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Annual Survey of South Carolina Law/Practice and Procedure: Defendant Not Allowed to Assert Collateral Estoppel Against Stranger to Prior Judgment

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V. DEFENDANT NOT ALLOWED TO ASSERT COLLATERAL ESTOPPEL AGAINST STRANGER TO PRIOR JUDGMENT

The South Carolina Supreme Court held in *Richburg v. Baughman*[89] that a defendant could not assert collateral estoppel against a plaintiff who was not a party to a prior action in which the defendant was a party. Finding that the plaintiff had not had a full and fair opportunity to litigate the relevant issue, the court refined its interpretation of the doctrine of collateral estoppel, but remained consistent with its previous treatment of collateral estoppel issues and with the modern trend in other jurisdictions.[90]

Richburg arose as the result of an automobile accident between a truck driver and Richburg's daughter. In the accident the daughter sustained physical injuries and Richburg incurred property damage to his vehicle. Richburg sued Baughman to recover his daughter's medical expenses and damages for property loss to his vehicle, but Baughman prevailed.[91] Because of errors in the jury charge, however, the trial court granted Richburg's motion for a new trial. Later, in a separate action, the daughter sued Baughman for actual and punitive damages for her injuries, but the jury only awarded her actual damages. Neither party appealed that verdict. On retrial of Richburg's claims against

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87. Goodwin v. Dawkins, 282 S.C. 40, 317 S.E.2d 449 (1984). In a fraud action at law for damages, "[the court's] review of the trial judge's findings of fact is limited to determining whether there is any evidence which reasonably supports the judge's findings." *Id.* at 42, 317 S.E.2d at 451.

88. The party asserting fraud assumes a heavy burden of proving it by clear, cogent and convincing evidence. Watson v. Wall, 239 S.C. 109, 113, 121 S.E.2d 427, 429 (1981).

89. 290 S.C. 431, 351 S.E.2d 164 (1986).

90. *See infra* note 101.

91. 290 S.C. at 433, 351 S.E.2d at 165.

Baughman the trial court granted Richburg's motion for summary judgment on the issue of Baughman's liability for actual damages. The court found that Baughman was collaterally estopped from denying liability because the jury in the daughter's suit had already adjudged Baughman liable for actual damages.

Correspondingly, Baughman asserted that Richburg should be collaterally estopped from recovering punitive damages since the jury in the daughter's suit had awarded only actual damages and, thus, had exonerated Baughman on the issue of liability for punitive damages.[92] The trial court denied Baughman's motion, however, and after trial the jury returned a verdict against Baughman for punitive damages. Baughman contended on appeal to the supreme court[93] that the trial court should have precluded Richburg from relitigating the same punitive damages issue on which a jury previously had vindicated Baughman.

The supreme court initially noted that in a suit between parties and their privies, collateral estoppel precludes the relitigation of issues actually and necessarily litigated and determined in a previous action.[94] The court held that "[s]ince the father was neither a party in the previous action nor in privity with such a party, the prior verdict refusing punitive damages [was] not applicable to the father,"[95] and the father, therefore, was not estopped from litigating the issue.

Richburg presented the court with an opportunity to further define the doctrine of collateral estoppel as it is applied in South Carolina. In the 1982 decision *Graham v. State Farm Fire & Casualty Insurance Co.*[96] the court abandoned the requirement

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92. Whether the jury exonerated the defendant on the issue of his alleged reckless or wilful misconduct is an open question. The jury only explicitly found liability on the issue of actual damages and failed to stipulate its findings concerning punitive damages. The question is essentially academic, however, because whether the matter actually was litigated is immaterial; in either case, the defendant could not use the prior judgment to estop this plaintiff from litigating an issue which he had never before litigated. *Id.* at 434-35, 351 S.E.2d at 166.

93. The defendant appealed following the denial of his motions for judgment *non obstante veredicto* and for a new trial. *Id.* at 433, 351 S.E.2d at 165.

94. *Id.* at 434, 351 S.E.2d at 166.

95. *Id.* at 435, 351 S.E.2d at 166. The court stated that a parent-child relationship does not engender a state of privity. The determination of lack of privity in this case is logical nonetheless because the father possessed distinct protectable interests separate from those of his daughter.

96. 277 S.C. 389, 287 S.E.2d 495 (1982). For a thorough analysis of *Graham*, see *Practice and Procedure, Annual Survey of South Carolina Law*, 35 S.C.L. REV. 107

of mutuality[97] and allowed the defensive assertion of collateral estoppel by one who was neither a party to nor in privity with a party to the previous action. Because the plaintiff in *Graham* had been given a full and fair opportunity to litigate his claim in a prior action against a different defendant, the plaintiff's due process rights were not violated by the application of collateral estoppel.[98] The *Graham* holding revealed, therefore, that the critical question is "whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action."[99] Since Richburg was not a party to his daughter's action, he had not had an opportunity to litigate the punitive damages issue and, therefore, was not bound by the prior judgment.

