Court of Appeals Clarifies Definition of "The Same Cause of Action" for Purposes of Claim Preclusion

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Court of Appeals clarifies definition of “the same cause of action” for purposes of claim preclusion

Claim preclusion, an aspect of res judicata, forecloses relitigation of matters which have been or which could have been litigated in a prior adjudication when a subsequent suit is based on the same cause of action. What constitutes the same cause of action for claim preclusion purposes, however, is not always clear. Recently, Procedure Law and other statutes (do not sanction) a general remission of the Tax Law’s call for secrecy merely to accommodate a grand jury subpoena . . . where there is a total absence of any showing . . . that the investigation bears some relationship to tax matters.” Id. (citation omitted).

The term res judicata often is used broadly to include all instances in which a party is precluded from relitigating matters involved in prior adjudications. D. Siegel, New York Practice § 442 (1978); accord, Restatement (Second) of Judgments, Introductory Note ch. 3 (Tent. Draft No. 1, 1973). Used in this manner, the concept encompasses both “claim preclusion” and “issue preclusion.” See Siegel, supra, §§ 442-443, 450.

Claim preclusion prevents relitigation of an entire cause of action if a final and binding judgment previously has been rendered on the same matter. This doctrine is comprised of two subcategories: merger and bar. Under the merger rule, when judgment is rendered in favor of the plaintiff, “his cause of action ‘merges’ in the judgment” and may not be relitigated. Conversely, if the defendant has judgment in an action, the plaintiff thereafter is ‘barred’ from relitigating the same cause of action. Siegel, supra, § 450; accord, Restatement (Second) of Judgments §§ 45, 47-48, 61 (Tent. Draft No. 1, 1973). For a discussion of special circumstances, such as “dismissal for lack of jurisdiction,” when merger and bar will not operate to preclude a subsequent suit on the same cause of action, see id. §§ 48.1, 61.2.

In contrast, issue preclusion operates to foreclose relitigation of specific questions of fact or law that were actually or implicitly resolved in an earlier adjudication. Statter v. Statter, 2 N.Y.2d 668, 672-73, 143 N.E.2d 10, 12, 163 N.Y.S.2d 13, 16-17 (1957); Schuylkill Fuel Corp. v. Nieberg Realty Corp., 250 N.Y. 304, 306-07, 165 N.E. 456, 457 (1929); Siegel, supra, §§ 457, 460. This doctrine may not be raised, however, against a party who did not have a full and fair opportunity to litigate the issue in a prior action. See Schwartz v. Public Adm’t, 24 N.Y.2d 65, 71, 246 N.E.2d 725, 729, 298 N.Y.S.2d 955, 960 (1969); Restatement (Second) of Judgments § 68 (Tent. Draft No. 4, 1977). Like claim preclusion, issue preclusion has two aspects. One aspect, collateral estoppel, precludes relitigation in subsequent suits of issues that previously were determined in a suit based on a different cause of action. Siegel, supra, § 457; Restatement (Second) of Judgments § 68, Comment b (Tent. Draft No. 4, 1977); see In re American Ins. Co., 43 N.Y.2d 184, 188 n.2, 371 N.E.2d 798, 801 n.2, 401 N.Y.S.2d 36, 39 n.2 (1977); Schuylkill Fuel Corp. v. Nieberg Realty Corp., 250 N.Y. 304, 306-07, 165 N.E. 456, 457 (1929). Direct estoppel, on the other hand, precludes relitigation of issues determined in a proceeding which was dismissed on grounds other than the merits. Siegel, supra, § 443. For an excellent discussion of the distinctions between issue preclusion and claim preclusion, see Rosenberg, Collateral Estoppel in New York, 44 St. John’s L. Rev. 165 (1969).


