

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

**BOUCHARD MARGULES
AND FRIEDLANDER,**

Plaintiff,

v.

**KIMBERLY I. GAYLORD, LISA M.
GAYLORD, LORI I. GAYLORD,
ROBERT M. GAYLORD, JR.,**

Defendants,

:
:
:
:
:
:
:
:
:
:
:
:
:

C.A. No. 01C-10-131 CLS

Submitted: September 7, 2004
Decided: October 21, 2004

On Defendant Baise Miller P.C.'s
Motion to Dismiss .

GRANTED

MEMORANDUM OPINION

Joel E. Friedlander, Esquire, Bouchard Margules & Friedlander, Wilmington, Delaware,
Attorney for Plaintiff.

Stephanie Matthews, Esquire, The Law Office of Stephanie Matthews, Chicago, Illinois,
Attorney for Defendants Kimberly I. Gaylord, Lisa M. Gaylord, Lori I. Gaylord, and Robert M.
Gaylord, Jr.

Linda M. Gilchrist, Esquire, and Edward M. McNally, Esquire, Morris James Hitchens &
Williams, Attorneys for Defendant Baise Miller & Freer, P.C.

SCOTT, J.

I.

Defendant Baise Miller P.C. has filed a Motion to Dismiss. Upon consideration of the evidence presented by them, and Defendant and Plaintiffs' responses, this court concludes that Baise Miller's request be **GRANTED**.

II.

On December 1st, 2000, Baise Miller & Freer P.C. ("Baise Miller"), a Washington, DC law firm, was contacted by the Defendant Gaylords about representation in a Delaware Chancery court proceeding. Not licensed in Delaware, Marshall Miller of Baise Miller located and associated with the Delaware firm of Bouchard Margules & Friedlander ("BM&F"), plaintiffs in this action. In early December 2000, members of BM&F and Baise Miller traveled to the Gaylord's home in Rockford, Illinois, to obtain additional information for the Chancery proceeding.

On January 2, 2001, BM&F represented the Gaylords in Chancery court for the preliminary injunction. Relations between Baise Miller and BM&F weakened when a dispute arose over how much BM&F was owed for the representation of the Gaylords. This court denied Baise Miller's Motion to Dismiss the Amended Complaint and Motion to Dismiss Cross claim on August 10th, 2004. The motions were denied because they were not timely filed. At that time, this court also believed Baise Miller to be an indispensable party for resolution of the fee dispute in the present case.

Subsequently, Baise Miller was a party to a declaratory relief action brought by the Gaylords before the District of Columbia Bar Attorney/Client Arbitration Board on August 17th. The Gaylords were seeking declaratory relief on the issue of the capped fee agreement. The D.C. arbitrator awarded Baise Miller \$199,514.44 in attorney fees.

III.

A. Baise Miller is precluded from this litigation on the basis of *res judicata*.

The doctrine of *res judicata* states that a decision of “a court of competent jurisdiction may, in the absence of fraud and collusion, be raised as an absolute bar to the maintenance of a second suit in a different court upon the same matter by the same party, or his privies.”¹ *Res judicata* is a doctrine founded on principles of public policy.² It works to promote judicial economy, and prevent endless litigation of the same lawsuit.³

To assert *res judicata* in Delaware, the party seeking to bar a second suit must prove: (1) the court making the prior adjudication had jurisdiction; (2) the parties in the present action are either the same or in privity with the parties from the prior adjudication; (3) the cause of action must be the same in both cases or the issues decided in the prior action must be the same as those raised in the present case; (4) the issues in the prior action must be decided adversely to the [parties] contentions in the instant case; and (5) the prior adjudication must be final.⁴ The Restatement Second of Judgments states “a valid and final award by arbitration has the same effects under the rules of *res judicata*, subject to the same exceptions and qualifications, as a judgment of the court.”⁵ In Delaware, an arbitration award will have *res judicata* effect on subsequent litigation efforts in the courts if the elements above are met.⁶

The court holds that Baise Miller has satisfied the five elements, thus, they are precluded from suit in the present litigation. The District of Columbia Bar Attorney/Client Arbitration

¹ *Epstein v. Chatham Park, Inc.*, 153 A.2d 180, 184 (Del. Super. 1959).

