

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50272
Summary Calendar

RICHARD JACKSON,

Plaintiff-Appellant,

versus

RTC, AS RECEIVER FOR SUNBELT
FEDERAL SAVINGS, FSB, ET AL.,

Defendants,

RTC, AS RECEIVER FOR SUNBELT
FEDERAL SAVINGS, FSB,

Defendant-Appellee,

and

UNITED FINANCE FACTORS, INC.,

Defendant-Third Party
Plaintiff-Appellant,

versus

COMMERCIAL MANAGEMENT, INC., ET AL.,

Third Party Defendants-
Appellants.

Appeal from the United States District Court for the
Western District of Texas
(SA-93-CA-445)

(September 15, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

This appeal requires us to consider whether a condemnation award made "jointly" to parties by a Texas court determined ownership rights to the proceeds. Richard Jackson, United Finance Factors, Inc., Commercial Management, Inc., and Pearson Interests, Inc., the appellants here, claim that it did, and that as a consequence they own three-fourths of the proceeds. They further argue that the condemnation award is res judicata precluding any further litigation as to the rights to the proceeds. The trial court rejected those arguments, determined that the Resolution Trust Corporation, as receiver for Sunbelt Federal Savings F.S.B.,¹ is entitled to the entire amount of the proceeds, and entered summary judgment in its favor. Finding no error, we affirm.

I

Jurisdiction in this case is predicated on § 1441a(1)(3). Because it comes to us on summary judgment, our review is plenary: we will affirm the decision of the trial court if no issue of

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

¹Sunbelt Federal Savings, F.S.B. is the successor of Sunbelt Savings Association, a state-chartered savings and loan association that was declared insolvent shortly after it foreclosed on the parcels forming the basis of this suit. Because the distinction is not material for purposes of this appeal, both will be referred to as "Sunbelt."

material fact exists and the RTC is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see, e.g., Missouri Pac. R.R. Co. v. Harbison-Fischer Mfg. Co., 26 F.3d 531 (5th Cir. 1994).

The facts are not in dispute. Having decided to use two parcels of land located in Bexar County, Texas, for highway purposes, the State of Texas commenced condemnation proceedings in state probate court May 30, 1990. Ownership of the land, however, was being contested in separate litigation. Thus, all putative owners--Sunbelt; GSD, Ltd.; Southwest Realty Consultants, Inc.; Liberty Land Associates; and three individuals--were joined as parties. The probate court awarded \$1,895,610 and, pursuant to a joint motion by the putative owners, ordered that the funds be deposited into an interest-bearing account in NCNB Texas National Bank on October 5, 1990.

Meanwhile, the federal lawsuit to determine exactly who owned the parcels proceeded. The basis of the litigation was this: five and a half years earlier, on November 29, 1984, GSD had executed a deed of trust in favor of Sunbelt covering the parcels in order to secured a \$50 million loan from Sunbelt. GSD defaulted December 1, 1987, and Sunbelt completed a non-judicial foreclosure March 1, 1988. Shortly after, GSD, Southwest Realty Consultants, and two of the individuals sued Sunbelt and other parties in the United States District Court for the Northern District of Texas seeking among other things to set aside the foreclosure. That action ended in settlement on September 25, 1992, and the plaintiffs released all

claims to the condemnation proceeds. A year and a half earlier, however, on April 3, 1991, these federal plaintiffs had assigned their interest in the condemnation proceeds to Dallas attorney Richard Jackson in consideration for his representing them in court.² Accordingly, when that action ended, only the RTC³ and Jackson asserted claims to the condemnation proceeds.

Jackson then assigned part of his claim on the proceeds to United Finance Factors, Inc., which in turn assigned parts to Commercial Management, Inc., and Pearson Interest, Inc. Thus, according to the appellants, rights in the condemnation proceeds are as follows: 7.5 percent to Jackson; 22.5 percent each to United Finance Factors, Inc., Commercial Management, Inc., and Pearson Interest, Inc.; and 25 percent to the RTC.⁴ Jackson instituted

²According to its terms, the assignment was to be effective October 5, 1990.

³The director of the Office of Thrift Supervision appointed the Resolution Trust Corporation as Receiver for Sunbelt April 9, 1992.

⁴Jackson arrives at those proportions as follows: The condemnation award was made jointly to seven parties. Three of the parties released their claims, leaving four. Indulging in a presumption that each party is entitled to an equal share, Jackson, having obtained assignments of three of them, claims 75 percent of the proceeds, with the remaining fourth belonging to the RTC as Receiver of Sunbelt. Jackson then assigned 90 percent of his interest to United Finance Factors, which retained one-third of its interest and assigned the remaining two-thirds in equal parts to Commercial Management, Inc., and Pearson Interests, Inc. Hence, he retains one tenth of his original share, or 7.5 percent of the proceeds; Commercial Management, United Finance Factors, and Pearson Interests have interests of 22.5 percent each, and the RTC succeeds to Sunbelt's original 25 percent share.

this action for partition in state court May 11, 1993. The RTC removed the action to the United States District Court for the Western District of Texas and counterclaimed for the entire amount. On March 21, 1994, the court⁵ held on cross-motions for summary judgment that the condemnation proceedings did not determine the ownership rights to the proceeds, and accordingly entered judgment against the appellants and for the RTC. This appeal followed.