See Smith v. Kirkpatrick, 305 N.Y. 66, 70, 111 N.E.2d 209, 211 (1953); F. James, Civil Procedure § 11.10 at 554 (1965); A. Vestal, Res Judicata/Preclusion V-43 (1969); Rosenberg, supra note 267, at 168. According to one commentator:
in Reilly v. Reid, the Court of Appeals held that, where the remedy sought and the facts necessary to support a claim are the same as those determined in an earlier adjudication, the proceedings are based on the same cause of action for res judicata purposes.

The Reilly petitioner was employed as an attorney in the competitive class of the civil service. After his position was abolished, the petitioner brought an article 78 proceeding, contending that under the Civil Service Law he was entitled to be appointed to the same or a similar position in the noncompetitive or exempt civil service class. This proceeding ultimately was dismissed on the ground that the positions sought were not similar to the petitioner’s former position as a matter of law. Prior to this dismissal, however, the petitioner instituted a second proceeding in which he sought reinstatement to his former job, arguing that the elimination of the position was illegal. The respondents unsuccessfully moved for dismissal, contending that the proceeding was barred on res judicata.

The definitions of “cause of action” [for purposes of the res judicata doctrine] for the most part fall into one of three main patterns: (1) Those which define it in terms of the remedial right which is being enforced and limit it to a single right . . . . (2) Those which define “cause of action” in terms of a single delict or breach of a primary duty . . . . (3) Those which give the term “cause of action” a purely factual content . . . .


45 N.Y.2d at 30, 379 N.E.2d at 176, 407 N.Y.S.2d at 648-49.

Id. at 26, 379 N.E.2d at 174, 407 N.Y.S.2d at 646. Petitioner Reilly had been employed as an associate attorney with the New York State Department of Environmental Conservation. Id., 379 N.E.2d at 173, 407 N.Y.S.2d at 646.

Article 78 of the CPLR defines the scope of judicial review of administrative agency decisions and establishes the procedural mechanism for bringing a proceeding for review. For a general discussion of article 78, see SIEGEL, supra note 267, §§ 557-570.

Id. at 26-27, 379 N.E.2d at 173, 407 N.Y.S.2d at 646-47. After the elimination of his position, the petitioner was offered a job at a lower grade level within the competitive class. See N.Y. Civ. Serv. LAW § 80 (McKinney 1973). He rejected this offer, however, electing instead to bring suit.


45 N.Y.2d at 27, 379 N.E.2d at 174, 407 N.Y.S.2d at 647. In the second article 78 proceeding, the petitioner alleged that his former duties merely had been reassigned to the non-competitive or exempt positions he sought in the previous proceeding. He contended that this reassignment of duties was arbitrary and capricious, constituting an abuse of discretion. Id. at 27, 379 N.E.2d at 174, 407 N.Y.S.2d at 647; see CPLR 7803(3) (1963).
The Appellate Division, Third Department, reversed and granted the respondents' motion to dismiss. The Appellate Division reversed and granted the respondents' motion to dismiss. On appeal, the Court of Appeals affirmed, noting that in each proceeding the petitioner had predicated his claim on the same underlying factual transaction and had requested "nearly identical" relief. Writing for the unanimous Court, Chief Judge Breitel rejected a strictly mechanical approach for determining when the principles of claim preclusion should be invoked. The Court instead examined the factual foundation for the relief requested in each proceeding and the extent to which the purportedly distinct actions relied on similar proof. Applying the criteria articulated in the Second Restatement of Judgments, Chief Judge Breitel found the factual predicate in each proceeding to be the allegedly wrongful abolition of the petitioner's civil service position. While material differences in the elements of proof might render distinct two actions which arose from the same course of dealings between the adversaries, the Reilly petitioner could not benefit from such a rule, since in both proceedings he would have to "establish that abolition of his position without transferring him to an equivalent

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277 58 App. Div. 2d at 926, 397 N.Y.S.2d at 429; see CPLR 3211(a)(5) (1970). The appellate division held that the second proceeding was barred on "res judicata and collateral estoppel" grounds since the issues involved in the second suit were "substantially the same as those previously before the court." 58 App. Div. 2d at 927, 397 N.Y.S.2d at 430.

