

Res Judicata: No Res Judicata Where a Decision Is Rendered Without a Judgment

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In the recent case of *Continental Auto Lease Corp. v. Campbell*,¹¹⁴ the Court of Appeals was faced with a classic *Mills* situation. Plaintiff, engaged in the automobile rental business, sought to recover damages against the driver of an automobile which was involved in a collision with one of plaintiff's leased automobiles. The jury had previously found that both plaintiff's driver and the defendant were guilty of negligence. Applying *Mills* in the present action, the Court allowed plaintiff recovery holding that the negligence of plaintiff's driver was not imputable to plaintiff so as to bar recovery.

The defendant sought to distinguish the case from *Mills* on two grounds. First, the defendant contended that since here a commercial bailment was involved as opposed to a gratuitous bailment, a different rule should apply. The Court stated that this alone was not enough to deny plaintiff a recovery for damages.¹¹⁵ Second, the defendant sought to bring the case within the rule of *Gochee v. Wagner*.¹¹⁶ Under *Gochee*, if the owner's relationship to the operator is such that a degree of physical control over the operator can reasonably be deemed to exist, the negligence of the driver can be imputed to the owner so as to bar his recovery against a negligent third party. The Court dismissed this second contention because it felt that plaintiff had no right to control its lessee's conduct as a driver.¹¹⁷

The decision in *Continental* clarifies the *Mills* rule in regard to leased automobiles, and puts to rest any doubt that a different rule might be applied in the automobile leasing situation.

Res judicata: No *res judicata* where a decision is rendered without a judgment.

In *Mandracchia v. Russo*,¹¹⁸ plaintiff and defendant had, in an earlier suit, litigated the issues involved with their respective positions reversed. The judge, in the earlier action, had rendered a decision, after a non-jury trial, but judgment was never entered because the parties settled in accordance with the terms of the decision. In the present action, the appellate term, second department, held that the earlier decision was not *res judicata* as to the present action since judgment had never been entered thereon.

circumstances disclosed by this record. Nor may it be invoked for the purpose of imputing the operator's negligence to the owner. It is applicable for that purpose only in actions brought by third persons against the owner." *Mills v. Gabriel*, 259 App. Div. 60, 62, 18 N.Y.S.2d 78, 80 (2d Dep't 1940).

¹¹⁴ 19 N.Y.2d 350, 227 N.E.2d 28, 280 N.Y.S.2d 123 (1967).

¹¹⁵ *Id.* at 353, 227 N.E.2d at 30, 280 N.Y.S.2d at 125.

¹¹⁶ 257 N.Y. 344, 178 N.E. 553 (1931).

¹¹⁷ *Continental Auto Lease Corp. v. Campbell*, 19 N.Y.2d 350, 354, 227 N.E.2d 28, 30, 280 N.Y.S.2d 123, 125 (1967).

¹¹⁸ 53 Misc. 2d 1018, 280 N.Y.S.2d 429 (App. T. 2d Dep't 1967).

In refusing to give the earlier decision *res judicata* effect, the court was restating the settled law in New York: "Res judicata effect is not given to a legal proceeding unless there has been a final judgment."¹¹⁹

The dissent, while agreeing that the doctrine of *res judicata* does not generally apply in the absence of the entry of a final judgment, would have been willing to endorse an exception to the rule making a decision or verdict binding because of the parties' acquiescence to it.¹²⁰ The dissent felt that an exception should be allowed in the instant case, especially in light of the recent pragmatic approach to the doctrine of *res judicata* by the Court of Appeals.¹²¹

Where, as in the instant case, the issues have been previously litigated, and only the ministerial function of entering judgment remains, it seems that there is little to be gained from a technical application of *res judicata* principles.¹²² Not only is the refusal to afford a *res judicata* defense unfair to the defendant, but the liberal spirit of recent Court of Appeals decisions in the area¹²³ is circumvented.

Res judicata: Principle applies even where prior court lacked subject matter jurisdiction.

Jurisdiction is the power of a court to reach and affect legal interests.¹²⁴ Before a court may effectively render a judgment, it must have jurisdiction over the persons or things involved, as well as subject matter jurisdiction, *i.e.*, competency to decide the particular litigation in question. The judgment of a court proceeding without these two prerequisites is

¹¹⁹ 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5011.10 (1966).

¹²⁰ *Mandracchia v. Russo*, 53 Misc. 2d 1018, 1020, 280 N.Y.S.2d 429, 432 (App. T. 2d Dep't 1967). In support of this proposition the court cited *Kannel v. Kennedy*, 94 F.2d 487 (3d Cir. 1937).

¹²¹ 53 Misc. 2d at 1020, 280 N.Y.S.2d at 432.

¹²² New York recognizes the following exception to the general rule: "In certain instances the final judgment requirement is ignored. When an order adjudicating a fully litigated and central motion in the first action determines the subject matter of the second action and the order was not subject to modification at a later point in the first suit, it is binding on the parties in the subsequent suit. Similarly, when an issue is heard before a referee to hear and report and his report is confirmed by the court, the referee's determination is given *res judicata* effect." 5 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 5011.10 (1966).

¹²³ See, *e.g.*, *B. R. DeWitt, Inc. v. Hall*, 19 N.Y.2d 141, 225 N.E.2d 195, 278 N.Y.S.2d 596 (1967); *Cummings v. Drescher*, 18 N.Y.2d 105, 218 N.E.2d 688, 271 N.Y.S.2d 976 (1966).

¹²⁴ 1 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 301.01 (1966).