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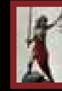

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Question 2

> *What generally is res judicata and collateral estoppel?*

Answer

The concepts of res judicata and collateral estoppel are very similar and easily confused since they both stand for the basic principal that when a person goes to court they should only have one bite at the apple and they cannot re-litigate the same issue over and over again.

The California Supreme Court states that "collateral estoppel is a distinct aspect of res judicata. 'The doctrine of res judicata gives conclusive effect to a former judgment in subsequent litigation between the same parties involving the same cause of action. A prior judgment for the plaintiff results in a merger and supersedes the new action by a right of action on the judgment. A prior judgment for the defendant on the same cause of action is a complete bar to the new action. (4 Witkin, Cal. Procedure (2d ed. 1971) Judgment, §§ 147–148, pp. 3292–3293.) Collateral estoppel … involves a second action between the same parties on a different cause of action. The first action is not a complete merger or bar, but operates as an estoppel or conclusive adjudication as to such issues in the second action which were actually litigated and determined in the first action. (citations omitted.)' (Rymer v. Hagler (1989) 211 Cal. App. 3d 1171.)" (Murray v. Alaska Airlines, Inc. (2010) 50 Cal.4th 860.)

Res Judicata

Referring to claims preclusion, the California Supreme Court has stated: "'Res judicata' describes the preclusive effect of a final judgment on the merits." (Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 896 (2002).) It "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (Id. at p. 897.) Under the doctrine, "all claims based on the same cause of action must be decided in a single suit; if not brought initially, they may not be raised at a later date." (Ibid.)

Additionally, the doctrine bars the filing of claims in a second suit that are "based on the same cause of action" as one asserted in a prior action if they are both premised on the same "primary right." (Mycogen Corp. v. Monsanto Co., supra, 28 Cal. 4th at 904 (emphasis added).) "The plaintiff's primary right is the right to be free from a particular injury. A cause of action comprises the factors: (1) the plaintiff's primary right, (2) the defendant's corresponding primary duty, and (3) the defendant's wrongful act that breaches that duty. (Federation of Hillside & Canyon Assns. v. City of Los Angeles, 126 Cal. App.4th 1180, 1202 (2004); Mycogen Corp. v. Monsanto Co., 28 Cal. 4th at 904-906.)

To determine whether claim preclusion bars another action or proceeding, courts look to whether the two proceedings involve the same cause of action. (Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Cas. & Sur. Co. of America, 133 Cal.App.4th 1319, 1326-27, 35 Cal.Rptr.3d 496 (2005). In this case, all the causes of actions in the FACC were raised and denied by the Khuu v. Khuu court. (Millard's June 29, 2011 Order Re: Khuu v. Khuu ("Khuu") pages 6-8.)

Collateral Estoppel

The California Supreme Court says that "'Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.' (Lucido v. Superior Court (1990) 51 Cal.3d 335, 341 [272 Cal. Rptr. 767, 795 P.2d 1223].) The doctrine applies "only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (Pacific Lumber Co. v. State Water Resources Control Bd. (2006) 37 Cal. 4th 921.)

Res judicata describes the preclusive effect of a final judgment on the merits and prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings." (Lucido v. Superior Court (1990) 51 Cal.3d 335, 341.) While the term "res judicata" has been used to encompass both claim preclusion and issue preclusion, it is more proper to use the term res judicata only to refer to claim preclusion. While, as noted above, "'the doctrine of collateral estoppel is one aspect of the concept of res judicata. In modern usage, however, the two terms have distinct meanings.' (Lucido v. Superior Court, supra, 51 Cal.3d at p. 341, fn. 3.) A clear and predictable res judicata doctrine promotes judicial economy. A predictable doctrine of res judicata benefits both the parties and the courts because it "seeks to curtail multiple litigation causing vexation and wasted effort and expense in judicial administration." (Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 896 (2002).expense to the parties and wasted effort and expense in judicial administration."

Because these doctrines limit future court actions, it behooves a litigant to ensure that they raise all the legal claims that they can in their original suit and also include all the necessary parties as defendants. Failure to do so, could mean losing out on legitimate and necessary relief.