278 58 App. Div. 2d at 926, 397 N.Y.S.2d at 429.

279 45 N.Y.2d at 26, 379 N.E.2d at 174, 407 N.Y.S.2d at 646.

280 Id. at 29, 379 N.E.2d at 175-76, 407 N.Y.S.2d at 648. The Court stated that "no single definition formulation is always determinative" in assessing what constitutes the same cause of action. Id. at 29, 379 N.E.2d at 176, 407 N.Y.S.2d at 648. The Court suggested, however, that the categorical approach exemplified by the Restatement (Second) of Judgments § 61(2) (Tent. Draft No. 1, 1973) may be useful in evaluating similarity between causes of action. 45 N.Y.2d at 29, 379 N.E.2d at 176, 407 N.Y.S.2d at 648.


282 Id. at 29-30, 379 N.E.2d at 176-77, 407 N.Y.S.2d at 648-49. The section of the Restatement quoted by the Reilly Court emphasizes a transactional approach and provides that the claim or cause of action extinguished by a prior judgment "includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose," Restatement (Second) of Judgments § 61(1) (Tent. Draft No. 1, 1973). According to the Restatement, "whether the facts are related in time, space, origin, or motivation, [and] whether they form a convenient trial unit" are particularly significant factors in "pragmatically" assessing the elements of a litigated transaction. Id. § 61(2) & Comment b. It should be noted that the section of the 1973 Restatement draft which defines "cause of action" for res judicata purposes was submitted in substantially the same form in 1978. See Restatement (Second) of Judgments Foreword (Tent. Draft No. 5, 1978).


position was in violation of law.\textsuperscript{285} In addition, the Court noted, in both suits the petitioner sought essentially the same relief—"restoration to his original duties"—although he did so by requesting a nominally different remedy under a different legal theory.\textsuperscript{286} Thus, the Reilly Court found that the petitioner's two

\textsuperscript{285} 45 N.Y.2d at 30, 379 N.E.2d at 176, 407 N.Y.S.2d at 649. The Court determined that the proof in the petitioner's second proceeding would rest upon substantially the same "foundation facts" as those presented in the earlier suit. In the first proceeding, in order to establish his right to a noncompetitive or exempt position, the petitioner would have had to prove that the duties involved in the position sought were substantially the same as those of his former position. See N.Y. Civ. Serv. Law § 80 (McKinney 1973). In the second suit, in order to show that his former position had been wrongfully abolished, the petitioner also would have to demonstrate the similarity between the duties of his former job and those of the position to which his duties allegedly were reassigned. See Meenagh v. Dewey, 286 N.Y. 292, 298, 36 N.E.2d 211, 217 (1941). The Court contrasted the Reilly petitioner's situation to that of the plaintiff in Smith v. Kirkpatrick, 305 N.Y. 66, 111 N.E.2d 209 (1953), where the Court held that an action in quantum meruit was not foreclosed by the adjudication of a prior action arising from the same transaction. Id. at 72, 111 N.E.2d at 212. In the earlier suit, the plaintiff's claim for breach of contract was dismissed on Statute of Frauds grounds, and his joint venture theory was dismissed on the merits. Id. at 68-69, 111 N.E.2d at 210-11. Although in the quantum meruit action the plaintiff sought payment for the same work that was the subject of the prior suit, the proof in each action varied. In the earlier suit, the plaintiff concentrated on proving the existence of a valid agreement giving rise to a right to payment. Id. at 71, 111 N.E.2d at 212. In the later suit, however, the plaintiff emphasized the value of the services he had rendered without regard to any agreement. Id. Commenting upon the plaintiff's right to maintain the action, the Smith court stated:

