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Collateral Estoppel: Glaser v. Huelte Followed

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that *any* jurisdictional question can be reopened unless based solely on a litigated question of fact.

Although the federal rule is quite restrictive on a litigant's ability to question a jurisdictional determination, it seems that the appellate division has unnecessarily gone to the other extreme. A more moderate rule is the Restatement rule: "When a court has jurisdiction over the parties and determines that it has jurisdiction over the subject matter, the parties cannot collaterally attack the judgment . . . unless the policy underlying the doctrine of res judicata is outweighed by the policy against permitting the court to act beyond its jurisdiction." [145] This principle would permit review of the jurisdictional basis where the court was one of limited jurisdiction or where the lack of jurisdiction seemed obvious,[146] without opening the courts to collateral attacks on every judgment except the few based solely on issues of fact.

Collateral Estoppel: Glaser v. Huette *followed.*

In *Glaser v. Huette*,[147] the Court of Appeals held, that where parties to a former suit were not adversaries, but rather co-fendants, an adjudication in that suit settles nothing with respect to the liability of the co-defendants *inter se* in subsequent actions.

Subsequent to *Glaser*, the technical requirements necessary to interpose collateral estoppel defensively were liberalized by the Court of Appeals.[148] More recently, the Court of Appeals has allowed the offensive use of collateral estoppel and some doubt has been thrown upon the continuing validity of the *Glaser* rule by *Cummings v. Dresher*.[149] However, cases involving joint tort-feasors have continued to apply the *Glaser* rule.

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[145] RESTATEMENT OF JUDGMENTS § 10(1) (1942). This principle was adopted in Peri v. Groves, 183 Misc. 579, 50 N.Y.S.2d 300 (Sup. Ct. N.Y. County 1944).

[146] Other pertinent factors indicated by the Restatement include: whether the issue was one of law or of fact; whether the issue of jurisdiction was actually litigated; and whether there is a strong policy against the court's exceeding its jurisdiction. RESTATEMENT OF JUDGMENTS § 10(2) (1942).

[147] 256 N.Y. 686, 177 N.E. 193, *aff'g*, 232 App. Div. 119, 249 N.Y.S. 374 (1st Dep't 1931). A number of lower court rumblings have held contra. *See* Thornton, *Further Comment on Collateral Estoppel*, 28 BROOKLYN L. REV. 250 (1962); *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 152 (1967).

[148] Israel v. Wood Dolson Co., 1 N.Y.2d 116, 134 N.E.2d 97, 151 N.Y.S.2d 1 (1956).

[149] 18 N.Y.2d 105, 218 N.E.2d 688, 271 N.Y.S.2d 976 (1966). For a further discussion of this case, see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 153 (1967).

In light of this liberal trend, the appellate division, second department, recently decided *Bartolone v. Niagara Car & Truck Rentals, Inc.*[150] Plaintiff was the owner and operator of a car involved in a collision with an automobile owned by a corporate defendant and operated by an individual defendant. Personal injury actions, brought by passengers in plaintiff's car, against plaintiff and defendants resulted in judgments against the three defendants. Plaintiff thereupon brought an action against the owner and operator of the other vehicle. Defendants contended that they should be permitted to plead res judicata, since the issues of negligence and contributory negligence were determined in the other actions. In a memorandum opinion, the court held that *Glaser v. Huette* "is presently the law of New York and we apply it to this case." [151]

Collateral Estoppel: Court of Claims interprets DeWitt *requirements.*

In *Alberto v. State*,[152] the court of claims was afforded the opportunity to interpret the requirements for the use of collateral estoppel, as posited by *B. R. DeWitt, Inc. v. Hall*,[153] and *Cummings v. Dresher*.[154] Claimant had been involved in an accident near the Tappan Zee Bridge, where his car skidded into an automobile operated by one Siccardi. Siccardi, and the passengers in his car, brought a personal injury action against claimant in federal court. There claimant sought to prove that the State had been negligent by maintaining the road in a dangerous condition. However, his offer of proof was rejected on the ground that the State was not a party to the action, and could not, therefore, defend itself. The jury found claimant negligent and returned a verdict for the plaintiffs.

In the instant action, the State moved to dismiss claimant's assertion of negligence under CPLR 3211(a)(5) on the ground that the findings in the federal court were res judicata as to the issues presented.

In rejecting the State's contention, the court reasoned that *DeWitt* limited the application of collateral estoppel to cases in which a party has had the opportunity to present *all* evidence available in order to exonerate himself. It was said that

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[150] 29 App. Div. 2d 689, 288 N.Y.S.2d 312 (2d Dep't 1968).
[151] *Id.* at 690, 288 N.Y.S.2d at 313.
[152] 56 Misc. 2d 235, 289 N.Y.S.2d 14 (Ct. Cl. 1968).
[153] 19 N.Y.2d 141, 225 N.E.2d 195, 278 N.Y.S.2d 596 (1967). For a further discussion of *DeWitt*, see *The Quarterly Survey of New York Practice*, 42 ST. JOHN'S L. REV. 128, 150 (1967).
[154] 18 N.Y.2d 105, 218 N.E.2d 688, 271 N.Y.S.2d 976 (1966).