

65808-5

65808-5

COURT OF APPEALS NO. 65808-5-I

**COURT OF APPEALS
(DIVISION ONE)
OF THE STATE OF WASHINGTON**

SUI K. WONG,

Appellant,

v.

ANA MARTINEZ and JOSE LUIS PATINGA FLORES ,

Respondents.

RESPONDENTS'S BRIEF

Gregory P. Cavagnaro
2100 116th Ave NE
Bellevue, Washington 98004
Telephone: (425) 451-1400
Facsimile: (425) 451-1689
Attorney for Respondents
WSBA #17644

ORIGINAL

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. RESPONSE TO STATEMENT OF ISSUES	1
III. STATEMENT OF THE CASE	2
V. CONCLUSION	9

TABLE OF AUTHORITIES

Cases

	Page
Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981).	5
<i>Kyreacos v. Smith</i> , 89 Wn.2d 425, (1977).....	7
<i>Loveridge v. Fred Meyer, Inc.</i> , 125 Wn.2d 759, (1995).....	6
<i>McGowan v. State</i> , 148 Wn.2d 278 , (2002).....	5
<i>Rains v. State</i> , 100 Wn.2d 660, (1983).....	6
<i>Reninger v. Dep't of Corrections.</i> , 134 Wn.2d 437, (1998).....	8
<i>Seattle-First Nat'l Bank v. Kawachi</i> , <u>91 Wn.2d 223</u> , (1978).....	6
<i>Snyder v. Munro</i> , 106 Wn.2d 380, (1986).....	6

Rules

Court Rule. 56	5
----------------------	---

Other Authorities

KARL B. TEGLAND, WASHINGTON PRACTICE, CIVIL
PROCEDURE § 35.32, at 475 (1st ed. 2003).....7

Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation*
in Washington , 60 WASH. L. REV. 805, 805, 813-14, and 829 (1985).....8

I. INTRODUCTION

Appellant Sui Wong does not come before this Court claiming the evidence presented to the trial court did not fully establish what the trial court said it established. The trial court found to be true that Sui Wong, quite simply, had fully litigated not once but twice, her case concerning the leasing of residential property to the Respondents. The trial court ruled that because Sui Wong had litigated issues with respect the leasing of her property to the Respondents on two former occasions, the law precluded her from bringing the claims in the trial court action.

What Sui Wong contends, instead, is that the trial court should have disregarded the evidence and the law in this case without a valid basis to do so.

II. RESPONSE TO APPELLANT'S STATEMENT OF ISSUES

Respondents only response to Sui Wong's' assignment of errors and statement of issues is to note that every one of Ms. Wong's' assignments of error and issues are based upon the very residential lease dispute she had previously litigated before in a small claim court and subsequently in the King County Superior Court prior to bringing the case in which she now seeks to appeal. The trial court in this case was correct in dismissing this case on the Respondents Motion for Summary Judgment.

III. STATEMENT OF THE CASE

A. On September 16, 2003, Respondents entered into a Monthly Rental Agreement with the Petitioner to occupy Petitioner's residential property located at 7355 Beacon Avenue South, Seattle, Washington. (Clerk's Papers, page 29,34,35). Rent for the premises was \$1,500.00. Upon signing the Rental Agreement, the Respondents tendered a \$1,500.00 deposit with the Petitioner. Respondents' paid their rent each month in a timely fashion. When the Respondents decided to purchase a home in the spring 2005, they gave the Petitioner a 2 month notice that they were terminating their tenancy and would vacate the premises. However once notice was given to Petitioner, she changed her attitude toward the Respondents. For example, the Petitioner refused to provide verification of rent for the Respondent's lender. Moreover, the Petitioner became increasingly hostile toward the Respondents.

After moving out of the Petitioner's property, the Respondents did not receive the return of their \$1,500.00 deposit from the Petitioner. On August 5, 2005, Respondents filed a Small Claims case against the Petitioner in King County District Court under case number 55-5957. Respondents sought the recovery of their \$1,500.00 deposit from the Petitioner under the Lease Agreement (Clerk's Papers, page 29, 37). On August 19, 2005, the Petitioner filed a counterclaim for the sum of \$1,100.00 for "rent and damage repair" (Clerk's Papers, page 29, 39). After a hearing on the merits in the Small Claims court case on August 31,

2005, Judge Arthur Chapman awarded judgment in favor of the Respondents in the sum of \$1,500.00 plus the filing fee of \$21.00 (Clerk's Papers, page 30, 42).