The two actions [joint venture and quantum meruit] involve different "rights" and "wrongs". The requisite elements of proof and hence the evidence necessary to sustain recovery vary materially. The causes of action are different and distinct and the rights and interests established by the previous adjudication will not be impaired by a recovery, if that be the outcome, in quantum meruit. Id. at 72, 111 N.E.2d at 212. Thus, under the Smith Court's approach, claim preclusion principles will be invoked only when successive suits are predicated on the same transaction or series of transactions and the successive claims are dependent upon the same evidence. See Marsh v. Masterson, 101 N.Y. 401, 407, 5 N.E. 59, 61 (1886); Lipkind v. Ward, 256 App. Div. 74, 78, 8 N.Y.S.2d 832, 836-37, (3d Dep't 1939). See also Perry v. Dickerson, 85 N.Y. 345, 350 (1881). In Perry, the Court held that a suit to recover wages for services rendered was a different cause of action from a suit for damages for breach of an employment agreement since "[t]he wages could not have been proved or recovered under the pleadings in [the damage suit] nor the damages for the wrongful dismissal in [the suit for wages]." Id. at 350.

causes of action were not sufficiently distinguishable for claim preclusion purposes.\textsuperscript{287}

The \textit{Reilly} holding is in accord with earlier New York cases which utilized tests emphasizing the nature of the wrongful act or the evidence to be presented as criteria for determining whether successive suits involved identical causes of action for res judicata purposes.\textsuperscript{288} Significantly, however, while reaffirming the viability of

\textsuperscript{287} 45 N.Y.2d at 30, 379 N.E.2d at 177, 407 N.Y.S.2d at 649. The \textit{Reilly} Court noted in dictum that, under the holding of \textit{Statter v. Statter}, 2 N.Y.2d 668, 143 N.E.2d 10, 163 N.Y.S.2d 13 (1957), the petitioner would be precluded from further litigating the validity of the elimination of his position, since the first proceeding, in which he sought transfer to a different civil service position, may have “necessarily assumed the validity of the abolition of the old position.” 45 N.Y.2d at 31, 379 N.E.2d at 177, 407 N.Y.S.2d at 649-50. The \textit{Statter} Court held that the existence of a former judgment precludes relitigation of issues that were actually or implicitly litigated in the action even when the second suit is premised on a different cause of action. 2 N.Y.2d at 672-73, 143 N.E.2d at 12, 163 N.Y.S.2d at 16-17. Thus, “[w]here a judgment of a particular kind can only be accounted for legally by the existence of a certain combination of findings, each of those findings will be deemed established by the judgment.” \textsc{Siegel}, \textit{supra} note 287, § 464, at 614. In \textit{Statter}, for example, where a separation decree was granted, the parties were thereafter precluded from showing that a valid marriage never existed between them. Permitting the wife to maintain a subsequent annulment action was held impermissible because it would have undermined the original separation decree, which was predicated on the existence of a valid marriage between the parties. 2 N.Y.2d at 673, 143 N.E.2d at 13, 163 N.Y.S.2d at 17. In reaching this conclusion, the \textit{Statter} Court invoked the “impairment” test articulated in \textit{Schuykill Fuel Corp. v. Nieberg Realty Corp.}, 250 N.Y. 304, 165 N.E. 456 (1929). See note 288 \textit{infra}. The \textit{Statter} Court’s use of the \textit{Schuykill} “impairment” doctrine has been criticized. According to one commentator:

> It is curious that the wife’s cause of action, based on the premise that the marriage was a nullity, could be found the same as a cause of action premising its validity . . . . The explanation for the Court’s odd conclusion lies in the tangled reasoning the \textit{Schuykill} doctrine encourages . . . .

> The “impairment” test [of \textit{Schuykill}] may be logical but it is far from reliable. The mere circumstances that failure to give conclusive effect to a matter involved in an earlier suit will permit a grossly inconsistent result in a second suit does not compel the second court to apply res judicata [as the Smith case demonstrates] . . . .