² *Id.*

³ *Id.*

⁴ *Bailey v. City of Wilmington*, 766 A.2d 477, 481 (Del. Supr. 2001).

⁵ Restatement (Second) of Judgments §84(1).

⁶ *RSS Acquisition, Inc. v. Dart Group Corp.*, 1999 WL 1442009 *4 (Del. Super. 1999).

Board had jurisdiction over the parties pursuant to D.C. Bar Rule XIII (a). Moreover, Baise Miller is located in the District of Columbia, and the Gaylords consented to jurisdiction by signing the agreement to arbitrate. Second, the parties in the Delaware proceeding are the same as in the D.C. arbitration. The Gaylords sought declaratory relief in the D.C. arbitration against Baise Miller. Both are now defendants in the present litigation.

Third, the issue at arbitration is identical to the issue presented here. The parties agreed to arbitrate in hopes of resolving the fee dispute. The Gaylords sought to prove that they had a \$250,000 capped fee agreement with Baise Miller, and that they owed nothing more over that amount. The arbitrator resolved the issue of what fees were owed to Baise Miller by awarding the firm \$199,514.44. The issue now before this court is whether a capped fee agreement existed.

Fourth, the D.C. arbitration decision is adverse to the Gaylord's contentions in this case. The Gaylords sought a declaration that there was a capped fee agreement. The D.C. arbitrator did not decide this issue as requested; rather, he awarded Baise Miller representation fees. Thus, the fees awarded to Baise Miller in the arbitration are adverse to the Gaylord's position in the present litigation because they did not want to pay Baise Miller any more than the \$250,000.

Finally, the D.C. arbitration was final and binding. The Gaylord's signature on the agreement to arbitrate indicated that they understood "the arbitration panel is binding on both parties." The Gaylords cannot now assert that the arbitration was non-binding because they did not like the result. Applying the five-prong test to the facts present before the court, the court holds that *res judicata* precludes Baise Miller from suit in this action.

B. Collateral estoppel precludes re-litigation of the fees owed to Baise Miller.

The doctrine of collateral estoppel applies where a question of fact, essential to the judgment, is litigated and determined by a valid and final judgment.⁷ The final judgment will bar subsequent litigation on the claim.⁸ Like *res judicata*, this doctrine attempts to preserve judicial economy.⁹ Accordingly, “the proper administration of justice will be served best by limiting parties to one trial of one issue.”¹⁰ Where the first litigation occurred in another state’s forum, a court in Delaware must give the final determination of another state’s forum the same preclusive effect as would a court in that state.¹¹

The Gaylord’s claim against Baise Miller based on the alleged capped fee agreement is barred in this litigation because of collateral estoppel. While the arbitrator failed to decide whether the capped fee agreement existed, he did conclude that Baise Miller was owed \$199,514.44 from its representation of the Gaylords. The arbitration was final and binding pursuant to the terms of the arbitration agreement, thus, this court is bound by the decision of the amount of fees owed by the Gaylords to Baise Miller. Consequently, the issue will not be re-litigated in this case.

⁷ *Columbia Casualty Co., v. Playtex FP, Inc.*, 584 A.2d 1214, 1216 (Del. Supr. 1991)(citing *Tyndall v. Tyndall*, 238 A.2d 343, 346 (Del. Supr. 1968)).

⁸ *Tyndall*, 238 A.2d at 346.

⁹ *Columbia*, 584 A.2d at 1216.

¹⁰ *Lewis v. Hanson*, 128 A.2d 819, 834 (Del. Supr. 1957).

¹¹ *Columbia*, 584 A.2d at 1217. According to the Full Faith and Credit Clause, the fifty states are required to give full faith and credit to the judicial proceedings of another state. U.S. Const. art IV. §1. Thus, where the court in the first proceeding has jurisdiction over the parties and the issues, the second court has the ability to preclude re-litigation based on collateral estoppel or *res judicata* because of the Full Faith and Credit Clause.

IV.

For the above reasons, Baise Miller is DISMISSED from the litigation.

IT IS SO ORDERED.

Calvin L. Scott, Jr.
Superior Court Judge