

A.2d 908 (Pa. 2001)), (c) In re Dawley. Estate of Stanford Harris v. William Dawley, 312 B.R. 765 (Bankr. E.D. Pa. 2004), (d) In the Matter of William Dawley, Debtor. William Dawley v. Estate of Stanford Harris, 2005 U.S. Dist. LEXIS 21564 (E.D. Pa. 2005), (e) In re William Dawley, Debtor. Christine Shubert v. William Dawley, Judith Dawley, 2005 Bankr. LEXIS 1593 (E.D. Pa. 2005).

For the reasons discussed, this court respectfully submits that its decision should be affirmed.

BACKGROUND

Established in 1985, Payphone, Inc. (“Payphone”) operated as a Pennsylvania corporation that provided and serviced video poker machines in Philadelphia area restaurants and taverns.¹ During its existence, Payphone had five shareholders with varying ownership interests.² These owners were, Stanford Harris, 21.99% ownership, William Dawley, 16.67% ownership, Bernard Greenstein, 16.67% ownership, Harvey Fischer, 29.99% ownership, and Gerald Fischer, 14.67% ownership.³ Based upon the shareholder’s agreement, Payphone’s profits were distributed according to the ownership interests.⁴ Beginning in 1995, William Dawley assumed responsibility for making distributions, balancing the Payphone checkbooks, and supplying the company accountant with financial information.⁵

¹ Fischer’s Proposed Findings of Fact and Conclusions of Law Established by Collateral Estoppel, p. 5.

² *Id.* at p. 6.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at p. 7.

In 1978, prior to the creation of Payphone, William Dawley and Bernard Greenstein (“Greenstein”) incorporated Franbern, Inc. (“Franbern”).⁶ Franbern, a Pennsylvania corporation, was equally owned by William Dawley and Greenstein and was in the same business as Payphone.⁷ Beginning with the incorporation of Payphone in the late 1980’s, through June 1998, Franbern did not receive any income.

Between 1994 and April 1998, Stanford Harris, Gerald Fischer, and Harvey Fischer retired from active involvement with the Payphone business due to illnesses.⁸ Despite the reduced role of these three owners, the company continued to yield consistent revenues between 1994 and the middle of 1998.⁹ Specifically, Payphone gross receipts showed earnings of \$350,086 in 1994, \$324,563 in 1995, \$359,431 in 1996, and \$300,602 in 1997.¹⁰

As of June 30, 1998, the Payphone general ledger shows the company stopped doing business altogether.¹¹ At that same time, July 1, 1998, Franbern resumed operating.¹² Payphone has not produced any income since June 1998, while Franbern has resurrected itself as a profitable business beginning in July 1998.¹³ As a result of these developments, William Dawley, Payphone and Judith Dawley were subjected to a series

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at p. 9. Harvey Fischer died in April 1998, and Stanford Harris passed away in November 1999. *Id.*

⁹ *Id.* at p. 8.

¹⁰ *Id.*

¹¹ *Id.* at p. 9.

¹² *Id.*

¹³ *Id.* at p. 10.

of lawsuits, the crux of which were the claims that beginning in July 1998, William Dawley had transferred all of Payphone's assets to Franbern for personal benefit.¹⁴ Additionally, these several lawsuits, including multiple bankruptcy actions, allege Dawley is liable for breach of contract, breach of fiduciary duty, conversion and fraudulent transfer.¹⁵ Each claim was subject to litigation and resulted in a finding against Dawley.

Subsequent to the conclusion of these lawsuits, on February 24, 2009, Rhoda Fisher, Executrix of the Estate of Harvey Fischer ("Fischer"), filed a Motion for Collateral Estoppel requesting the court bar Dawley from challenging or re-litigating the issues presented in those prior actions. This court granted the Motion for Collateral Estoppel in favor of Fischer by Order of June 3, 2009. This appeal followed.

DISCUSSION

The doctrine of collateral estoppel, also known as issue preclusion "operates to prevent a question of law or an issue of fact which has once been litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit."¹⁶ The theory behind this rule is to prevent litigants from the "burden of relitigating an issue with the same party or his privy and the need for efficient administration of justice."¹⁷ Collateral estoppel may be applied when the following

¹⁴ *Id.* at pp. 18, 20.

¹⁵ *Id.* at pp. 20-21, 23, 26.

¹⁶ Kaller's, Inc. v. John J. Spencer Roofing, Inc., 565 A.2d 794, 796 (Pa. Super. 1989).

