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LITIGATION REVIEW



Recent Issues In Collateral Estoppel

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Recent cases in the state courts in Nassau and Suffolk counties, as well as in the U.S. District Court for the Eastern District of New York, have addressed evolving issues concerning the doctrine of collateral estoppel.

One issue is the extent to which criminal convictions may be used to bar a convicted defendant from relitigating issues in a subsequent civil proceeding arising from the same criminal conduct. Another is whether the courts will collaterally estop a party from relitigating issues where the prior judgment is the subject of a pending yet undecided appeal.

In *Crum & Foster Insurance Co. v. Goodmark Industries Inc.*, 488 F.Supp.2d 241 (E.D.N.Y. 2007), Eastern District Judge Arthur D. Spatt was faced with a motion by third-party defendants to dismiss a third-party complaint asserted by defendants who had been previously convicted of fraud in connection with submitting false insurance claims.

In the main action, the insurance company that had paid the insurance claims to defendants sought the return of such proceeds because the claims were fraudulently submitted. The defendants were convicted of various federal mail and wire fraud counts as well as money laundering based on the underlying scheme to defraud the insurance company by submitting fraudulent

claims for losses sustained as a result of a series of fires that occurred at the defendants' premises.

In the action by the insurance company against the insured/defendants, the defendants brought a third-party action against the insurance adjusters that they hired to submit the claims, alleging, in various causes of action, that if the claims were deemed to be fraudulent, the third-party defendant insurance adjusters allegedly bore responsibility for the submission of those fraudulent insurance claims or documentation.

The third-party defendant insurance adjusters moved to dismiss the third-party action, asserting, among other things, that the prior criminal conviction arising from the fraudulent insurance claims barred the defendants from "passing the buck" to the insurance adjusters in the civil proceeding.

In *Crum & Foster*, Judge Spatt noted that in federal court it is well settled that a "criminal defendant is barred from relitigating any issue determined adversely to him in the criminal proceeding" in a subsequent civil action (quoting *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 43 (2d Cir. 1986).)

The federal courts focus on four elements that must be satisfied in order to apply collateral estoppel: "(1) the issues in both proceedings must be identical, (2) the issue in the prior proceeding must have been actually litigated and actually decided, (3) there must have been a full and fair opportunity for litigation in the prior proceeding, and

(4) the issue previously litigated must have been necessary to support a valid and final judgment on the merits." *Gelb*, 798 F.2d at 44.

In *Crum & Foster*, the question was whether defendants' conviction arising from their submitting false and fraudulent insurance claims necessarily resolved the issue as to whether the third-party defendant insurance adjusters could be held responsible in whole or in part for submitting those fraudulent claims.

The defendants argued that the jury in the criminal proceeding never addressed whether the third-party defendants could have been partially responsible for the fraudulent claims. Judge Spatt nevertheless concluded that the prior criminal conviction conclusively resolved the issue as to whether the defendants were legally responsible for submitting the fraudulent claims — even though the complicity of others was not explicitly determined in the criminal case.

'Vita'

A similar issue arose in *Vita v. Spina*, 15 Misc.3d 1137(A), 2007 WL 1470390 (April 11, 2007), decided by Suffolk Supreme Court Justice Emily Pines ([See Profile](#)).

In *Vita*, plaintiff, the owner of a building and general store, sued the defendant for intentionally and criminally damaging the building by fire, seeking \$750,000 in damages. In addition to general denials, the defendant asserted an affirmative defense alleging that the damages were caused by the culpable conduct of the plaintiff.

As a result of the incident, defendant was arrested and indicted for third-degree arson under N.Y. Penal Law §150.05. Defendant ultimately pleaded guilty to the charge and, in his allocution, admitted that "he intentionally started a fire at the subject premises" and as a result thereof, "the fire recklessly damaged the property" owned by the plaintiff.

Plaintiff moved for summary judgment on the issue of liability, arguing that defendant was collaterally estopped from denying his legal responsibility for starting the fire and causing the damages.

In following the Court of Appeals decision in *S.T. Grand, Inc. v. City of New York*, 32 N.Y.2d 300, 344 N.Y.S.2d 938 (1973), Justice Pines held that "the doctrine of collateral estoppel applied to preclude a criminal defendant from relitigating issues in a civil action where (1) there was an identity of issue which has been necessarily decided in the prior action and is decisive of the present action; and (2) there was a full and fair opportunity to contest the decision now said to be controlling."

