

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41205

LARRY D. CROWE, ET AL.,

Plaintiffs-Appellees,

versus

JAMES W. SMITH, ET AL.,

Defendants,

JAMES W. SMITH,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-2164)

February 26, 1996

Before REAVLEY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

James W. Smith challenges the judgment for plaintiffs Larry D. Crowe and Sue Ellen Crowe Silman, Administratrix of the Estate of the Succession of Reba Coody Crowe, for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). Because we conclude that the RICO claims are precluded by prior litigation between Crowe and Smith in Mississippi, we **REVERSE** and **RENDER** for Smith.

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

I.

The numerous relevant and intertwined events began long before the 1994 trial. In 1979, Crowe purchased Eagle Lake Farm, bordering Eagle Lake in Warren County, Mississippi, from a Trust, which financed part of the \$5.35 million purchase price; annual payments of approximately \$300,000 were due in February.

Later, Crowe and Smith became partners in Australia Island Farm, which they purchased in 1982. Australia Island, in Warren County, Mississippi, and Madison Parish, Louisiana, is in Eagle Lake. Crowe built a cotton gin at Eagle Lake in 1983; he and Smith formed a separate partnership for the gin.

In February 1984, shortly before Crowe's annual payment on Eagle Lake Farm was due, he requested a \$600,000 loan from Smith. Smith agreed, instead, to loan Crowe \$250,000, secured by a mortgage on Executive Woods, a portion of Crowe's Eagle Lake Farm. Crowe was to repay the loan in approximately two weeks; he did not do so.

Smith testified at the trial of this action that, in mid-1984, Crowe was using Australia Island partnership funds and property for his personal benefit. That fall, Smith told Crowe that he wanted to terminate the partnership. In November, Smith gave Crowe an option to purchase his interest; the option was extended at Crowe's request, but was never exercised.

By the end of 1984, Crowe began seeking a financial partner to help him develop Eagle Lake Farm into a resort. In early 1985, Crowe and Peoples Homestead Savings and Loan Association of Monroe,

Louisiana, agreed that Peoples would form Agrarian Development Corporation, which would become Crowe's partner in Eagle Bend Development. In March, while the partnership documents were being prepared, Peoples made two loans to Crowe: \$3.5 million, to pay his short-term debts (including the annual payment on Eagle Lake Farm, due the prior February); and \$300,000, secured by a \$750,000 mortgage, signed by Crowe and his wife, on his property in West Carroll Parish, Louisiana.

Crowe and Agrarian signed the Eagle Bend Development partnership agreement in early April. Agrarian contributed \$3.5 million, which was used to pay off the like amount loaned to Crowe by Peoples; Crowe contributed Eagle Lake Farm, equipment, and his interest in the Eagle Lake gin.

Accordingly, for the gin, Eagle Bend was substituted for Crowe as Smith's partner. Likewise, because Executive Woods had been pledged as collateral for Smith's 1984 \$250,000 loan to Crowe and was part of Eagle Lake Farm, Crowe had to have it released by Smith. Smith agreed, conditioned on the execution of an interim partnership operating agreement, deed, and escrow agreement. In the Australia Island interim partnership agreement, executed in March 1985, Crowe and Smith agreed that each would cure any deficits in his capital account and pay his share of partnership obligations immediately; and that Crowe would renew the \$250,000 loan, plus accrued interest, secured by Crowe's interest in the Australia Island partnership. Pursuant to the escrow agreement, one party's breach of the interim partnership agreement entitled

the non-breaching party to purchase the other's interest at a specified price; each was to execute a bill of sale and deed, to be held in escrow.

Crowe experienced difficulties in 1985 with Agrarian, his Eagle Bend partner. By October, Agrarian had retained counsel to review Crowe's alleged mismanagement and wrongful diversion of partnership property, and had begun planning to gain control of the partnership.

In the meantime, during the fall of 1985, when it appeared that Crowe was not going to perform as promised in the Australia Island interim partnership agreement, Smith's attorney discovered that Crowe had not signed the escrow agreement and deed, and advised Smith to file suit. That December, Smith filed suit against Crowe in the Chancery Court of Warren County, Mississippi, seeking repayment of both the \$250,000 loan and funds Crowe had diverted from the Australia Island partnership, as well as its dissolution and liquidation.

