

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2012

ALLEN F. STEWART,
Appellant,

v.

**JOE DRISCOLL, ROBERT DRISCOLL, and DRISCOLL'S TOWING
SERVICE, INC.,**
Appellees.

No. 4D10-1604

[April 4, 2012]

PER CURIAM.

Allen Stewart appeals the judgment of dismissal entered by the trial court as to defendant Joe Driscoll based on the doctrine of res judicata. “The party claiming the benefit of the former adjudication has the burden of establishing, with sufficient certainty by the record or by extrinsic evidence, that the matter was formerly adjudicated.” *State St. Bank & Trust Co. v. Badra*, 765 So. 2d 251, 254 (Fla. 4th DCA 2000). “The doctrine of res judicata has no applicability where there was no adjudication on the merits” *Id.* Finally, in order for res judicata to apply, there must be a “clear-cut former adjudication’ on the merits.” *Id.* (quoting *Suniland Assocs. v. Wilbenka, Inc.*, 656 So. 2d 1356, 1358 (Fla. 3d DCA 1995)) (emphasis added).

In this case, we do not find support in the record to conclude that the Final Judgment in the original, small claims matter was a clear-cut adjudication on the merits. Thus, Joe Driscoll did not meet his burden. We therefore reverse the order of dismissal.

Reversed and remanded.

CIKLIN, GERBER and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Peter M. Weinstein, Judge; L.T. Case No. 09-043060

CACE (12).

Allen F. Stewart, Fort Lauderdale, pro se.

No brief filed on behalf of appellees.

Not final until disposition of timely filed motion for rehearing.