On September 27, 2005, Petitioner filed a Notice of Appeal seeking review of the Judge Chapman's award in the Small Claims Court Case (Clerk's Papers page 30, 46, 47, 49). Moreover, the Petitioner was required to post a cash bond in the sum of \$2,990.00 in King County Superior Court under the Appeal Action, designated as Wong v. Martinez, King County Superior Court Case Number 05-2-36263-4 SEA.

In her September 27, 2005 notice of Appeal, Petitioner seeks review and claims error regarding the following among other things:

"Ana (Respondent) defaced my house outlook by installing a Television Dish on the outside wall. The nails of this Dish covered with rust. We feel annoyance at this TV Dish because it is facing directly at my home. I am requesting Ana (Respondent) restore the dwelling back to original"

Pursuant to the Petitioner's Notice of Appeal, the Small Court Claims records, including exhibits offered by the parties during their Small Court Claims court hearing were transmitted to the King County Superior Court (Clerk's Papers, page 30, 50-106). The King County

Superior Court Appeal Case under Cause Number 05-2-36263-4 SEA was assigned to Judge Michael C. Hayden (Clerk's Papers, page 30,42).

In support of her Appeal of the small court claims case, On December 2, 2005 Petitioner sent an appeal brief to Judge Hayden (Clerks Papers, page 30, 109114). In support of her argument to the court citing error with the Judge Chapman's judgment in favor of the defendants, the plaintiff cited the following:

Installation of Television Dish with rusty nails. Siding repairs range from \$7,390.00 to \$18,937.00.

Nonpayment of certain utility bills.

Broken garage door opener.

Repairs for stove and dishwasher.

Cleaning fee for garage.

Faucet replacement

Broken window.

After reviewing the Petitioner's appeal brief and the small claims court record, Judge Hayden affirmed the decision of Judge Arthur Chapman and entered Judgment on favor of the Respondents for \$1,350.00 plus \$21.00 for the filing fee (Clerks Papers, page 31, 32,116).

Petitioner filed this case in July of 2008 in the King County Superior Court (Case No. 08-2-23259-0 SEA) alleging indebtedness to Petitioner in the sum of \$7,390.00 - \$18,937.00 for damages caused by the

Respondents arising out of the October 16, 2003 Rental Agreement. The Petitioner alleged rusty nails necessitating repairs in connection with the installation of a TV Dish (Clerk's Papers, page 32,118,119). Respondents filed an Answer in this case alleging the affirmative Defenses of unclean hands, res judicata and collateral estoppel. Clerk's Papers, page 121-123).

A. STANDARD OF REVIEW

Summary judgment is appropriate where there are no disputed material facts, and the moving party is entitled to judgment as a matter of law. CR 56(c); *McGowan v. State*, 148 Wn.2d 278, (2002).

B. THE PETITIONER'S CASE IS BARRED UNDER THE DOCTRINE OF RES JUDICATA

Res judicata ensures the finality of decisions. A final judgment on the merits bars parties or their privies from relitigating issues that were or could have been raised in a prior action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2424 (1981). In Washington, res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of (1) subject matter; (2) cause of action; (3)

persons and parties; and (4) the quality of the persons for or against whom the claim is made. Seattle-First Nat'l Bank v. Kawachie, 91 Wn.2d 223, (1978). Also see Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, (1995). See also Snyder v. Munro, 106 Wn.2d 380, (1986). Two causes of action are identical for purposes of res judicata if (1) prosecution of the later action would impair the rights established in the earlier action, (2) the evidence in both actions is substantially the same, (3) infringement of the same right is alleged in both actions, and (4) the actions arise out of the same transactional nucleus of facts. Rains v. State, 100 Wn.2d 660, (1983).