In early February 1986, Peoples seized Crowe's West Carroll Parish property to satisfy the \$750,000 mortgage executed in March 1985 by Crowe and his wife. Peoples claimed that Crowe was in default on debt totaling \$1.25 million, including the \$300,000 loan to Crowe in March 1985 and balances on Australia Island and Eagle Bend crop loans.

In mid-April, Crowe had the West Carroll foreclosure enjoined. And, earlier, on the same day that Peoples seized his property, Crowe sued Agrarian and Peoples in federal court in Mississippi for

dissolution of the Eagle Bend partnership. That action was dismissed without prejudice in May 1986, because the partnership agreement forum selection clause designated Louisiana state court as the forum for such disputes.

In mid-March 1986, to prevent the Trust from conducting a nonjudicial foreclosure sale of the Eagle Bend property, scheduled for later in March, Agrarian obtained in Louisiana state court the appointment of a receiver for Eagle Bend Development. On March 26, that court authorized the receiver to put Eagle Bend in bankruptcy. The Trust obtained relief from the automatic stay, and the bankruptcy court ordered that the property be sold; but, it was not sold because, as discussed *infra*, a compromise was reached.

In August 1986, Crowe sued Peoples and Agrarian in federal court in Louisiana, alleging that they had conspired to deprive him of his interest in Eagle Bend and were trying to cause his financial ruin. He made similar allegations in a motion to withdraw the reference in the bankruptcy proceeding, asserting that Peoples, Agrarian, and the bankruptcy trustee filed the bankruptcy petition as "a combined concerted action" to deprive him of the property. (Crowe also sued the Eagle Bend receiver in Louisiana state court.)

In September 1986, Peoples and Crowe settled their disputes. Crowe transferred his interest in Eagle Bend to MLM, Inc., another Peoples subsidiary, in exchange, *inter alia*, for approximately \$1.2 million, an agreement by MLM and Agrarian to hold him harmless from Eagle Bend's debts (totaling approximately \$7 million, including

\$900,000 owed to the Farmers Home Administration), and forgiveness of \$500,000 personal debt. As part of the settlement, Peoples collected all of the indebtedness owed it by Crowe, except for the balance of the Australia Island crop loans; it agreed to withhold efforts to collect that debt for six months.

Prior to the Crowe/Peoples settlement, Smith had offered to pay his share of the Australia Island debt to Peoples; it refused, asserting that Smith was liable for the entire debt. In November 1986, Peoples demanded payment of the indebtedness from Crowe and Smith. And, in October 1987, it filed suit against them and Australia Island Farm for the balance on the crop loans. A letter from Peoples' counsel, admitted into evidence at the trial of this action, indicates that Smith counterclaimed, asserting that Peoples should have taken Crowe's share of the debt from the proceeds of its September 1986 settlement with Crowe, and that Peoples conspired with Crowe to cause Smith to repay the entire debt; and that Crowe cross-claimed against Smith, alleging that Smith and Peoples conspired to cause Peoples to file suit on the debt at a time when Crowe was particularly vulnerable financially. Smith and Peoples settled in May 1988.

Returning to the Crowe/Peoples September 1986 settlement, Eagle Bend dismissed the bankruptcy after settlement. Peoples negotiated with the Farmers Home Administration for the release of the Eagle Bend property as collateral, but did not obtain Crowe's release from the remaining debt.

Having settled (temporarily) with Peoples, Crowe broadened his conspiracy theory to encompass Smith. On October 27, 1986, the same day hearings began before the special master appointed by the Mississippi chancery court in the Australia Island partnership dissolution proceeding (filed in December 1985), Crowe sued Smith in Louisiana state court, alleging, in essence, that Smith, in collusion with Peoples, filed the Mississippi lawsuit to exert financial pressure on Crowe. Crowe asserted that Smith acquiesced in the proceedings brought against Crowe by Peoples; that Smith's filing of the Mississippi action was "instituted solely to bring financial hardship and economic pressure on [Crowe] at a time when ... Smith knew or should have known that such pressure was being exerted simultaneously by [Peoples]"; and that "the actions of [Smith] were so deliberately or negligently timed and calculated that he knew or should have known of the disastrous injuries that would occur to the business and financial reputation of [Crowe], especially at a time when [Smith] knew of the financial pressure being exerted by [Peoples]". Crowe sought, *inter alia*, \$5 million in damages. But, after Smith filed an exception, claiming that the pendency of the Mississippi action barred the Louisiana action, Crowe did not prosecute it.

