

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 10-20938-CIV-KING

NICHOLAS ESTRELLA,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

THIS CAUSE comes before the Court upon Plaintiff's Motion for Partial Summary Judgment (DE #74), filed February 1, 2011. The claim as to which Plaintiff seeks summary judgment is Count I of Defendant Federal Insurance Company Counterclaim, which requests declaration from this Court that Defendant is not liable for insurance coverage where Plaintiff "had knowledge of or participation with the scuttling" of the M/V Star One. Plaintiff now contends that, because of certain statements made at an earlier trial involving the same parties, Defendant Federal Insurance is judicially estopped from arguing otherwise in the above-styled matter and that Count I is therefore barred.¹

The earlier case, *Esoteric v. Estrella*, Case No. 09-22437-CV-JLK, to which Plaintiff refers involved largely the same parties as does the above-styled matter: Nicholas Estrella, Federal Insurance Company, as well as the salvor, Esoteric LLC. The

¹ Defendant Federal Insurance filed its Opposition (DE #91) on February 14, 2011. The matter is therefore ripe for determination.

pertinent issue in that case was whether a salvage award was due after the M/V Star One was found abandoned and sinking. At closing, defense counsel, Charles Davant of Houck Anderson, P.A., admitted that there was “no evidence in this record – and indeed, I am unaware of any evidence whatsoever --- that Mr. Estrella had anything to do with the sinking of this vessel.” (DE #91-1). Plaintiff claims that that statement was made by Federal Insurance, and that Federal Insurance is therefore judicially estopped from contending otherwise in the instant action.

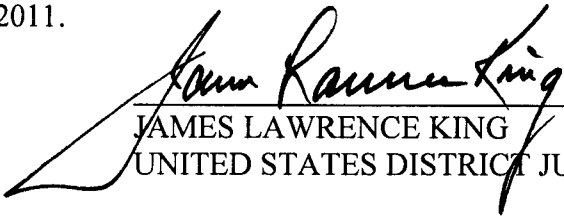
Upon consideration, the Court finds Plaintiff’s Motion for Partial Summary Judgment is unwarranted. Although Federal Insurance had been represented by Charles Davant and Houck Anderson during the earlier proceedings instituted by Esoteric, on June 24, 2010 this Court stayed the judicial proceedings as to Defendant Federal in those proceedings before trial. *Esoteric v. Estrella*, Case No. 09-22437-CV-JLK (DE #64). That stay was in place through trial, which began on September 13, 2010. The only defendant who appeared before the Court at that time was therefore Nicholas Estrella – Defendant Federal was neither present during trial, nor were its interests represented.

Indeed, it is clear from a review of the record that Charles Davant and Houck Anderson were representing Nicholas Estrella himself at trial. Although the Court earlier noted its concerns over the dual representation of Houck Anderson of both Nicholas Estrella and Federal Insurance Company, such concerns cannot serve as the basis for judicial estoppel where, as here, the underlying statement that Plaintiff relies upon was made by counsel acting on behalf of Nicholas Estrella rather than Federal Insurance. Permitting a representation made by Nicholas Estrella’s counsel to bar later action by Federal Insurance would lead to absurd results. Since judicial estoppel does not apply

where the complained-of statements are made by different parties, the Court finds that judicial estoppel is inapplicable here. *See New Hampshire v. Maine*, 532 U.S. 742 (2001) (noting that sameness of parties is required element of judicial estoppel).

Accordingly, after due consideration of the record and of the parties' filings, the Court hereby **ORDERS, ADJUDGES, and DECREES** that Plaintiff's Motion for Partial Summary Judgment (DE #74) be, and the same is hereby, **DENIED**.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, at Miami, Miami-Dade County, Florida, this 16th day of February, 2011.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

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