In this case, the Petitioner asserted a counterclaim against the Respondents in the small claims court case alleging an affirmative claim for rent and compensation for damages to repair Petitioner's property arising out the tenancy of the Respondents. Petitioner was present in court and had the ability to produced evidence of her claims, and did in fact present evidence of her claims against the Respondents. After she did not prevail, Petitioner maintained her position in the Superior Court Appeal. After the Petitioner filed an Appeal brief, and after Judge Hayden reviewed the evidence presented in the small claims court trial and Petitioner's appeal brief, the Court upheld the small claims court judgment

in favor of the Respondents. The subject matter, claims, parties and case in indistinguishable from the former proceedings under Superior Court case 05-2-36263-4SEA, and the small claims court case prior to that. The Respondents have a right to rely on the judgment rendered by two judges who have presided over the former proceedings and ruled in favor of the Respondents.

C. THE TRIAL COURT PROPERLY RULED THAT THE PETITIONER'S CASE IS BARRED UNDER THE DOCTRINE OF COLLATERAL ESTOPPEL

Petitioner is also collaterally estopped from bringing the case at bar. Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties. 14A KARL B. TEGLAND, WASHINGTON PRACTICE, CIVIL PROCEDURE § 35.32, at 475 (1st ed. 2003). It is distinguished from claim preclusion “in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted.” *Rains v. State* , 100 Wn.2d 660, (1983) (emphasis added) (quoting *Seattle-First Nat'l Bank v. Kawachi* , 91 Wn.2d 223 , (1978); *Kyreacos v. Smith* , 89 Wn. 2d. 425, (1977); See also *Shoemaker v. City of Bremerton* , 109 Wn.2d. 504,

(1987); Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 WASH. L. REV. 805, 805, 813-14, 829 (1985); TEGLAND, CIVIL PROCEDURE § 35.32, at 475. The collateral estoppel doctrine promotes judicial economy and serves to prevent inconvenience or harassment of parties. Reninger v. Dep't of Corr., 134 Wn. 2d.437, (1998).

Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation TEGLAND, CIVIL PROCEDURE § 35.21, at 446. Collateral estoppel provides for finality in adjudications. Trautman, *Claim and Issue Preclusion*, 60 WASH. L. REV. at 806.

The doctrine of collateral estoppel differs from res judicata in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted. See *Seattle-First Natn'l Bank v. Kawachi*, 91 Wn. 2d. 223, 225-26 (1978).

Not only are the claims in this case identical to the former actions involving the Petitioner and Respondents, but so are the nucleus of facts and circumstances and issues. The issue presented in the small claims court action, and subsequent superior court action involved the recovery of

the Respondents damage deposit on the part of the Respondents, and compensation for damages to the Petitioners property resulting from the Respondent's tenancy. There was a final judgment on the merits entered in both proceedings as previously discussed.

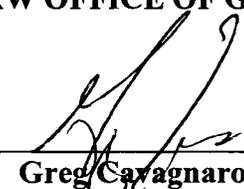
The application of the doctrine of collateral estoppel will not work an injustice on Petitioner. She has had an unencumbered, full and fair opportunity to litigate her claims in court on two separate occasions. Petitioner is foreclosed under the doctrine of collateral estoppel from relitigating the same issue in this case. To do so would be not only a burden on the Respondents, it would work a great injustice upon them.

IV. CONCLUSION

For the reasons cited above, the Respondents respectfully request that this Court dismiss the Petitioner's appeal and award the Respondents attorney fees and costs as may be applied for by the Respondents.

DATED this 14th day of JANUARY, 2011

LAW OFFICE OF GREG CAVAGNARO

By 

**Greg Cavagnaro WSBA #17644
Attorneys for Respondents**

NO. 65808-5-I
COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

SUI WONG

Appellant,

v.

ANA MARTINEZ et al.

Respondents.

**CERTIFICATE OF
SERVICE OF
RESPONDENT'S
BRIEF**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below that I caused the Respondent's Brief to be served upon the Petitioner as follows:

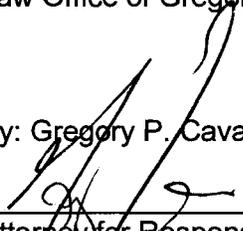
By placing a copy of the January 14th 2011 Respondents Brief the United States mail with proper postage attached, addressed to:

Sui Wong
2966 South Webster Street
Seattle, WA 98108

DATED January 14, 2011, at Bellevue, Washington by:

Law Office of Gregory P. Cavagnaro

By: Gregory P. Cavagnaro



Attorney for Respondents
2100 116th Ave NE
Bellevue WA 98004
(425) 451-1400

FILED
JAN 17 2011
A