In November 1987, the Mississippi chancery court awarded partial judgment to Smith for \$250,000 (the amount Smith loaned Crowe in February 1984); held that the Australia Island partnership was dissolved as of the end of 1985; and ordered its liquidation.

And in June 1988, that court, *inter alia*, found that Crowe had caused the dissolution of the Australia Island partnership.

That August, the Mississippi court entered a final judgment, awarding Smith approximately \$1 million, plus attorney's fees of approximately \$49,000, and ordering the appointment of a special commissioner to sell the Australia Island partnership assets. Trying to prevent the sale, Crowe attempted to place the partnership in bankruptcy; tried to transfer his interest in the partnership to another entity; and, when that transfer was nullified, attempted to mortgage his interest. Smith purchased the partnership assets at the commissioner's sale in October 1989.

In mid-1992, the Mississippi Supreme Court affirmed the chancery court. ***Crowe v. Smith***, 603 So. 2d 301 (Miss. 1992). That September, the chancery court confirmed the commissioner's sale, overruling Crowe's objections, and denied Crowe's motion to dismiss for lack of jurisdiction.

To make the judgment executory in Louisiana, Smith filed an action in Louisiana state court in September 1992. Crowe filed an exception, asserting (as in this action) that the Mississippi judgment was void for failure to join the Succession of Reba Crowe. The Louisiana court denied Crowe's exception, stating that the issue "has been thoroughly litigated in ... Mississippi. The property was found to be partnership property under Mississippi law.... Should the Succession ... desire to attack the Mississippi judgment, this must be done in ... Mississippi".

In March 1993 (the instant action was filed in December 1992), Smith's wholly-owned corporation purchased a promissory note executed by Australia Island Farm, secured by the partnership assets, and foreclosed on the property. Smith's attorney testified at the trial of this action that this was necessary because the note was about to mature, and new financing could not have been obtained because of title problems (created by the Succession's claimed interest in the property).

Dropping back to August 1988, while the Mississippi litigation between Crowe and Smith was proceeding, Peoples leased the farming portion of Eagle Bend to its retiring president, Russell Hart, for three years, with an option to purchase. That same month, Smith and Hart entered into an agreement by which Smith promised to guarantee a loan that he had procured for Hart; Hart's option to purchase Eagle Bend was to be transferred to Smith in the event of default. That agreement was not recorded until two years later, when Smith discovered that Hart had transferred the option to others. In April 1990, Smith purchased Eagle Bend from the Resolution Trust Corporation (it had taken over the management of Peoples in 1989), subject to Hart's lease and option. (Crowe had offered to purchase Eagle Bend for \$5.65 million in December 1989; in January 1990, the RTC advised that his proposal did not comply with its guidelines.) Smith purchased the property on the same day that a Louisiana state court denied Crowe's attempt to enjoin the sale. Smith filed suit against Hart for breach of their agreement; the court eventually ruled in favor of Hart. After Hart exercised

his option, Hart owned the farming portion of Eagle Bend, and Smith owned the developed, lakefront portion.

In December 1992, Crowe and the Succession of Reba Crowe filed this civil RICO action against Smith, Hart, and others, including the RTC (as receiver and conservator for Peoples), Agrarian, MLM, the directors of Peoples and Agrarian, and the law firm that represented Peoples and Agrarian in connection with Eagle Bend Development.¹ The plaintiffs alleged, *inter alia*, that Smith's Mississippi action to dissolve the Australia Island partnership was instituted as part of a scheme to defraud them of their interest in Australia Island; that the other defendants, associated with Peoples or the RTC, participated in a second scheme to defraud the plaintiffs of their interest in Eagle Bend Development; and that Smith and Peoples conspired to divest Crowe of his interests in both partnerships, by filing lawsuits against him simultaneously, with the goal of forcing the sale of the properties and putting Crowe in such financial straits that he could not defend himself.

In addition, the plaintiffs sought a declaratory judgment that Smith's Mississippi judgment against Crowe is void for lack of jurisdiction. They claimed also that Peoples breached the

¹ The complaint also asserted state law claims against some of the defendants for breach of fiduciary duty, unfair trade practices, tortious interference with contract, breach of contract, and intentional infliction of emotional distress, and a claim under the Federal Tort Claims Act against the RTC. All of the claims were either settled or dismissed prior to trial, except for a claim against Hart for breach of the 1986 settlement agreement; the district court granted judgment as a matter of law for the plaintiffs on that claim at the conclusion of the presentation of evidence at trial.

