

IN THE UTAH COURT OF APPEALS

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Goodman & Chesnoff and	)	MEMORANDUM DECISION
David Z. Chesnoff,	)	(Not For Official Publication)
	)	
Plaintiffs,	)	Case No. 20100413-CA
	)	
v.	)	F I L E D
	)	(November 26, 2010)
Michael John Nikols,	)	
	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 338</span>
Defendant.	)	
_____	)	
	)	
John Nikols,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
Goodman & Chesnoff and David	)	
Z. Chesnoff,	)	
	)	
Appellees.	)	

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Third District, Salt Lake Department, 050921826  
The Honorable John Paul Kennedy

Attorneys: L. Rex Sears, Salt Lake City, for Appellant  
            Scott O. Mercer and Scott S. Bridge, Salt Lake City,  
            for Appellees

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Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

John Nikols appeals the district court's May 10, 2010 order denying his objections to a writ of execution. This matter is before the court on cross-motions for summary disposition. This court requested additional memoranda from the parties concerning whether Nikols's claims were mooted by a federal court decision involving the parties dated June 28, 2010.

Nikols asserts that the district court should have granted his objections to the writ of execution because he had filed a

federal action alleging rights under the Occupying Claimants Act. See generally Utah Code Ann. § 57-6-1 (2000). Nikols argued to the district court that the statute mandated that no execution could occur on the subject properties until such federal action was resolved. The district court refused to consider the argument because it determined that the claim under the Occupying Claimants Act could and should have been raised during the earlier trial, which resolved Nikols's claims to the property. Thus, the district court determined that Nikols's claims were barred by res judicata, and more particularly, claim preclusion.

Claim preclusion not only prevents relitigation of a claim, "it also prevents the litigation of claims that could and should have been litigated in the prior action, but were not." Office of Recovery Servs. v. V.G.P., 845 P.2d 944, 946 (Utah Ct. App. 1992). Enforcement of this doctrine serves vital public interests, including "(1) fostering reliance on prior adjudications; (2) preventing inconsistent decisions; (3) relieving parties of the cost and vexation of multiple lawsuits; and (4) conserving judicial resources." Id. Claim preclusion has three elements:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Snyder v. Murray City Corp., 2003 UT 13, ¶ 34, 73 P.3d 325.

In this case all three elements of claim preclusion are met. First, this case involves the same parties because it is an extension of the same case in which a judgment was entered in Goodman & Chesnoff's favor in 2008. Second, the claim under the Occupying Claimants Act could and should have been presented during the phase of the case meant to address any of Nikols's interests in the properties. This was a claim that clearly related to Nikols's potential interests in the property and should have been adjudicated along with all other claims he made concerning the properties.

Finally, the first suit resulted in a final judgment on the merits. In August of 2007, the district court granted Goodman & Chesnoff's motion for summary judgment and dismissed Nikols's and his son's claims against Goodman & Chesnoff. However, the district court ordered that Goodman & Chesnoff could not execute upon that judgment until Nikols had an opportunity to assert his

claims to the subject properties in a separate trial. As a result, the district court allowed Nikols to pursue his claims to the subject properties. The court afforded the parties an opportunity to conduct discovery on all relevant issues and on April 1, 2008, held a trial on the issues raised by Nikols. The court ruled in favor of Goodman & Chesnoff. Nikols then appealed that decision. This court affirmed the district court's ruling in March of 2009. Accordingly, Nikols was afforded a "proceeding subject to the full spectrum of due process." See Brigham Young Univ. v. Tremco Consultants, Inc., 2007 UT 17, ¶ 47, 156 P.3d 782. As a result, the underlying proceeding resulted in a final decision on the merits. See id.

Affirmed.<sup>1</sup>

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Carolyn B. McHugh,  
Associate Presiding Judge

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William A. Thorne Jr., Judge

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J. Frederic Voros Jr., Judge

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1. Goodman & Chesnoff's request for attorney fees under rule 33 of the Utah Rules of Appellate Procedure is denied.