II

Res judicata and related doctrines serve the ends both of certainty and judicial economy by precluding parties from revisiting issues determined in prior litigation. See Barr v. Resolution Trust Corp. ex rel. Sunbelt Federal Savings, 837 S.W.2d 627, 628-631 (Tex. 1992). Res judicata, more precisely known as claim preclusion, "prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit." Id. at 628 (citations omitted). It is settled law in Texas that res judicata extends to "'every other matter which the parties might litigate in the cause, and which they might have decided.'" Id. at 629, quoting Foster v. Wells, 4 Tex. 101, 104 (1849). But in Barr, the Texas Supreme Court indicated that res judicata does not require parties to join all disputes existing

⁵The trial court proceedings were heard before United States Magistrate Judge Nancy Stein Nowak, pursuant to consent of the parties and 28 U.S.C. § 636.

between them "regardless of whether the disputes have anything in common." Id. Rather, res judicata requires that "Any cause of action which arises out of those same facts should, if practicable, be litigated in the same lawsuit," Id. at 630.

Texas courts determine the scope of res judicata by analyzing "the factual matters that make up the gist of the complaint." Id. That analysis, the court emphasized, should proceed pragmatically, "'giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a trial unit conforms to the expectations or business understanding or usage." Id. at 631, quoting Restatement of Judgments § 24(2).

III

The appellants argue that the condemnation proceedings of themselves determined rights as between the parties and thus provide a basis for their claim. They point to the fact that the probate court awarded the sum "jointly," and, invoking a judicial presumption that joint tenants are equal shareholders, they claim that the proceeds are allocable as described above. Because the probate court had jurisdiction to determine property rights as between the condemnees, they argue, it must have done so, and because the RTC neither objected during the pendency of that action judgment nor challenged it on appeal, the principles of res judicata preclude it from doing so here.

We agree that the probate court had the authority to determine rights between the parties as part of the condemnation proceeding, but we think it clear that it did not exercise that authority. As a consequence, res judicata does not bar the RTC's claim.

A

The appellants advance two arguments in support of their claim that the probate court determined rights among the parties to the condemnation proceeds. First, they point to statements in the Awards of Commissioners that the court was "to assess the damages caused by the condemnation of said property and property rights." In their view, "property rights" in that sentence is an object of the infinitive "to assess," and the sentence is a declaration that the court would "assess . . . property rights." A more natural interpretation of that statement, and the one we adopt, treats "property rights" as an object of the preposition "of," with the consequence that the probate court declared to do no more than "assess the damages caused by the condemnation of . . . property rights."

Our interpretation more nearly comports with the events surrounding the condemnation proceeding as well. The federal suit was pending. Were the appellants' interpretation correct, one would expect the parties to have severed that part of the federal suit relating to the foreclosure and to have tried it as part of the condemnation proceeding. Yet the record contains no indication that they did so. Instead, the record suggests that the state

court joined all possible claimants and determined the value of the parcels, and left the question of relative rights to the parcel to the outcome of the federal suit.

Second, the appellants point to the form notices of award sent to the parties to the condemnation. Each is addressed to an individual party and does not refer to any other party and makes an award "to you." This argument founders upon the twin observations that these are form notices and that while each such notice awards the entire value, rather than one-seventh or any other fractional interest, "to you," the court deposited only enough to cover the amount contained in one award. If the forms are to be taken in such a literal fashion, we then would be required to also accept that the state court proceedings determined the value of each share, rather than the entire value, as nearly \$1.9 million. Their argument would also require us to conclude that the state court ordered only a fraction of the total amount deposited. Of course, we find those propositions untenable, and we reject them.

B

Additionally, the appellants' arguments misapprehend the basis for applying the doctrine of res judicata. Rather than seizing on isolated bits of language in the record, they must point to practical considerations like those identified above that would justify precluding any further inquiry into the rights to the proceeds. That they have failed to do.

The trial court correctly recognized that the condemnation proceeding concerned the right of the state to exercise its power of eminent domain and the value of the parcels taken. The proceeding did not determine who the state must pay--the special commissioners heard evidence only "as to the damages which will be sustained by the owners, by reason of the condemnation." Neither the commissioners nor the state court heard evidence relating to the ownership of the proceeds. Nor should anyone have expected them to do so: the ownership question, which depended upon the effect of a past foreclosure then being litigated in federal court, was related neither in "time, space, origin, [n]or motivation." Because the facts, issues, and proofs were completely distinct, including the ownership questions in condemnation proceeding would not have formed "a convenient trial unit." All of this, plus the absence from the record of any indication that any party tried to raise an ownership claim during the condemnation proceeding, leads us to conclude that doing so would not "conform[] to the expectations or business understanding or usage." Accordingly, we agree with the district court that the condemnation proceedings did not establish ownership rights to the proceeds.⁶

⁶The appellants claim their rights to the proceeds by assignment, and claim that those rights arise from the condemnation proceeding. Having found, however, that those proceedings did not determined any ownership rights, we need not consider the effect of the assignments in this case.

IV

The condemnation proceedings determined, and necessarily so, the validity of the condemnation and the value of the parcels. Were a party in this suit now to challenge those determinations, res judicata would bar them, but res judicata does not bar the RTC's claim here. Accordingly, the judgment of the trial court is

A F F I R M E D.