September 1986 settlement agreement by failing to hold Crowe harmless from Eagle Bend's debt to the Farmers Home Administration.

In April 1993, Smith moved to dismiss pursuant to FED. R. CIV. P. 12(b)(6), asserting, *inter alia*, that the plaintiffs' claims against him were barred by res judicata or collateral estoppel. A year later, no ruling having been made on that motion, Smith moved for summary judgment, reasserting his preclusion defenses. In June 1994, without stating reasons, the district court denied Smith's motion to dismiss. A few days later, Smith answered the complaint, asserting, *inter alia*, res judicata and collateral estoppel as affirmative defenses.

Shortly thereafter, on the eve of trial in July 1994, the district court denied Smith's summary judgment motion, holding, *inter alia*, that the RICO claims were not precluded, because the complaint alleged commission of predicate acts after Smith filed the Mississippi action. The court held further that the validity of the Mississippi judgment was irrelevant to the RICO claims because the plaintiffs "need only prove [Smith's] fraudulent intent ... in filing the [Mississippi] lawsuit as part of the alleged fraudulent scheme to whipsaw Crowe into submission".

On the first day of trial, the district court severed the claim to nullify the Mississippi judgment. During trial, the plaintiffs settled for \$2.25 million with all of the remaining defendants, except Smith and Hart. Smith immediately seized part of that settlement to satisfy his Mississippi judgment lien.

The next day, Smith and Crowe entered into a partial settlement agreement, which was dictated into the record but not otherwise reduced to writing. The parties agreed that Smith would release the seizure of all but \$250,000 of the proceeds of the plaintiffs' settlement with the other defendants, which would be placed in escrow; that, if the jury found for Smith, the \$250,000 would be released to him immediately, but Crowe would not owe him for the balance of the Mississippi judgment; but that, if the jury rendered a verdict against Smith, the plaintiffs would keep the \$250,000, Smith would be entitled to a credit for the amount paid by the settling defendants (\$20,000 from the RTC and the \$2.25 million) and to a credit for the Mississippi judgment (\$1.4 million, including accrued interest), and, in no event, would the plaintiffs take a judgment in excess of \$4 million, including attorneys' fees and court costs, against Smith.

The parties agreed further that Smith would assign the Mississippi judgment to the Succession and the Crowe children in exchange for their execution of quitclaim deeds transferring to Smith their interests, if any, in the disputed Australia Island property. The settlement agreement provided also that the plaintiffs would dismiss any state court litigation against Smith; that Smith would not be required to post a bond for appeal of an adverse judgment; and that the plaintiffs would not seek to levy on any judgment until it became final. The partial settlement mooted the plaintiffs' severed claim that the Mississippi judgment was void.

The jury found Smith and Hart liable under RICO, and awarded \$8.5 million, which the district court trebled.

II.

Smith contends that the plaintiffs' claims are barred by res judicata and/or collateral estoppel because they arise from the same transactions and occurrences, and involve the same facts litigated in Mississippi.² The plaintiffs counter that these defenses were compromised by the partial settlement agreement, pursuant to which Smith assigned the Mississippi judgment to the Crowe children and the Succession; alternatively, that the Mississippi judgment does not bind the Succession, because it was not a party to the Mississippi litigation; and that, in any event, the RICO claims are not barred because Crowe did not learn of the underlying conspiracy until 1990, after the Mississippi litigation was pending on appeal.

"The preclusive effect of a state court judgment is a question of law that we review *de novo*." **Boyce v. Greenway (Matter of Greenway)**, 71 F.3d 1177, 1180-81 (5th Cir. 1996).³ "A state court

² Hart's appeal was dismissed in July 1995. Because the plaintiffs' claims are precluded, it is not necessary to address Smith's statute of limitations and sufficiency of the evidence contentions.

³ As noted, Smith raised res judicata and collateral estoppel as affirmative defenses in his answer, and relied on those defenses in support of his motions to dismiss and for summary judgment. Our court will not, however, "review the pretrial denial of a motion for summary judgment where on the basis of a subsequent full trial on the merits final judgment is entered adverse to the movant". **Black v. J. I. Case Co., Inc.**, 22 F.3d 568, 570 (5th Cir.), cert. denied, ___ U.S. ___, 115 S. Ct. 579 (1994). If motions for judgment as a matter of law are made at trial, "the denied motion for summary judgment need not be reviewed, because the 'legal'

issues determined by the district court are freely reviewable, and the case may be reversed and rendered on that basis". *Id.* at 571 n.5.

