Witte v. Clark, Docket No. S0396-07 Cncv (Katz, J., July 10, 2007)



STATE OF VERMONT SUPERIOR COURT
Chittenden County, ss.: Docket No. S0396-07 CnC

MICHELLE WITTE

v.

PETER CLARK

# Entry
## Defendant Clark's Motion to Dismiss

Plaintiff Michelle Witte sues Defendant Peter Clark for assault and battery allegedly occurring on September 8 and/or September 19, 2006. Clark moves for dismissal, asserting that Witte's claims are barred by res judicata and as compulsory counter-claims because she did not pursue them in the prior trial between the parties, No. 1403-06 CnC. In that trial, Clark sued to evict Witte, and Witte asserted a counterclaim for an equitable distribution of the parties' property. Witte testified extensively about these incidents as part of the basis of her counterclaim. She did not seek tort recovery. Witte asserts that her tort claims were not compulsory counterclaims under V.R.C.P. 13(a) because the underlying facts played no part in Clark's eviction case in chief, and thus do not involve "the transaction or occurrence that is the subject matter of the opposing party's claim."

Rule 13 requires that a defendant's pleading include as a counterclaim any claim which the pleader has against the opposing party at

the time, "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." V.R.C.P. 13(a). Vermont has adopted a "logical relationship" test to determine what constitutes the same transaction or occurrence. Pomfret Farms Ltd. v. P'ship v. Pomfret Assoc., 174 Vt. 280, 283 (2002). "A claim has a logical relationship to the original claim if it *arises* out of the same aggregate of operative facts as the original claim in two senses: (1) that the same aggregate of operative facts serves as the basis for both claims; or (2) that the aggregate core of facts upon which the original claim rests activates additional legal rights in a party defendant that would otherwise remain dormant." Id. The words "transaction or occurrence" will be interpreted liberally, as the words have a flexible meaning and may comprehend a series of many occurrences. Id.

Rule 13 is an expression of part of the greater doctrine of res judicata. See Reporter's Notes- V.R.C.P. 13 (stating that elimination of multiple litigation and enforcing estoppel by a failure to plead form the basis for the rule). Under the doctrine of res judicata, a final judgment in previous litigation bars subsequent litigation if the parties, subject matter, and cause(s) of action in both matters are the same or substantially identical. Faulkner v. Caledonia County Fair Ass'n, 2004 VT 123, ¶ 8, 178 Vt. 51. Res judicata requires a plaintiff to address in one lawsuit all injuries emanating from all or any part of the transaction or series of connected transactions, out of which the action arose. Id. ¶ 12, citing Restatement (Second) of Judgments § 24(1) (1982). The scope of a "transaction" for res judicata purposes is to be determined pragmatically by weighing such considerations as whether the facts are related in time, space, origin, or motivation, and whether they form a convenient trial unit. Faulkner, 2004 VT 123, ¶ 13, citing Restatement (Second) § 24(2).

Res judicata's focus on the previously litigated transaction, not the suit's legal theory, means it will bar claims that should have been raised but were not. Dep't of Taxes v. Murphy, 2005 VT 84, ¶ 9, 178 Vt. 269. No less than the United States Supreme Court observed that "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 401 (1981). Accordingly, the Faulkner Court specifically noted that a second suit arising out of the same

transaction will be barred even where the second suit will include "evidence or grounds or theories of the case not presented in the first action, or ... remedies or forms of relief not demanded in the first action." Faulkner, 2004 VT 123, ¶ 14, citing Restatement (Second) § 25. The strong language of Rule 8(a) provides a similar warning, requiring that a pleading shall state the relief the pleader seeks, regardless of the type of claim. V.R.C.P. 8(a) (emphasis added).

Our findings in the previous case, submitted as Defendant's Exhibit A, indicate the following. The relationship between these two litigants was failing and Clark wanted their cohabitation to end. (D.'s Ex. A at 4.) Witte would not leave his house, so Clark sent her a letter of eviction through his attorney on August 29, 2006. (Id.) In early September, when Clark announced that he would no longer live at the house until Witte left, a physical altercation involving his car keys resulted. (Id.) This incident is the basis of Witte's present suit for assault and battery. (Complaint ¶ 5.) On the basis of this event, Witte applied for and received a Relief from Abuse order, resulting in Clark's continued exclusion from the house. (D.'s Ex. B – Relief from Abuse Order; Complaint for Relief From Abuse; Supporting Affidavit.) Accordingly, Clark pursued the eviction action to trial and final judgment. We note that although dates of September 8 and September 19 are given for acts of abuse in the Complaint for Relief From Abuse and the Complaint in this lawsuit, the Complaint for Relief From Abuse Affidavit describes a single incident. (Id.)

Based on our previous findings regarding the parties, we conclude that the parties' dispute over Ms. Witte remaining in the house lead directly to both the alleged assaults and the eviction action. The eviction and the assaults are not merely incidentally related, but are causally related as part of a single sad sequence of events. The altercation occurred during the time when Clark was seeking to evict Witte, as a direct result of an escalating argument about the matter. The Order banning Clark from his own house all but guaranteed he would pursue eviction so as to regain possession. This sequence of events is "the common aggregate of operative facts" for these two lawsuits. Thus, Witte's tort claims bear a logical relationship to the eviction action because they arose "out of the transaction or occurrence that is the subject matter of the opposing party's claim." See Pomfret Farms,

174 Vt. at 283. They were therefore compulsory counterclaims that were waived by omission from the first suit. See V.R.C.P. 13(a).

The doctrine of res judicata also bars Witte's tort claims, above and beyond the specific language of the Rule. The facts of the eviction and the assault are related in time, space, origin, and motivation for the reasons stated above. They are thus part of the same transaction and must be litigated together. See Faulkner, 2004 VT 123, ¶ 13. The connection between the eviction and the assaults is underscored by the fact that Witte actually litigated the events in the context of her equitable counterclaim. Thus, not only might these events have hypothetically formed a convenient trial unit, but in fact such a trial was held.

Witte's previous litigation of these events is an additional basis to compel the application of res judicata, whether or not it was compulsory in the first instance. Witte seeks to re-litigate the same events, which will require the same evidence that was previously presented, only now seeking a new form of relief. Clark would be forced to bear the cost and vexation of facing the charges again. This is contrary to res judicata. When Witte sought relief in equity, but not in tort, she waived her tort claim. She was required to bring all of her claims for relief based on these events at one time, to be examined in a single judicial proceeding, and waived those bases of relief not claimed at that time. Federated Dep't Stores, 452 U.S. at 401; Faulkner, 2004 VT 123, ¶ 14; Restatement (Second) § 25; V.R.C.P. Rule 8(a); Reporter's Notes- V.R.C.P. 13. It is of no significance that Witte raised the assaults as a counterclaim, because all claims for relief must state the remedy they seek. See Rule 8(a).

Defendant Clark's motion to dismiss is GRANTED.

Dated at Burlington, Vermont, _____, 2007.

M. I. Katz, Judge