Justice Pines found that the defendant was collaterally estopped from relitigating his responsibility for the fire and resulting damages, notwithstanding the fact that plaintiff's alleged role in the occurrence had not been previously decided in the criminal proceeding.

The court found that the defendant had pleaded guilty to the applicable section of the Penal Law providing that "a person is guilty of arson in the fourth degree when he recklessly damages a building...by intentionally starting a fire or causing an explosion." Thus, there was an identity of issues in the criminal and civil actions in that the verified complaint alleged that the damage to the plaintiff's building was caused by the defendant's negligence, carelessness and recklessness.

Further, defendant's plea allocution satisfied the second prong of the collateral estoppel test in that he understood that his plea had the same effect as a conviction after trial and that he was giving up his right to have the prosecution prove its case against him beyond a reasonable doubt.¹

These recent cases show that defendants

previously convicted of specific statutory criminal violations are likely to be precluded from relitigating similar issues in subsequent civil proceedings arising out of the same criminal circumstances, even where the role of others or the precise wrongful acts have not been definitively decided in the prior criminal case.

Pending Appeals

In *Crum & Foster*, Judge Spatt applied collateral estoppel to the prior criminal conviction even though defendants' appeal of that conviction was pending when the motion to dismiss the subsequent civil case was brought. The state and federal courts in New York appear to deal with the pendency of an appeal of a prior judgment slightly differently for collateral estoppel purposes.

In its recent decision in *Industrial Risk Insurers v. Port Authority of New York and New Jersey*, ___ F.3d ___, 2007 WL 2007669 (July 12, 2007), the U.S. Court of Appeals for the Second Circuit acknowledged the apparently different manner in which the state and federal courts in New York deal with the pendency of an appeal on the issue of collateral estoppel.

The circuit noted that in federal court, federal law is applied "in determining the preclusive effect of a federal judgment and New York law [is applied] in determining the preclusive effect of a New York state court judgment." It then noted that under federal law, the pendency of an appeal generally does not alter the collateral estoppel effect of a judgment.

The circuit went on to observe that while New York authority suggests the same result, there are, nevertheless, "many New York cases suggesting caution in applying preclusion in such situations," where the courts have "given consideration" to the existence of an appeal in determining whether to apply collateral estoppel.

'Estate of Alexis'

In the recent decision in *In re Estate of Alexis*, 14 Misc.3d 379, 823 N.Y.S.2d 886 (2006), Nassau County Surrogate John B. Riordan ([See Profile](#)) addressed whether to apply collateral estoppel to a criminal conviction that was appealed

but not perfected. The court cited case law in which the courts observed that "[w]hile strict construction would hold that the pendency of an appeal does not affect the judgment's use of an estoppel...it would appear that the full and fair opportunity doctrine...requires the court to consider the existence of an appeal" before binding a party to the prior determination.

Surrogate Riordan noted that in one prior case, the court directed that the funds in question be held in escrow pending finalization of a judgment of murder after appeal. Although Surrogate Riordan did, therefore, acknowledge that the pendency of an appeal could have an effect on the extent to which the court would apply the doctrine of collateral estoppel, he ruled, nevertheless, that since the defendant had not perfected the appeal in 17 months and the time by which to do so had expired, the court would, indeed, give full effect to the prior criminal conviction and disqualify the decedent's spouse as a distributee of the decedent's estate without a separate hearing based on his prior conviction of murdering the decedent.

Insofar as a party must have had "a full and fair opportunity" to litigate an issue in the prior proceeding in order for collateral estoppel to apply, it does appear that the courts should consider the pendency and merits of an appeal in determining whether to apply collateral estoppel to a subsequent proceeding. It would be unfair to bind a party to a prior judgment that is ultimately reversed on appeal or to require that party to resort to post-judgment proceedings to vacate the subsequent judgment as, if and when the appeal is decided favorably.

Endnote:

1. In *Launders v. Steinberg*, 39 A.D.3d 57, 828 N.Y.S.2d 36 (2007), the Appellate Division, First Department, determined that criminal defendant Joel Steinberg could be held civilly responsible for injuries inflicted upon his daughter Lisa in a subsequent civil proceeding even though Steinberg was not in fact indicted or convicted of prior acts of abuse, but rather the blow that resulted in the actual death of the child. Justice James M. Catterson, writing for the majority, found that the prior abuse was a contested issue presented to the jury. In dissent, Justice James M. McGuire disagreed that collateral estoppel applied because "the trial court's charge to the jury [did not charge defendant Steinberg] with those prior acts of abuse and thus the jury could not possibly have found that he committed them."