Smith moved for judgment as a matter of law after the plaintiffs rested, and at the close of all the evidence; although he referred to the Mississippi judgments, he did not explicitly reassert *res judicata* and collateral estoppel as grounds for the motions. Nevertheless, under the particular, narrow circumstances of this case, we conclude that the defenses were preserved.

The district court did not deny Smith's summary judgment motion until the eve of trial. And, on the first day of trial, it announced that it was "not going to try anything regarding the Mississippi trials, the validity of any of those trials, the judgments, or anything like that. But we are going to try the issues that were litigated in Mississippi. I say again, I am trying a RICO case here". In response to Smith's counsel's question whether "we [are] going to go back and litigate all of those issues that we litigated in Mississippi, which was a court of competent jurisdiction", the court replied, "[a]nd didn't have one God damn bit of evidence or any thought of RICO in it". Smith's counsel stated his disagreement, to which the court responded, "[y]ou can disagree, but I'll overrule you. I'm not going to say anything more about that".

On the second day of trial, the court acknowledged that Smith's objections on the basis of collateral estoppel raised "a matter of law". The plaintiffs stipulated that Smith's objection to any collateral estoppel matter was continuing, and "waive[d] any right to an appeal on the issue that they did not object". Consistent with that stipulation, the plaintiffs do not contend that Smith failed to preserve his preclusion defenses by failing to reassert them as grounds for his motions for judgment as a matter of law.

The court and plaintiffs understood that Smith maintained that the RICO claims were precluded by the Mississippi judgments. Because *res judicata* and collateral estoppel are issues of law, there were no factual issues for the jury to decide with respect to their applicability. Accordingly, the plaintiffs were not sandbagged, and the purposes of FED. R. CIV. P. 50 were not thwarted. In light of the district court's denial of summary judgment the day before trial, its clear indication at trial that it did not want to hear anything more about *res judicata*, and the plaintiffs' waiver of the right to complain on appeal that Smith did not preserve his collateral estoppel defense, we conclude that Smith's preclusion defenses were preserved. We caution counsel, however, that legal issues that are the subject of a denied pretrial motion should be reasserted at trial as grounds for

judgment's preclusive effect on a subsequent federal action is determined by the full faith and credit statute, which provides that state proceedings `shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken.'" **Id.** at 1181 (quoting 28 U.S.C. § 1738). Therefore, we must "look to the rules of preclusion of the state in which the judgment was rendered in order to determine the judgment's preclusive effects". **Id.**

Under Mississippi law, "res judicata precludes all claims that were *or could have been brought* in the underlying action". **McIntosh v. Johnson**, 649 So. 2d 190, 192 (Miss. 1995) (emphasis added). Collateral estoppel precludes parties "from relitigating a specific issue actually litigated, determined by, and essential to the judgment in a former action, even though a different cause of action is the subject of the subsequent action". **Dunaway v. W. H. Hopper & Associates, Inc.**, 422 So. 2d 749, 751 (Miss. 1982). Mississippi requires four "identities" for application of res judicata and collateral estoppel:

- (1) identity of the subject matter of the action,
- (2) identity of the cause of action,
- (3) identity of parties to the cause of action, and
- (4) identity of the quality or character of a person against whom the claim is made.

Id. at 751.

judgment as a matter of law.

The Mississippi Supreme Court has identified three purposes served by the preclusion doctrine: (1) protecting litigants from the burden of relitigating an identical issue; (2) providing judicial economy; and (3) protecting the integrity of judgments by preventing inconsistent results. **McCoy v. Colonial Baking Co., Inc.**, 572 So. 2d 850, 852 (Miss. 1990). Regarding the first purpose, the Mississippi Supreme Court stated:

It is, and should be, a paramount concern of the judiciary to prevent multiple suits where one suit will suffice. There is a tendency, perhaps, to forget that one who undergoes the rigors of an action, with all of its traumatic impact, loss of time, delay, substantial expense and disruption of his affairs, with consequent appeals and possible retrials and still other appeals, should be spared having to do this more often than is strictly necessary. Even the successful party after bearing the expense of one trial and of one appeal is, in many instances, hardly a winner.

Magee v. Griffin, 345 So. 2d 1027, 1032 (Miss. 1977).