> Better analysis in the \textit{Statter} case would have recognized that since the wife’s claim for annulment was different from her husband’s earlier case for separation, she should not have been precluded on the issue of the validity of the marriage because that issue had gone untested in the husband’s action.

Rosenberg, \textit{supra} note 1, at 170-71 (footnotes omitted) (emphasis in original); see note 285 \textit{infra}.

\textsuperscript{288} New York courts have utilized various tests to determine whether the causes of action in successive suits are the same. One test is whether rights established in an earlier suit will be impaired by a different holding in a subsequent suit. \textit{Schuykill Fuel Corp. v. Nieberg Realty Corp.}, 250 N.Y. 304, 307, 165 N.E. 456, 457 (1929). Under the \textit{Schuykill} test, the result reached in \textit{Reilly} would likely have been the same, since the determination in the first suit, that the state was not obliged to employ Reilly in a comparable civil service position, would have been impaired by a holding in the second suit which permitted Reilly to return to his
a variety of traditional tests, the Court appears to be moving toward the transactional approach recommended by the Restate-

former position. One commentator, however, has criticized the Schuylkill rule, noting that its test is circular because "whether 'rights or interests' . . . established by the former judgment would be 'destroyed or impaired' . . . depends in many cases on what the court now decides is the effect of the earlier judgment so far as creating rights or interests." Rosenberg, supra note 267, at 169. It is interesting to note that the Schuylkill doctrine was not applied to bar the quantum meruit claim in Smith v. Kirkpatrick, 305 N.Y. 66, 111 N.E.2d 209 (1953), see note 285 supra, although a holding that the defendant owed the plaintiff money would have undermined the earlier finding that no money was owed. According to Professor Rosenberg, this retreat from the Schuylkill rationale was the result of the Smith Court's finding that the evidence material to each cause of action in Smith differed. Rosenberg, supra note 267, at 168.

Another approach used by the courts rests upon an examination of the nature of the wrongful act at issue. See, e.g., De Cos v. Turner & Blanchard, Inc., 267 N.Y. 207, 196 N.E. (1936); Secor v. Sturgis, 16 N.Y. 548 (1858); Stoner v. Culligan, Inc., 32 App. Div. 2d 170, 300 N.Y.S.2d 966 (3d Dep't 1969). The Secor Court reasoned: "The true distinction between demands or rights of action which are single and entire, and those which are several and distinct is, that the former immediately arise out of one and the same act . . . and the latter out of different acts . . ." 16 N.Y. at 558. The "wrongful act" test is unsatisfactory, however, because it is difficult to predict which conduct the courts will determine to be the wrongful act underlying the respective causes of action. In Reilly, for example, the Court found a single wrongful act: the abolition of petitioner's position. See note 283 and accompanying text supra. It could be argued, however, that there was some basis for the Court to find that the petitioner's two suits arose from different acts. The initial claim in Reilly was based on the respondents' allegedly wrongful refusal to appoint the petitioner to a noncompetitive position after the elimination of his competitive position. The second action, on the other hand, might have been based on the wrongful abolition of the competitive position. Similarly, in Smith, where the Court found two different acts, see note 285 supra, it can be argued that the suits arose from the same act: failure to compensate the plaintiff for work performed. Thus, although the Court in Reilly reaffirmed the viability of a "wrongful act" test, it is submitted that the standard may be unreliable.

