COURT OF APPEALS DECISION DATED AND FILED

December 11, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1093

Cir. Ct. No. 2006FJ3

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STANLEY V. KIRALY, JR. AND LISA KIRALY,

PLAINTIFFS-RESPONDENTS,

V.

WAYNE M. HAJDASZ AND LINDA R. HAJDASZ,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Lundsten, JJ.

¶1 HOOVER, P.J. Wayne and Linda Hajdasz appeal an order denying their motion for relief from a Maryland judgment. The Hajdaszes argue the Maryland court lacked jurisdiction over them and the judgment should therefore be unenforceable in Wisconsin. The circuit court concluded the jurisdiction issue

had been fully litigated in Maryland and any collateral attack on the judgment here was therefore precluded. We agree with the circuit court and affirm.

Background

¶2 On June 8, 2004, the Hajdaszes sold a motor home to Stanley Kiraly, Jr., and his wife Lisa, via internet auction site eBay, for $17,330. The Hajdaszes had advertised the vehicle's condition as excellent. The Kiralys wired the payment to Linda's Wisconsin bank account, and they came to Wisconsin to accept delivery of the motor home, driving it back to Maryland.

¶3 Subsequent to their purchase, the Kiralys allegedly discovered that the motor home was not in excellent condition. They claim it had pre-existing water and other damage and required repairs totaling over $34,500. In June 2005, they brought suit against the Hajdaszes in Prince George's County, Maryland, for breach of contract, misrepresentation, and concealment.

¶4 The Hajdaszes obtained Maryland counsel, who filed a motion to dismiss for lack of personal jurisdiction on September 20, 2005. The motion was based on the face of the complaint and no additional information was submitted at the time. The Maryland court denied the motion. Counsel filed a motion for reconsideration, which was denied without a hearing. Subsequently, the court entered a default judgment against the Hajdaszes for a total of $20,325.54.[1]

[1] The Kiralys state that judgment was entered after a trial. However, the Hajdaszes, and the copy of the Maryland judgment contained in the record, indicate that a default judgment was entered.

¶5 The Kiralys then filed their Maryland judgment in Barron County and began garnishment proceedings. The Hajdaszes answered the garnishment proceedings, affirmatively alleging the Maryland court lacked jurisdiction and moving to have that court's judgment vacated or voided. The circuit court concluded the jurisdiction issue had been fully litigated in Maryland and it therefore had to give full faith and credit to the Maryland court's determination on the matter. The court accordingly denied the motion to vacate.

Discussion

¶6 "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" ***Burger King Corp. v. Rudzewicz***, 471 U.S. 462, 471-72 (1985) (quoting ***International Shoe Co. v. Washington***, 326 U.S. 310, 319 (1945)). Thus, the question of jurisdiction "is obviously a legitimate matter of inquiry whenever the enforcement of a foreign judgment is sought." ***Hansen v. McAndrews***, 49 Wis. 2d 625, 630, 183 N.W.2d 1 (1971).

¶7 Notwithstanding the propriety of such an inquiry,

> the modern decisions of this Court have carefully delineated the permissible scope of such an inquiry. From these decisions there emerges the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been *fully and fairly litigated* and finally decided in the court which rendered the original judgment.

Durfee v. Duke, 375 U.S. 106, 111 (1963) (emphasis added). In other words, "if the jurisdictional issue is *fully litigated* in the foreign court and is not subject to

collateral attack in that state, then the forum court is bound by the judgment rendered as to jurisdiction as well." ***Hansen***, 49 Wis. 2d at 630 (emphasis added).

¶8 The justification for such a rule is simple.

> After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.

Sherrer v. Sherrer, 334 U.S. 343, 350 (1948).

¶9 The Hajdaszes state the only appearances they made in Maryland were to challenge jurisdiction. While their initial argument was briefed for the court, there was no evidentiary hearing for the submission of additional material and no witnesses were called. Thus, the Hajdaszes assert they have not "fully litigated" the jurisdictional matter to the degree necessary to foreclose a collateral attack in Wisconsin. We disagree.

¶10 The protections of due process do not include a right to litigate the same issue twice. ***Baldwin v. Iowa State Traveling Men's Ass'n***, 283 U.S. 522, 524 (1931). Thus, the question to be determined is "whether the judgment amounts to res judicata on the question of the jurisdiction of the court which rendered it…." ***Id.*** In other words, we ask if, as ***Hansen*** requires, the jurisdiction issue has been fully litigated in the foreign court. If so, the judgment is entitled to full faith and credit. To answer this question, it is necessary to determine the meaning of "fully litigated," which does not appear to be explicitly defined in case law, despite being an oft-used phrase. However, we believe we can discern its meaning through an examination of the res judicata doctrine and its sister doctrine, collateral estoppel.