Of course, Mississippi's compulsory counterclaim rule echoes these purposes. It provides:

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

(1) at the time the action was commenced the claim was the subject of another pending action; or

(2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13; or

(3) the opposing party's claim is one which an insurer is defending.

In the event an otherwise compulsory counterclaim is not asserted in reliance upon any exception stated in paragraph (a), relitigation of the claim may nevertheless be barred by the doctrines of res judicata or collateral estoppel by judgment in the event certain issues are determined adversely to the party electing not to assert the claim.

MISS. R. CIV. P. 13(a). The commentary states that "[a] counterclaim is compulsory if there is any logical relation between the original claim and the counterclaim". MISS. R. CIV. P. 13(a), comment.

Because state and federal courts have concurrent jurisdiction over civil RICO claims, see *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990), the Mississippi courts could have adjudicated Crowe's RICO claims had they been asserted in a counterclaim. See, e.g., *Evans v. Dale*, 896 F.2d 975, 977-78 (5th Cir. 1990) (applying Texas law and stating that civil RICO claims were barred because they could have been asserted in state court divorce proceeding).

A.

We address first the plaintiffs' contention that, by assigning the Mississippi judgment, Smith also assigned or abandoned his preclusion defenses. As stated, the settlement provided in part that, in exchange for the release of all but \$250,000 of his seizure of the proceeds of the earlier settlement between the plaintiffs and other defendants, Smith would receive a credit for

the amount owed on the Mississippi judgment (\$1.4 million) in the event the jury found for the plaintiffs; it provided further that Smith would assign that judgment to Crowe's children and the Succession, making them Crowe's judgment creditors. The agreement does not mention the preclusion defenses, nor does it reflect otherwise any intent that Smith abandon them.

Prior to the partial settlement, Smith's preclusion defenses loomed large on the future appeal horizon. Had the parties intended that Smith abandon or assign them, they doubtless would, and certainly should, have said so. Moreover, by agreeing to apply the Mississippi judgment as a credit against a jury verdict in their favor, and, especially, by taking an assignment of that judgment, the plaintiffs implicitly recognized its validity. The obvious purpose of the assignment was to allow Crowe's children and the Succession to step into Smith's shoes as judgment creditors so that they would have priority.

Relying upon LA. CIV. CODE ANN. art. 2645 (West 1952) ("[t]he sale or transfer of a credit includes every thing which is an accessory to the same; as suretyship, privileges and mortgages"), the plaintiffs contend that, by virtue of the assignment, Smith "merged his claims of res judicata and collateral estoppel into the claims of the Crowes"; that "[t]he claims no longer belong to him[,] and he has no standing to raise them".⁴ We disagree. The

⁴ Article 2645 was amended effective January 1, 1995, and now states that "[t]he assignment of a right includes its accessories such as security rights". LA. CIV. CODE ANN. art. 2645 (West Supp. 1996).

plaintiffs did not cite, nor could we locate, any authority for the proposition that a judgment creditor's assignment of a judgment, especially to one in privity with the judgment debtor, barred the judgment creditor from asserting preclusion defenses to a subsequent claim by the judgment debtor based on the same transaction or occurrence that was involved in the prior action underlying the assigned judgment.

Furthermore, *res judicata* and collateral estoppel are not claims but, instead, are defenses which may be asserted as a bar to subsequent litigation of claims that were or could have been raised in a prior action. A party's right to rely on a judgment in support of a preclusion defense is not an "accessory" to the judgment; that right is based, *inter alia*, on his status as a party to the prior litigation, rather than his ownership of, or right to enforce, the judgment. For example, had Smith assigned the Mississippi judgment to a third party prior to the plaintiffs' filing this action, he still would have been able to raise preclusion. Accordingly, although Smith lost his right to enforce the judgment when he assigned it, this did not affect his right to assert preclusion, based on that judgment, as a defense to the RICO claims in issue.

B.

Alternatively, the plaintiffs assert that the preclusion defenses are inapplicable to the Crowe children because the Succession was neither a party, nor in privity with a party, to the Mississippi litigation and, therefore, is not bound by the

Mississippi judgment. Smith counters that the Succession was in privity with Crowe because he was the administrator of the Succession during the Mississippi litigation and, therefore, had a fiduciary duty to protect its interest. He maintains further that the Crowe children are bound by their mother's hereinafter discussed declaration in 1983 that she did not have an interest in the Australia Island property.