Although the supreme court did not allude to its previous abandonment of the mutuality rule and instead used language suggesting that mutuality remains a requirement,[100] the facts in

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(1983).

97. 277 S.C. at 390, 287 S.E.2d at 496. The court declared this to be the modern trend; as noted in the *Annual Survey*, *supra* note 96, at 108 & n.11, cases from other jurisdictions support this assertion; *see also* Annotation, *Mutuality of Estoppel as Prerequisite of Availability of Doctrine of Collateral Estoppel to a Stranger to the Judgment*, 31 A.L.R.3D 1044, 1067 (1970 & Supp. 1986).

98. The United States Supreme Court has suggested that provision of a full and fair opportunity is a constitutional due process requirement. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 327 n.7 (1979).

99. 277 S.C. at 391, 287 S.E.2d at 496; *accord* Irby v. Richardson, 278 S.C. 484, 298 S.E.2d 452 (1982); *see also* Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). In *Beall* the South Carolina Court of Appeals upheld the offensive use of nonmutual collateral estoppel when the defendant has had a full and fair opportunity to litigate the issue. The court extensively addressed the status of the doctrine in South Carolina and discussed relevant policy considerations. Accordingly, the court adopted the rule of RESTATEMENT (SECOND) OF JUDGMENTS §§ 27-29 (1982): "Because the rule is perfectly in accord with *Graham* and *Irby* and because it represents a 'more flexible modern view,' we adopt it as the rule by which to determine whether a party in South Carolina is precluded from relitigating an issue with a nonparty." 281 S.C. at 370, 315 S.E.2d at 190 (citation omitted); *accord* St. Philip's Episcopal Church v. South Carolina Alcoholic Beverage Control Comm'n, 285 S.C. 335, 329 S.E.2d 454 (Ct. App. 1985). Although the *Richburg* court apparently did not rely on *Beall* or the Restatement position, but relied only on *Graham* and *Irby*, the distinction is neither significant nor outcome-determinative. As noted by the *Beall* court, the operative question in each approach is the same: whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate in a prior action. 281 S.C. at 370, 315 S.E.2d at 190.

100. The court merely stated that "[u]nder the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim."

Richburg did not require consideration of the mutuality rule. The holding comports with *Graham* and with decisions in those jurisdictions that also have discarded the mutuality rule.[101] When a stranger to a prior judgment brings suit against a defendant who is bound by that prior judgment, the defendant may not assert collateral estoppel to preclude the plaintiff from litigating an issue decided in that prior proceeding. Taking into account South Carolina decisions mentioned above, one may characterize the aggregate effect of the *Richburg* holding in this manner: while a stranger to a judgment may assert nonmutual collateral estoppel either offensively or defensively,[102] a party may not assert it defensively against such a stranger. This decision is not a major departure from existing South Carolina law, but practitioners should recognize the parameters and potential for use of the doctrine.

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290 S.C. at 434, 351 S.E.2d at 166. Perhaps because the presence of mutuality would have made no difference to the outcome of *Richburg*, the court did not note that instances exist in which a stranger to a judgment may assert estoppel against an adversary.

101. The rule in other jurisdictions that have rejected the mutuality rule is stated as follows:

> The cases which abandon the mutuality rule, whether in whole or in part, agree . . . that the doctrine of collateral estoppel can be invoked by a stranger to the judgment only against one who was a party, or in privity with a party, to the judgment and had a full opportunity in the prior action to litigate the relevant issue.

Annotation, *supra* note 97, at 1067; *see, e.g.*, Clemmons v. Travelers Ins. Co., 88 Ill. App. 3d 201, 410 N.E.2d 445 (1980), *aff'd*, 88 Ill. 2d 469, 430 N.E.2d 1104 (1981).

102. Although *Graham* concerned the assertion of defensive collateral estoppel by a stranger, *Beall* illustrated that the stranger may also assert collateral estoppel offensively as long as the defendant had a full and fair opportunity to litigate.

103. 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986).

104. *See, e.g.* Landvest Assoc. v. Owens, 276 S.C. 22, 274 S.E.2d 433 (1981); Jacobson v. Yaschik, 249 S.C. 577, 155 S.E.2d 601 (1967); Boardman v. Lovett Enter., 283 S.C.