¹⁷ *Id.* (quoting Clark v. Troutman, 502 A.2d 137, 139 (Pa. 1985)).

requirements are met:

(1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment.¹⁸

If these criterion are met, “collateral estoppel may be used as either a sword or shield by a stranger to the prior action if the party against whom the doctrine is invoked was a party or in privity with a party to the prior action.”¹⁹

Instantly, Dawley insists that collateral estoppel must not be granted for three distinct reasons. First, Dawley presents a general policy argument claiming offensive collateral estoppel runs counter to the court’s effort to promote judicial economy because it promotes more litigation;²⁰ rather than intervene in a lawsuit, a party can wait for judgment in the earlier litigation, and then institute an additional action if the initial case yields a favorable result.²¹ Second, defendants claim that the use of collateral estoppel against Dawley would violate the due process rights of Greenstein and Franbern,²² two

¹⁸ Spisak v. Edelstein, 768 A.2d 874, 877 (Pa. Super. 2001)(quoting Incollingo v. Maurer, 575 A.2d 939, 940 (Pa. Super. 1990).

¹⁹ Columbia Med. Group, Inc. v. Herring & Roll, P.C., 829 A.2d 1184, 1190 (Pa. Super. 2003)(quoting Phillip v. Clark, 560 A.2d 777, 780 (Pa. Super. 1989).

²⁰ Dawley Memorandum of Law in Opposition to Plaintiff’s Motion for Collateral Estoppel, p. 7.

²¹ *Id.* Dawley further states that Fischer’s failure to intervene in the Harris law suits are proof that collateral estoppel is not appropriate in the instant matter. *Id.*

²² While Dawley’s Opposition Motion only makes a general claim that other unnamed Defendant’s rights may be violated, this court suspects Dawley is referring to Greenstein and Franbern. In the event that assumption proves to be incorrect, the rationale behind the dismissal of Dawley’s due process argument remains applicable to those additional unnamed defendants as well.

parties not named in the instant matter.²³ Finally, Dawley presents a blanket argument insisting that Fischer has not adequately met the five requirements for collateral estoppel and therefore the claim should be dismissed.²⁴ This court **does not** find Dawley's contentions persuasive.

Dawley's first two arguments pertaining to judicial economy and due process rights must fail. Contrary to Dawley's assertion, a bevy of prior jurisprudence indicates that the use of collateral estoppel preserves judicial resources rather than exhausts them.²⁵ Furthermore, while the promotion of judicial efficiency is an important consideration, it is not an adequate defense in the face of a viable legal action. The paramount concern of the court is to reach a just result even if further litigation is required to achieve this end. Moreover, Dawley's insistence that Fischer's failure to intervene in the Harris law suit is enough to deny the Motion for Collateral Estoppel is not supported by any statute or judicial precedent.

Similarly, Dawley's theory that applying collateral estoppel to the Harris lawsuits would violate the due process rights of Franbern and Greenstein is unsubstantiated. In an effort to support this contention, Dawley makes loose reference to United States Supreme Court cases.²⁶ However, these cases do not support defendant's position. Rather, the cited cases clearly state the use of collateral estoppel against a prior **non-party**, who has

²³ Dawley Memorandum of Law in Opposition to Plaintiff's Motion for Collateral Estoppel, pp. 13-15.

²⁴ *Id.* at pp. 8-12.

²⁵ Clark v. Troutman, 502 A.2d 137, 139 (Pa. 1985); *See also* Montana v. United States, 440 U.S. 147, 153-54 (1979)(*holding* collateral estoppel achieves multiple purposes including the protection of litigants from the expense and vexation of attending several lawsuits, **conserves judicial resources**, and minimizes the possibility of inconsistent decisions) *emphasis added*.

²⁶ *See* Blonder-Tongue Laboratories, Inc. v. Univ. of Ill. Foundation, 402 U.S. 313 (1971); *See* Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331-32 (1979); *See also* United States v. Webber, 396 F.2d 381 (3rd Cir. 1968).

not had the chance to litigate the pertinent issues may violate one's due process rights.²⁷ That scenario is not what this court is presently faced with. Unlike the facts presented in Blonder, Fischer seeks the application of collateral estoppel against the Dawley defendants, all of whom were parties to the prior Harris actions.²⁸ These arguments are, therefore, insufficient.

Despite Dawley's insistence to the contrary, Fischer has adequately demonstrated that collateral estoppel should be applied based upon the criterion outlined above.²⁹ In the matter of Stanford Harris v. Payphone, Inc. and William Dawley, and the subsequent appellate decisions (collectively "Harris civil matters"), the court considered whether William Dawley was liable for breach of contract, breach of fiduciary duty, and conversion stemming from the transfer of Payphone's assets for his own personal benefit.³⁰ The trial court entered judgment in favor of Harris, and the matter was affirmed on appeal.