In support of its alternative position, the Succession maintains that the assets Crowe contributed to the Australia Island partnership were community property, and that the children inherited the interest of their mother, Reba Crowe, in that property when she died intestate in June 1985.⁵ The Succession therefore contends that it was an indispensable party to the Mississippi litigation and that, because it was not a party, it is not bound by the Mississippi judgment.

As noted, Smith points out that, in 1983, Reba Crowe, with Crowe's acknowledgment, declared that the assets that Crowe contributed to the Australia Island partnership were Crowe's separate property; he asserts therefore that Reba Crowe had no community interest in the partnership property, and there was no

⁵ The Succession took the opposite position in an April 17, 1986, memorandum in support of a request for an injunction to prohibit Peoples from foreclosing on the West Carroll Parish property. The memorandum, filed by Crowe and the Succession, asserted that Peoples had no legal right to proceed against the Succession for collection of the Australia Island partnership debts because, *inter alia*, "Larry Crowe's 50% interest in [Australia Island partnership and Eagle Bend Development partnership] is his separate property, composing no part of the community estate between [him] and Reba Coody Crowe".

such interest for the Succession to inherit. The Succession maintains that the Crowe children are not bound by their mother's declaration, relying on LA. CIV. CODE ANN. art. 2342, which provides that a declaration such as that executed by Reba Crowe may "be controverted by the forced heirs and the creditors of the spouses, despite the concurrence by the other spouse", but "an alienation, encumbrance, or lease of the thing by onerous title may not be set aside on the ground of the falsity of the declaration". LA. CIV. CODE ANN. art. 2342 (West 1985).

We need not address whether Louisiana law would permit the Succession to controvert Reba Crowe's declaration, because even assuming it would, we agree with Smith that there was privity between Crowe and the Succession as a result of Crowe's fiduciary duties, discussed below, to his wife and the Succession. Under Mississippi law, *res judicata* bars claims by persons in privity with a party in the prior action. ***McIntosh v. Johnson***, 649 So. 2d at 193.

Under Louisiana law, a partner has the "exclusive right to manage, alienate, encumber or lease the partnership interest", subject to the duty to account to his spouse or the heirs of his spouse for community property under his control. LA. CIV. CODE ANN. arts. 2352, 2369 (West 1985). Moreover, pursuant to LA. CODE CIV. P. art. 3191 (West 1961), Crowe, who served as administrator for the Succession from June 1985 until August 1990, when his daughter was appointed, had a fiduciary duty to collect, preserve, and manage the Succession's property.

Accordingly, Crowe owed fiduciary duties to his wife and her Succession to protect the alleged community property contributed to the Australia Island partnership. Because the Succession had no independent relationship with Smith, its claims are derivative of Crowe's claims based on his partnership relationship with Smith. See **Eubanks v. F.D.I.C.**, 977 F.2d 166, 170 (5th Cir. 1992) (applying federal preclusion law to Louisiana spouses and stating that, where wife purchased no interest in partnership, and had no legal relationship with bank, her claims were derivative of lender liability claims asserted by husband, who invested in partnership which borrowed money from bank; res judicata barred husband's lender liability claims because he should have asserted them in bankruptcy court; and, although wife was not party to husband's bankruptcy, res judicata barred her claims because her husband was so closely aligned to her interests as to be her virtual representative).

C.

On the RICO claims, the jury found that Smith and Hart violated subsections (a), (b), and (c) of 18 U.S.C. § 1962, and that they had conspired to violate each of those subsections, in violation of subsection (d). The plaintiffs maintain that these claims are not precluded, because Crowe thought the conspiracy ended in September 1986, when he settled with Peoples; and that he did not discover until 1990 (1) that Peoples had not released him from liability on the Farmers Home Administration debt, which impeded his ability to raise capital for his litigation against

Smith, (2) that Smith and Hart had a secret agreement to finance Hart's purchase of Eagle Bend, and (3) that Smith expected to take over that property after Hart leased it for three years.

The complaint alleged numerous predicate acts of mail fraud, obstruction of justice, bankruptcy fraud, and interstate shipment of stolen goods, from 1985 through 1992. The acts alleged to have been committed by Smith included mailings in the Mississippi litigation; applications for, and receipt of, farm subsidy payments for Australia Island after the partnership was dissolved; blocking Crowe's transfer of an aircraft;⁶ and sales of crops grown by Smith on Australia Island after dissolution of the partnership. The acts alleged to have been committed by Smith's alleged co-conspirators included mailings involved in the Peoples/Crowe litigation and the Eagle Bend bankruptcy; the settlement of the Peoples/Crowe litigation; the sale of Eagle Bend; and crop sales from Eagle Bend.

