

NO. 20-6359-16

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

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: Res judicata will apply if the defendant can establish three elements: (1) a second action based on the same claims as were raised or could have been raised in the first action, (2) the same parties or those in privity with them, and (3) a prior final judgment on the merits by a court of competent jurisdiction. *New Talk, Inc. v. Sw. Bell Tel. Co.*, 520 S.W.3d 637, 645 (Tex. App.—Fort Worth 2017, no pet.). For purposes of res judicata, a claim and a cause of action are generally synonymous, e.g., negligence, breach of contract, deed restriction violation, etc. Hyde cannot satisfy the first or third elements, but he still focuses on the first, arguing that the POA could have litigated the validity of the AVDCO restrictions in the first action. This argument has no merit for the following reasons.

Hyde cannot establish the first element because the validity of the AVDCO restrictions is not a cause of action but rather a potential defense to a cause of action based on a deed restriction violation. In the previous litigation, the POA made no claims and Hyde made no counterclaims based on violation of the AVDCO restrictions. Furthermore, neither plaintiff nor defendants challenged their validity. Therefore, res judicata does not apply.

In some contexts, however, the validity of the AVDCO restrictions might be considered a cause of action. But *res judicata* still would not apply. Texas follows the transactional approach to *res judicata*. Under the transactional approach, the subject matter of a suit is based on “the factual matters that make up the gist of the complaint.” *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 630 (Tex. 1992). Any claim arising out of those facts should be litigated in the same suit. *Id.* “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.” *Note Inv. Grp., Inc. v. Assocs. First Capital Corp.*, 83 F. Supp. 3d 707, 725 (E.D. Tex. 2015) (citations omitted).

The factual matters that made up the gist of the POA’s complaint in the prior litigation consisted of the number of signatures the POA received to adopt the Integrated Deed Restrictions (“IDRs”) not the validity of the AVDCO restrictions. “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 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 at least regarding their amendment procedures. 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 in any respect.

The POA made no claims and Hyde made no counterclaims regarding the validity of the AVDCO restrictions. Both parties acknowledged that properties owners could amend 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. Questioning the validity of the AVDCO restrictions would have undermined the basis of the POA's entire lawsuit.

With the future condition of the IDRs held invalid, all properties fell back to previous valid restrictions. "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 made a claim regarding 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 number of signatures the POA received. In this, the second action, the POA asserts authority under the AVDCO restrictions that both parties already agreed are valid. Only the scope of the restrictions may be in question. Hyde cannot rely on res judicata for substantially the same reasons Ryan could not in *Valley Forge Ins. Co.*, i.e., allowing the suit to proceed would not violate any of the policies underlying the doctrine of res judicata.

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,

Law Office of Donna Hernandez

By: /s/ Donna R. Hernandez
Donna R. Hernandez
Texas Bar No. 03638600
610 Parker Square
Flower Mound, Texas 75028
Tel. (972)539-0090
Fax. (972)539-1464
Attorney for Plaintiff

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