The test that appears to have been most influential in the Reilly decision, however, is whether the proof and evidence involved in the subsequent suit would be substantially the same as that involved in the prior suit. See, e.g., Smith v. Kirkpatrick, 305 N.Y. 66, 72, 111 N.E.2d 209, 212 (1953); Lipkind v. Ward, 256 App. Div. 74, 78, 8 N.Y.S.2d 832, 836-37 (3d Dep't 1939); note 285 supra. The rationale in Eidelberg v. Zellermayer, 5 App. Div. 2d 658, 662, 174 N.Y.S.2d 300, 304 (1st Dep't 1958), aff'd mem., 6 N.Y.2d 815, 159 N.E.2d 691, 188 N.Y.S.2d 204 (1959), represents a typical application of this test. In Eidelberg, a second action in joint venture was precluded by a former adjudication of the same "inceptive facts" premised on a sale agreement theory. 5 App. Div. 2d at 661, 174 N.Y.S.2d at 302. The Eidelberg court looked beyond the facts pertinent to the specific legal theory pleaded and analyzed the "foundation facts" in each suit. Finding them identical, the court determined that the successive suits were based on the same cause of action. Similar reasoning is apparent in the Reilly opinion, where the Court stressed the identity of the underlying transaction. See generally Rosenberg, supra note 267, at 168.

Borrowing from this approach, the Court in Reilly looked past the superficial differences in the petitioner’s separately litigated claims and emphasized instead the common factual foundation necessary to support the two causes of action. Although the Reilly opinion does not establish a clear standard, it does reflect the Court’s view that the concept of a “cause of action” should be realistically defined for purposes of applying the principles of res judicata. Since modern procedural rules are designed to maximize a litigant’s opportunity to procure relief to which he is entitled in a single adjudication, a requirement that suitors present all claims premised on the same factual foundation in a single action is not unduly harsh. Moreover, in addition to promoting judicial economy, such a rule seems calculated to further the interest of all litigants in the finality of judgments.

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291 See note 281 and accompanying text supra.

292 According to one commentator, lack of precision is unavoidable. Detailed rules cannot settle [when causes of action are the same], for the factors that influence decision defy prescription. They include such complex considerations as the practical needs of administering justice conveniently and efficiently and the degree of favor or disfavor with which the law regards the type of claim made by the plaintiff. Rosenberg, supra note 267, at 169 (footnote omitted).

Another commentator has suggested:

Perhaps the time has come to . . . ask simply whether the party to be precluded had adequate opportunity to litigate the matter in the earlier proceeding and whether the matter is closely enough related to the original controversy so that judicial economy would be served by confining litigation to one proceeding. If these two conditions are satisfied, . . . preclusion will generally be neither unforeseeable nor unfair.


293 See 45 N.Y.2d at 29, 379 N.E.2d at 175-76, 407 N.Y.S.2d at 648. In the future, because of the Court’s focus on the factual foundation underlying a cause of action, the practitioner would be wise to plead all possible theories related to an underlying factual predicate in one action.


295 The concept of res judicata is premised on the principle that there must be finality.
Federal venue restrictions for suits against national banks held inapplicable to third-party claims

Under federal law, a national bank may be sued in a state court in the county or city in which it is located. Although the language of the applicable venue statute appears to be permissive, in Mercantile National Bank v. Langdeau, the United States Supreme Court held that “national banks may be sued only in those state courts in the county where the banks are located.” Recently, however, in Lazarow, Rettig & Sundel v. Castle Capital


Id. at 561 (emphasis added). The Supreme Court has recognized only two exceptions to the general rule precluding suits against national banks in forums other than those in counties in which the bank is “located.” In Casey v. Adams, 102 U.S. 66, 67 (1880), the Court held that purely “local” actions may be brought in counties other than those specified in § 94. In addition, the Court has stated that the venue privilege may be waived by a failure to assert it, Charlotte Nat'l Bank v. Morgan, 132 U.S. 141, 145 (1889), or by conduct which could be construed as consent to be sued, National Bank of N. America v. Associates of Obstetrics and Female Surgery, Inc., 425 U.S. 460 (1976) (per curiam). Conduct sufficient to constitute consent appears to be limited to on-going business activity within the jurisdiction, including qualifying to do business or appointing an agent to receive service of process in a foreign district. Id. at 462 (Rehnquist, J., concurring).