The relevant facts and issues in the present action are identical to those litigated in the Harris civil matter. Additionally, the Harris civil matters were litigated fully and reached a final judgment on the merits. Both the instant case and the Harris civil matters have common defendants, William Dawley and Payphone, and therefore the privity requirement for collateral estoppel is met. William Dawley and Payphone were represented by legal counsel in the Harris civil matter, and had ample opportunity to state

²⁷ Blonder, 402 U.S. at 329; Webber, 396 F.2d at 386.

²⁸ This Court also notes that both Franbern and Greenstein were parties to the prior Harris actions as well.

²⁹ See *supra* note 18.

³⁰ See Stanford Harris v. Payphone, Inc., and William Dawley, case No. 9811-3135 (C.C.P. Phila. September 2000)(aff'd 778 A.2d 741 (Pa. Super. 2001)), Stanford Harris, Sharon Harris v. Payphone, Inc. and William Dawley, 778 A.2d 741 (Pa. Super. 2001)(appeal denied, 793 A.2d 908 (Pa. 2001)).

their defenses at trial. Finally, all of the trial judge's findings of fact were essential to the ultimate conclusion which held William Dawley and Payphone liable for breach of contract, breach of fiduciary duty and conversion. As such, the five criterion are met, and Dawley is collaterally estopped from re-litigating the issues presented in the Harris civil matter.

Similarly, collateral estoppel should also be applied based upon the bankruptcy actions, Estate of Stanford Harris v. William Dawley, and the subsequent appeals.³¹ At issue there was whether William Dawley was entitled to a discharge for debts owed to Harris.³² Ultimately, the bankruptcy court held William Dawley did in fact fraudulently transfer Payphone assets for his own benefit at the expense of Harris, and discharge was not appropriate.³³ This judgment was affirmed upon appeal.³⁴

Applying the five criterion for application of collateral estoppel, it is apparent that Dawley must be barred from re-litigating the issues presented in the Harris bankruptcy action. Preliminarily, the issues raised in both the prior action and the present one are near identical insofar as they establish Dawley fraudulently transferred money from Payphone for his own benefit. In addition, the Harris bankruptcy action reached a final judgment on the merits. The defendants in both matters are the same, and therefore the privity requirement is satisfied. The defendants in the Harris bankruptcy action had legal representation and were afforded a full and fair opportunity to litigate. Lastly, the

³¹ See In re Dawley. Estate of Stanford Harris v. William Dawley, 312 B.R. 765 (Bankr. E.D. Pa. 2004); In the Matter of William Dawley, Debtor. William Dawley v. Estate of Stanford Harris, 2005 U.S. Dist. LEXIS 21564 (E.D. Pa. 2005).

³² In re Dawley. Estate of Stanford Harris v. William Dawley, 312 B.R. 765, 770 (Bankr. E.D. Pa. 2004).

³³ *Id.* at 781-89.

³⁴ In the Matter of William Dawley, Debtor. William Dawley v. Estate of Stanford Harris, 2005 U.S. Dist. LEXIS 21564 (E.D. Pa. 2005).

conclusions reached by the bankruptcy court were essential to the final judgment.

The final case at issue is In re William Dawley, Debtor. Christine Shubert v. William Dawley, Judith Dawley. This matter addressed a motion for summary judgment relating to the issue of whether or not Dawley was liable for fraudulent transfer of Payphone assets for personal benefit. The court granted partial summary judgment against Dawley. Following this, any outstanding issues were resolved via settlement between the parties, and the bankruptcy action was concluded in December 2006.³⁵

Fischer sufficiently demonstrates that this last case is suitable for collateral estoppel because it too echoes the same facts and issues as those in this matter. Final judgment was reached as to the issue of fraudulent transfer, awarding Harris money damages.³⁶ The defendants in both matters are identical, thereby meeting the privity requirement. Also, the defendants fully litigated the issues addressed at summary judgment and were assisted by counsel. The court's decision was supported by facts pertinent to both matters, and was essential to the final determination.

In summary, collateral estoppel should be applied and Dawley is barred from re-litigating these issues.

³⁵ Fischer's Proposed Findings of Fact and Conclusions of Law Established by Collateral Estoppel, p. 26.

³⁶ Dawley, 2005 Bankr. LEXIS 1593, 61 (E.D. Pa. 2005).

CONCLUSION

For these reasons, this court respectfully submits that the Order entered June 3, 2009 granting Rhoda Fischer, Executrix of the Estate of Harvey Fischer's Motion for Collateral Estoppel should be affirmed.

BY THE COURT:

ALBERT W. SHEPPARD, JR.,