

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

DAVID B. STILL,	:	January Term 2005
	:	
Plaintiff,	:	
	:	
v.	:	No. 0136
	:	
REGULUS GROUP, LLC,	:	
	:	
Defendant.	:	COMMERCE PROGRAM
	:	
	:	Control Numbers 041806/062193
	:	
	:	
	:	

**ORDER**

**AND NOW**, this 31<sup>ST</sup> day of October 2006, upon consideration of Defendant Regulus Group, LLC's Motion for Summary Judgment and the responses in opposition, it hereby is **ORDERED** that said motion is Granted as to Counts I, II, III and IV. Plaintiff David B. Still's Cross Motion for Summary Judgment is denied.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**

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**OPINION**

***BERNSTEIN, J.***

In this action plaintiff attempts to relitigate claims which have already been litigated and decided against him in a preceding action filed in the Eastern District of Pennsylvania. The doctrine of *res judicata* prevents Still from relitigating these claims. Consequently, Defendant Regulus Group, LLC’s Motion for Summary Judgment is granted and plaintiff’s cross motion for summary judgment is denied.

**Background**

Defendant Regulus Group LLC (“Regulus”) is a Delaware limited liability company. Plaintiff David Still (“Still”) is the former president, CEO and board chairman of Regulus. During Still’s tenure with Regulus, he was the holder of non-controlling blocks of Class B, Class C and Class D shares of stock.

In December 1998, Regulus loaned Still \$300,000.00. As collateral for the loan, Still pledged his Class B, C and D shares (“Pledged Shares”). The Promissory Note required the pledged shares to be delivered and held by an escrow agent. The parties executed an Escrow Agreement which provided that upon Still’s default the pledged shares held by the escrow agent would be delivered to Regulus.

On August 1, 2000, Regulus terminated Still with cause. On August 3, 2000, Regulus demanded that Still repay the principal amount of the Demand Note, plus interest within thirty days. Still did not repay the loan. On December 29, 2000, Regulus declared the loan in default and requested in writing, with notice to Still, that the escrow agent turn over the pledged shares. On January 3, 2001, the escrow agent complied with Regulus' request and delivered all of Still's shares to Regulus. Regulus applied the valuation formula contained within the Escrow Agreement and found that the total principal and accrued interest due under the Note was greater than the fair market value of the pledged shares. Regulus canceled the shares consistent with established company practice.

### **Federal Court Action**

On November 29, 2000, Still commenced an action in the United States District Court for the Eastern District of Pennsylvania against Regulus and eleven other defendants ("Federal Court Action"). On the same day, Regulus filed suit against Still in the Court of Common Pleas of Montgomery County. Regulus discontinued this action and filed suit in the Delaware Chancery Court ("Delaware Action"). Regulus ultimately dismissed the Delaware Action with the understanding that the parties could assert any claims that would have been raised in the Delaware action in the Federal Court Action. In accordance with this understanding, Still filed his Second Amended Complaint in the Federal Court Action on April 10, 2002. The amended complaint included, *inter alia*, claims for conversion/wrongful forfeiture of stock (Count XX) and wrongful seizure of stock (Count XXII).<sup>1</sup>

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<sup>1</sup> Second Amended Complaint attached to Defendant's Motion for Summary Judgment Exhibit "10".

On November 21, 2002, Regulus filed a motion for summary judgment with supporting exhibits in the Federal Court Action. The exhibits included an affidavit of its Chief Financial Officer which stated that Still's shares were cancelled. Six days later Still's counsel informed Regulus that the cancellation of Still's shares violated the Uniform Commercial Code and that the violation would be pursued in the case.

The Federal Court Action was tried before a jury from February 3, 2003 to February 21, 2003. During the trial, Still introduced testimony and other evidence concerning the promissory note, Escrow Agreement, the formula used to calculate the value of the pledged shares, the cancellation of the pledged shares and the value of the pledged shares. Still also presented evidence and testimony on Regulus' alleged failure to set vesting targets and benchmarks for the Class B and C shares, Regulus' breach of the Operating Agreement as well as a devaluation of the shares.

During the trial, Still sought leave of court to amend the complaint a third time to assert a statutory claim under the UCC for the value of the shares. Still's counsel argued that the UCC claim should be allowed because it was an "alternative claim" that was "subsumed" within his claims in Counts XX and XXII of his second amended complaint. The trial judge granted Still leave to amend.

Prior to the submission of the case to the jury, the court dismissed a majority of Still's claims on a motion for directed verdict. The claims for Title VII and Pennsylvania Human Relations Act were submitted to the jury along with claims for breach of employment contract and wrongful seizure of stock. The jury was given a special interrogatory verdict form. The special verdict form included directions after each

question instructing the jury as to the next question. Question Number 8 on the special verdict form stated:

Do you find that Regulus was lawfully justified in its calling of the Demand Note and retention of Mr. Still's shares because of agreements signed by Mr. Still and Regulus?

The direction after Question No. 8 instructed the jury not to answer Question Numbers 9 through 12 if it found that Regulus was justified in calling the loan and taking possession of Still's shares. Question Numbers 9 through 12 concerned the manifest reasonableness of the formula used to value Still's shares and the commercial reasonableness in disposing of Still's shares. The jury answered "yes" to Question Number 8 and ultimately returned a verdict in favor of Regulus.

Still filed post trial motions seeking a new trial on his UCC claim on the ground that the direction following Question No. 8 was erroneous in instructing the jury not to answer Questions Numbers 9-12 if it found that Regulus was justified in calling the loan and taking possession of Still's shares. The trial judge granted Still's post trial motion and ordered a new trial, finding that the accompanying direction following Question Number 8 prohibited the jury from deciding issues pertaining to the disposition and valuation of Still's shares, particularly the issues of commercial reasonableness of the shares disposition and the manifest unreasonableness of the standards in the valuation formula in the Escrow Agreement.

