of vexatious litigation, double recoveries, and inconsistent judgments.” *Id.*

The prior litigation did not resolve the controversy between the parties. Property owners are confused about who has the right to make assessments and manage the airport. The parties remain at odds about their respective rights and duties. If this matter is not heard, the controversy, confusion, and litigation will continue indefinitely. Instead of judicial economy, the opposite will occur. Thus, res judicata does not preclude the POA’s litigation against Hyde and request for temporary injunction.

Plaintiff respectfully requests that the Court grant the Temporary Injunction sought herein and for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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#### CERTIFICATE OF SERVICE

I certify that on November 12, 2020, I served a true and correct copy of the foregoing pleading on all counsel of record by electronic filing system.

/s/ Donna R. Hernandez