But, the essence of Crowe's RICO claims is that Smith and Peoples, through its president, Hart, conspired to "whipsaw" him with simultaneous litigation, so that he would be unable to defend himself, with the goal of taking his interests in the Australia Island and Eagle Bend Development partnerships. "[T]he core of a RICO civil conspiracy is an agreement to commit predicate acts" of

⁶ As part of the September 1986 Crowe/Peoples settlement, \$40,000 was escrowed pending Crowe's assignment to MLM of his claimed interest in an aircraft. The Mississippi chancery court ruled that the aircraft was owned by the Australia Island partnership, and that Crowe's attempt to transfer his interest in it to MLM was of no effect. Peoples took the \$40,000 in escrowed funds after Crowe failed to deliver title to the aircraft pursuant to the terms of the escrow agreement.

racketeering, through a pattern of racketeering activity, connected to the acquisition, establishment, conduct, or control of an enterprise affecting interstate commerce. **Crowe v. Henry**, 43 F.3d 198, 204, 206 (5th Cir. 1995).⁷ Although Crowe alleges the commission of predicate acts after the Mississippi litigation began, all of them stem from the almost simultaneous litigation instituted against him by Peoples and Smith.

Crowe's allegations in his October 1986 action against Smith in Louisiana state court, filed just *after* his settlement with Peoples, belie his contention that he thought the alleged conspiracy was over, and demonstrate that, at that time, he believed that he was the victim of the same conspiracy between Smith and Peoples that is the basis for his RICO claims. As stated, in that 1986 Louisiana action, Crowe alleged that Smith, in collusion with Peoples, timed his Mississippi partnership dissolution and collection action to coincide with Peoples' Eagle Bend litigation. Crowe's claim that he was unaware until 1990 of additional alleged overt acts in furtherance of the conspiracy, such as Peoples' failure to hold him harmless on the Farmers Home Administration debt, and the option agreement between Smith and Hart, provides no justification for his failure to litigate the

⁷ In **Crowe v. Henry**, our court reversed, in part, the dismissal of Crowe's civil RICO claims against Henry, who represented Crowe, *inter alia*, in connection with the September 1986 Peoples/Crowe settlement. 43 F.3d at 201. In that action, Crowe alleged that Henry, who was concerned about the possibility of a judgment against Crowe in favor of Smith in the Mississippi litigation, advised Crowe in early 1987 to transfer various property to Henry, with the secret, oral understanding that Henry would return the property to him. **Id.** at 202.

RICO claims in the Mississippi litigation. *Cf. Brannan v. Eisenstein*, 804 F.2d 1041, 1044 (8th Cir. 1986) (stating that plaintiffs could not avoid application of Missouri's compulsory counterclaim rule by asserting that their state law securities fraud and common law fraud claims either did not exist or were not mature at time defendants filed prior state court action, because they had some notice that they had suffered an injury or that another person had committed a legal wrong which ultimately might result in harm to them). Accordingly, Mississippi's compulsory counterclaim rule, among other reasons, precludes Crowe's RICO claims.

The use of civil RICO litigation in federal court by unsuccessful state court litigants in an attempt to turn state court defeat into federal court victory thwarts the salutary purposes of the preclusion doctrine, as well as the mandate that federal courts give full faith and credit to state court judgments. The partnership between Smith and Crowe ended in 1985. After years of litigation in Mississippi, the chancery court ruled that Crowe was responsible for the dissolution of the partnership, and that he owed Smith over \$1 million; Mississippi's highest court affirmed. Dissatisfied with that result, Crowe dressed his grievances up in RICO clothing, and relitigated the issues surrounding the dissolution of the partnership before a federal court jury in Louisiana.

Although the plaintiffs' claim for nullification of the Mississippi judgment was severed, and then mooted by the partial

settlement agreement by which Smith assigned that judgment, the jury's findings that Smith violated RICO by his actions in filing and prosecuting the Mississippi litigation, if allowed to stand, would have the same effect. Full faith and credit does not countenance such a result.

III.

For the foregoing reasons, we **REVERSE** the judgment in favor of the plaintiffs and **RENDER** judgment in favor of Smith.