Regulus moved for reconsideration, which was granted. The trial judge vacated its order granting Still a new trial and denied Still's post trial motion for new trial on his UCC claim. The trial court found that Regulus did not consent to trial of the UCC issue and therefore Regulus was prejudiced. Still filed an appeal with the United States Court

of Appeals for the Third Circuit. The Third Circuit affirmed the judgment in favor of Regulus and denied Still's request for rehearing on March 17, 2005.

On July 29, 2004, while the case was on appeal, Still filed a legal malpractice action against his trial counsel in the Federal Court Action.<sup>2</sup> Thereafter, on March 30, 2005, Still filed the instant action. The complaint alleges a claim under Article 9 of the Pennsylvania Uniform Commercial Code section 9-504 ("UCC") (Count I), breach of the Operating Agreement (Counts II and III) and devaluation of stock (Count IV).

### **DISCUSSION**

The doctrine of *res judicata* provides that a final judgment on the merits by a court of competent jurisdiction will bar any future suit between the parties in connection with the same cause of action that either was raised or could have been raised in the prior proceeding. The purposes behind the doctrine is to conserve limited judicial resources, establish certainty and respect for court judgments and protect the party relying upon the judgment from vexatious litigation. Regardless of whether the plaintiff effects a recovery in the first action, he may not relitigate an action which has been adjudicated already. In keeping with these purposes, the doctrine must be liberally construed and applied without technical restriction.<sup>3</sup>

Application of the doctrine of *res judicata* requires the concurrence of four conditions between the present and prior action: 1) identity of the thing sued upon; 2) identity of the cause of action; 3) identity of parties or their privies; and 4) identity of the

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<sup>2</sup> After entering into a tolling agreement, the action styled Still v. Saul Ewing LLP, July Term No. 4073 was voluntarily dismissed by Still.

<sup>3</sup> McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219 (1993).

quality or capacity of the parties suing or being sued.<sup>4</sup> Since all the other elements are clearly the same in the present action as that fully litigated to the trial court and the Third Circuit Court of Appeals in the Federal Court, the only issue presented herein is the second element, identity of the cause of action.

With respect to identity of cause of action, *res judicata* generally is thought to turn on the essential similarity of the underlying events giving rise to the various legal claims. In determining whether a single cause of action is present one may consider the identity of the acts complained of, the demand for recovery, the identity of witnesses, documents and facts alleged. A lack of identity of these facets would, of course, support the conclusion that there is no identity of cause of action.<sup>5</sup>

Here, the fact that Still alleges a different legal theory in this action does not give rise to a different cause of action. In this case the underlying events giving rise to the various legal claims are identical. Both actions challenge Regulus' cancellation and retention of Still's pledged shares, Regulus' failure to set vesting targets and benchmarks for Class C and D shares as required by the Operating Agreement, Regulus' issuance of additional Class B, C and D shares to other Regulus executives and Regulus' shifting contracts and assets from Regulus to subsidiaries. Both actions also seek monetary compensation for the value of the shares. The actions share identity of witnesses, documents and facts. The actions are identical. Adjudicating the UCC claim, breach of contract claims and the devaluation claim here would require the parties to relitigate the

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<sup>4</sup> See, Matternas v. Stehman, 434 Pa. Super. 255, 642 A.2d 1120, 1123 (1994).

<sup>5</sup> See, McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219, 1222 (1993).

same facts and present the same legal arguments raised before the Federal Court. This is improper.

The Restatement (Second) of Judgments provides:

A given claim may find support in theories or grounds arising from both state and federal law. When the plaintiff brings an action on the claim in a court, either state or federal, in which there is no jurisdictional obstacle to his advancing both theories or grounds, but he presents only one of them, and judgment is entered with respect to it, he may not maintain a second action in which he tenders the other theory or ground.<sup>6</sup>

The Federal Court's finding that Still's UCC amendment was untimely is immaterial.<sup>7</sup> The amendment was deemed untimely after a federal jury made a factual finding on the wrongful seizure of Still's shares. The jury decided that Regulus was lawfully justified in calling the Demand Note and the retention of Still's shares because of the agreements signed by Still and Regulus.<sup>8</sup> Although the jury was not required to decide the issue of commercial reasonableness based on the trial judge's instructions, the UCC claim was subsumed within the wrongful seizure claim.<sup>9</sup> The Federal Court's finding that Still's UCC claim was untimely advanced and rejected does not preclude the application of *res judicata*. The claims presented herein have already been decided and are not open to reexamination by this court. A final judgment on the merits was rendered by the Federal Court and said decision was affirmed on appeal. Accordingly, this action is barred by the principle of *res judicata*.

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<sup>6</sup>McArdle v. Tronetti, 426 Pa. Super. 607, 627 A.2d 1219, 1222 (1993)(citing Restatement (Second) of Judgments § 25 cmt. e. (1982)).

<sup>7</sup>Restatement (Second) of Judgments § 25 comment b (1982).

<sup>8</sup> Jury Verdict Slip attached hereto as Exhibit "4" to Defendant Regulus' Motion for Summary Judgment.

<sup>9</sup>Exhibit "18" attached to Defendant Regulus' Motion for Summary Judgment.

## **CONCLUSION**

Based on the foregoing, Defendant Regulus Motion for Summary Judgment is Granted as to Counts I, II, III and IV. For the same reasons, Plaintiff David Still's Cross Motion for Summary Judgment is denied.

**BY THE COURT,**

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**MARK I. BERNSTEIN, J.**