



These principles apply because "litigants should not be permitted to relitigate issues they had a fair opportunity to contest." Id.

In this case there have been two prior appeals. The first appeal resulted in remand to the trial court on a narrow issue, but generally affirmed the substance of the judgment. See Smith v. Osguthorpe, 2002 UT App 361, 58 P.3d 854. On appeal after remand, this court again affirmed the judgment. See Smith II, 2005 UT App 11. These prior appeals conclusively establish the continuing jurisdiction of the trial court to enter supplemental orders. The trial court expressly stated in the judgment that Osguthorpe was obligated to pay future amounts that would come due under the leases, and specifically retained jurisdiction over the matter. This portion of the order was not raised in either appeal.<sup>1</sup> Because Osguthorpe did not raise this issue in prior appeals, he is barred from raising it now.

Similarly, Osguthorpe is precluded from challenging the trial court's determinations that the Restatement of Agreement is invalid and that Stephen Osguthorpe was in privity through the family partnership. The trial court determined these two issues in a memorandum decision in October 2001 in the course of garnishment proceedings. Both the garnishment proceedings and the summary judgment proceedings after remand were concluded by the entry of orders on August 28, 2003. Both the garnishment and the summary judgment orders were part of the second appeal.

Osguthorpe presented the fact of the Restatement of Agreement in the second appeal and argued that it raised an issue of fact regarding the integration of the leases. Although Osguthorpe argued that the Restatement of Agreement affected the leases, he did not challenge the October 2001 ruling finding the Restatement to be invalid. Nor did he argue that the trial court erred in finding Stephen Osguthorpe to be in privity. The October ruling was not put at issue in the second appeal although it was part of the garnishment proceedings and ripe for appeal.

The record shows that the issues identified by Osguthorpe in this third appeal were either tried and determined, or were available to be presented and determined, in prior appeals.

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<sup>1</sup>The judgment that was the subject of the second appeal granted summary judgment and also supplemented the amount of the judgment. Osguthorpe challenged the supplemental judgment, asserting the amount was unsupported, but did not challenge the trial court's authority to supplement the judgment through continuing jurisdiction.

Osguthorpe's failure to raise these issues during the previous appeal precludes him from asserting them now. See id.

Accordingly, the trial court's supplemental judgment is affirmed.

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Russell W. Bench,  
Presiding Judge

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge