



Stopping a Second Bite at the Apple: Doctrines Limiting Relitigation of the Same Cases and Issues

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What keeps a losing party from returning to court again and again and again? As any first-year law student knows, court made doctrines of res judicata and collateral estoppel establish part of the framework for answering that question. But some wonder why certain cases and issues seem to keep coming back to court. The reason is based, in part, on the nuances of res judicata and collateral estoppel. This memo seeks to provide a brief explanation of the scope, effects, and elements of both doctrines.

A. Res Judicata and Collateral Estoppel— Related but Distinct Doctrines

Res judicata stops a party from bringing a subsequent action based on the same claim litigated in the prior action, while collateral estoppel “precludes the subsequent adjudication of a previously determined issue, even if the subsequent action is based on an entirely different claim.” *Id.* “The two doctrines are complementary in that each may apply in situations where the other would not and both advance the twin policy goals of ‘protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing needless litigation.’” *Whitacre P’ship v Biosignia, Inc.*, 358 N.C. 1, 15-16 (2004) (citations omitted).

Both doctrines advance the twin policy goals of “protecting litigants from the burden of relitigating previously decided matters and promoting judicial economy by preventing

needless litigation.” *Bockweg v. Anderson*, 333 N.C. 486, 491 (1993) (citing *Park Lane Hosiery Co. v. Shore*, 439 U.S. 322 (1979)).

Recognizing the close relationship between the two doctrines, North Carolina’s Supreme Court and lower courts have sometimes referred to both res judicata and collateral estoppel as species of a broader category of “estoppel by judgment.” *See, e.g., Bockweg v. Anderson*, 333 N.C. 486, 491-92 (1993). “More often, however, we have used the term ‘estoppel by judgment’ to refer specifically to collateral estoppel.” *Id.* (citing *State v. Summers*, 351 N.C. 620, 622 (2000); *State v. Brooks*, 337 N.C. 132, 147 (1994) (referring to “collateral estoppel by judgment”).

B. Res Judicata

Under the doctrine of res judicata or “claim preclusion,” a final judgment on the merits in one action precludes a second action based on the same cause of action between the same parties or their privies. *Whitacre P’ship*, 358 N.C. at 15; *Williams v. Peabody*, 217 N.C. App. 1, 5 (2011). The doctrine prevents the re-litigation of the causes of action and defenses that were actually presented or adjudicated, and also those matters which could have been presented or should have been adjudicated, in the prior action. *Whitacre P’ship*, 258 N.C. at 15; *Hales v. North Carolina Ins. Guar. Ass’n*, 337 N.C. 329, 333 (1994); *Goins v. Cone Mills*

Corp., 90 N.C. App. 90, 93 (1988), *disc. rev. den.*, 323 N.C. 173 (1988).

A. Scope and Elements of Res Judicata

For an action to be barred by *res judicata*, "a party must show that the previous suit resulted in a **final** judgment on the merits, that the same cause of action is involved, and that **both** the party asserting *res judicata* and the party against whom *res judicata* is asserted were either parties or stand in privity with parties." *Williams*, 217 N.C. App. at 7 (emphasis added) (citations and quotation marks omitted).

The doctrine of *res judicata* bars all causes of action which were or could have been presented in a previous suit "based on the same cause of action between the same parties or their privies." *Williams*, 217 N.C. App. at 7 (2011); *Goins v. Cone Mills Corp.*, 90 N.C. App. at 93. "A final judgment 'operates as an estoppel not only as to all matters actually determined or litigated in the prior proceeding, but also as to all relevant and material matters within the scope of the proceeding which the parties, in the exercise of reasonable diligence, could and should have brought forward for determination.'" *Williams*, 217 N.C. App. at 7 (quoting *Rodgers Builders, Inc. v. McQueen*, 76 N.C. App. 16, 22, (1985)).

The elements required to establish *res judicata* are: "(1) a final judgment on the merits in an earlier suit, (2) an identity of the causes of action in both the earlier and the later suit, and (3) an identity of the parties or their privies in the two suits." *Herring v. Winston-Salem/Forsyth Cnty. Bd. of Educ.*, 188 N.C. App. 441, 444 (2008). See *R.C. Koonts & Sons Masonry, Inc. v. First Nat'l Bank*, 266 N.C. App. 76, 81 (2019).

B. Examples in North Carolina Cases

In *Batch v. Town of Chapel Hill*, 326 N.C. 1, 14–15 (1990), the Supreme Court held that the doctrine of *res judicata* applied to the plaintiff's "constitutional statutory claims" in Superior Court because they were based on a final decision from the Town Council of Chapel Hill denying approval of the plaintiff's subdivision plan. *Id.* In determining *res judicata* applied, the *Batch* court noted that to apply the doctrine of *res judicata*, "there must be a final judgment on the merits in another suit with an identity of issues and parties in the two cases." *Id.*, citing *State ex rel Utilities Comm. v. Public Staff*, 322 N.C. 689, (1988). The *Batch* court further stated: "[t]he fact that the original claim arose in a quasi-judicial administrative hearing does not affect this result. A final judicial determination of the claim has been rendered by this Court.