¶11 In Wisconsin, res judicata is now called claim preclusion, while collateral estoppel is known as issue preclusion. ***Kruckenberg v. Harvey***, 2005 WI 43, ¶18 n.11, 279 Wis. 2d 520, 694 N.W.2d 879. When claim preclusion is applied, a final judgment ordinarily bars all matters which were, or which might have been, litigated in prior proceedings. ***Id.***, ¶19. Issue preclusion bars subsequent action on issues "actually litigated." ***Id.***, ¶19 n.13.

¶12 To this end, when cases like ***Durfee*** and ***Hansen*** require the jurisdictional issue be "fully litigated," we conclude this merely means "actually litigated." In other words, a judgment on jurisdiction is not subject to claim preclusion merely because it *might have been* litigated, as the doctrine normally dictates. Rather, due process permits application of a preclusion doctrine only when the issue is actually, or fully, litigated. "Actually litigated," though, has actual meaning. "When an issue is properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined, the issue is actually litigated…." RESTATEMENT (SECOND) OF JUDGMENTS, § 27, cmt. d (1982).

¶13 If the Kiralys did not raise the issue of Maryland jurisdiction by their pleadings, the Hajdaszes raised it by their motion to dismiss. The issue was submitted to the court for determination, and the court concluded it had jurisdiction. The question was submitted to the court for determination a second time by the motion for reconsideration, and the court again held that it had jurisdiction; otherwise, it would have granted the motion for reconsideration and

reversed itself. Because the issue of jurisdiction was raised and fully litigated in Maryland, that determination is entitled to full faith and credit in Wisconsin.[2]

¶14 Further justifying granting full faith and credit to the Maryland determination, we note that the Hajdaszes failed to exhaust all remedies available in Maryland. They neither sought an interlocutory appeal on the jurisdiction question, nor did they appeal from the final default judgment on the merits. That the Maryland appellate court may have denied an interlocutory appeal, or that the Hajdaszes may ultimately have lost an appeal on the merits is of no import.

> If [a party] failed to take advantage of the opportunities afforded him, the responsibility is his own. We do not believe that the dereliction of a defendant under such circumstances should be permitted to provide a basis for subsequent attack in the courts of a sister State on a decree valid in the State in which it was rendered.

Sherrer, 334 U.S. at 352; *see also* ***Baldwin***, 283 U.S. at 525 (noting respondent had a right to appeal, but did not, resulting in an adverse judgment to which claim preclusion was applied).[3]

¶15 Finally, we are not persuaded by the Hajdaszes' argument that appearing in a court to challenge its jurisdiction should not confer jurisdiction. Although they contend such a result creates the very burden the due process clause

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[2] The Hajdaszes complain that in order for something to be "fully litigated," there should at least be an evidentiary hearing. Even were we to extend the definition that far, they fail to indicate how an evidentiary hearing on jurisdiction would have changed the result.

[3] *See also* ***State v. Smith***, 2005 WI 104, ¶22, 283 Wis. 2d 57, 699 N.W.2d 508 (defendant stipulated to child support order in Maine, then challenged Maine court's jurisdiction in Maine circuit court when enforcement in Wisconsin began, but failed to appeal in Maine, resulting in Wisconsin court applying claim preclusion as to question of Maine court's jurisdiction and resulting order).

meant to prevent, that of litigating in a foreign forum, the Hajdaszes' appearance in the Maryland court shows they entered that court

> for the very purpose of litigating the question of jurisdiction over [their] person. [They] had the election not to appear at all. If, in the absence of appearance, the court had proceeded to judgment and the present suit had been brought thereon, [they] could have raised and tried out the issue in the present action, because [they] would never have had [their] day in court with respect to jurisdiction….
>
> Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest; and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not … be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

Baldwin, 283 U.S. at 525-26.[4]

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[4] *See also* ***Hartenstein v. Hartenstein***, 18 Wis. 2d 505, 511 n.2, 118 N.W.2d 881 (1963) (appearance in a divorce action in a foreign state to contest domicile of petitioning spouse is sufficient appearance to justify giving full faith and credit to foreign divorce judgment).