Years later, the Supreme Court distinguished *Batch* and emphasized *res judicata* requires an identity of cause of actions, not merely the subject of dispute. *Intersal, Inc. v. Hamilton*, 373 N.C. 89, 109 (2019). The Supreme Court held that a breach of contract claim between the same parties about the same contract was not subject to *res judicata* because the prior action did not involve a breach of contract claim. Because the legal claims were distinct, *res judicata* was inapplicable. *Id.* at 109.

C. Collateral Estoppel

Collateral estoppel is a companion doctrine to *res judicata*. Also known as issue preclusion, collateral estoppel "bars successive litigation of an issue of fact or law that is actually litigated and determined by a valid and final judgment, and [the issue] is essential to the judgment." *Bobby v. Bies*, 556 U.S. 825, 834 (2009) (internal quotation omitted). The

determination of an issue in a prior judicial or administrative proceeding precludes the re-litigation of that issue in a later proceeding, provided the party against whom the estoppel is sought enjoyed a full and fair opportunity to litigate that issue in the earlier action. *Whitacre P'ship*, 358 N.C. at 15-16.

Collateral estoppel is "designed to prevent repetitious lawsuits over matters which have once been decided and which have remained substantially static, factually and legally." *King v. Grindstaff*, 284 N.C. 348, 356 (1973).

A. Scope and Elements of Collateral Estoppel

"Under the doctrine of collateral estoppel, when an issue has been fully litigated and decided, it cannot be contested again between the same parties, even if the first adjudication is conducted in federal court and the second in state court." *McCallum v. N.C. Coop. Extension Serv. of N.C. State Univ.*, 142 N.C. App. 48, 52 (citation omitted; emphasis added), *appeal dismissed and disc. review denied*, 353 N.C. 452 (2001). "[P]arties are precluded from retrying fully litigated issues that were decided in any prior determination, even where the claims asserted are not the same." *Bishop v. Cnty. of Macon*, 250 N.C. App. 519, 523 (2016) (citation omitted). Thus, "even if the subsequent action is based on an entirely different claim[.]" collateral estoppel bars "the subsequent adjudication of a previously determined issue[.]" *Williams v. City of Jacksonville Police Dep't*, 165 N.C. App. 587, 591-92 (2004); *see also Hales*, 337 N.C. at 333.

The doctrine of collateral estoppel precludes re-litigation of specific issues that were actually litigated and determined in a prior suit. *Strates Shows, Inc. v. Amusements of Am., Inc.*, 184 N.C. App. 455, 461 (2007). The elements of collateral estoppel are: "(1) a prior

suit resulting in a final judgment on the merits; (2) identical issues involved; (3) the issue was actually litigated in the prior suit and necessary to the judgment; and (4) the issue was actually determined." *Royster v. McNamara*, 218 N.C. App. 520, 526 (2012) (quoting *McDonald v. Skeen*, 152 N.C. App. 228, 230 (2002)); *Bluebird Corp. v. Aubin*, 188 N.C. App. 671, 678, (citation and internal quotation marks omitted; emphasis added), *disc. review denied*, 362 N.C. 679 (2008).

B. Examples in North Carolina Cases

In *Hillsboro Partners, LLC v. City of Fayetteville*, 226 N.C. App. 30, 39 (2013), the Court of Appeals held that the plaintiff was collaterally estopped from contending in a civil lawsuit seeking damages for the demolition of its building and that the demolished structure was not a fire, health, and safety hazard, where in a prior hearing before the City's Housing and Code Enforcement Division Manager ("Code Enforcement Manager"), over two years prior to the filing of the lawsuit, it was determined that the structure was in fact a fire, health, and safety hazard. The *Hillsboro Partners'* plaintiff failed to appeal the initial decision which found that the building was a fire, health, and safety hazard. *Id.* at 36-37. Although the ultimate matter to be decided in the hearing before the Code Enforcement Manager was whether the City had the authority to order plaintiff to demolish or repair its building, and the ultimate matter to be decided in the lawsuit was whether the plaintiff was entitled to compensation for demolition of plaintiff's property, the Court of Appeals nevertheless determined that the *Hillsboro Partners'* plaintiff could not re-litigate the issue of whether the building was a fire, health and safety hazard, because it was the subject of a final un-appealed decision by the Code Enforcement Manager, and thus the

finding was binding on plaintiff in the lawsuit, and precluded its right to recover damages under condemnation law.

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“A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”

Constitution of 197, art. I, §35
Constitution of 1868, art. I, § 29
Constitution of 1176, Declaration of Rights, § 21