

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-25

BROKEN ARROW, LLC

vs.

WILLIAM HUSBAND & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendants, William and Joyce Husband, appeal from a Superior Court judgment holding them liable for past rent due under a commercial lease to which they were signatories along with a since-dissolved corporation that they operated, Frederic Coiffeurs, Inc., doing business as Egadz Hair Salon. The Husbands argue that this action should have been dismissed because of the preclusive effect of a judgment that the plaintiff, Broken Arrow, LLC (lessor), had obtained in an earlier summary process action against the corporation. We affirm the judgment.

Background. In 2013, the lessor, after serving a notice to quit on William Husband in his capacity as a corporate officer,

¹ Joyce Husband.

brought a District Court summary process action against the corporation, but not against the Husbands individually, seeking possession of and back rent for retail premises leased to the corporation in or before 2006. After a trial, a judgment issued against the corporation, awarding the lessor possession of the premises and back rent of \$56,028, plus interest and costs. The corporation appealed, but it did not pay the appeal bond necessary to perfect the appeal, and an execution issued.

Later in 2013, the lessor brought this Superior Court action against the Husbands individually, seeking, on various theories, to collect the back rent due for the premises. Attached to the lessor's complaint was a copy of a 2001 lease signed by the Husbands individually and by William Husband as president and treasurer of the corporation. The lessor's complaint alleged that, at the time it filed the summary process action, it had been unable to find a copy of the lease in its files, and therefore had not named the Husbands as defendants in that action.² The Husbands moved to dismiss the Superior Court action, principally on the basis of claim preclusion.³ A motion judge denied the motion.

² The Husbands assert that, in discovery in the summary process action, the lessor was unable to produce a copy of the lease, despite requests by the corporation.

³ Their motion could also be understood to seek dismissal on the basis of issue preclusion. We return to that subject infra.

A different judge later allowed the lessor's motion for summary judgment on liability only and then, after a hearing on assessment of damages, ordered judgment for the lessor and against the Husbands for \$56,028 in damages, plus interest and costs -- the same amount of damages as in the summary process action. The Husbands now appeal that judgment.

Discussion. 1. Claim preclusion. "Claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and prevents relitigation of all matters that were or could have been adjudicated in the action." Blanchette v. School Comm. of Westwood, 427 Mass. 176, 179 n.3 (1998). Here, the Husbands contend that the matter of their liability for back rent could have been adjudicated in the summary process action, by making them defendants along with the corporation, and thus that claim preclusion bars the lessor from litigating the matter against them in this action. Even assuming that the matter could have been litigated in the summary process action,⁴ the Husbands, to obtain the benefit of claim preclusion, must establish that they were in privity with the corporation with respect to the summary process action. This they have not done.

⁴ The lessor contends that it could not have done so without a copy of the lease, which it did not have or could not find at that time. We need not determine here whether such a circumstance would bar the application of claim preclusion.

The Husbands argue that such privity existed by virtue of their having been officers, agents, or employees of the corporation. But the Husbands cite no authority for the proposition that any of these relationships establishes privity sufficient to trigger claim preclusion, and the Restatement (Second) of Judgments (1982) (Restatement) suggests otherwise.

As to the Husbands' status as corporate principals, Restatement § 59 provides that "[e]xcept as stated in this [s]ection, a judgment in an action to which a corporation is a party has no preclusive effects on a person who is an officer, director, stockholder, or member of a non-stock corporation." None of the exceptions set forth in § 59 appears applicable here. For example, § 59 recognizes that where a corporation and its officer have a principal-agent relationship, "a judgment in favor of an officer in an action by a third party based on the officer's allegedly wrongful conduct may have the effect of extinguishing the third person's claim against the corporation." Restatement (Second) of Judgments § 59, comment b (1982). This case presents no such scenario. Another § 59 exception is that "[i]f the corporation is closely held . . . the judgment in an action by or against the corporation or the holder of ownership in it is conclusive upon the other of them as to issues determined therein," provided certain conditions are met. Restatement (Second) of Judgments § 59(3) (1982). Assuming

without deciding that the corporation here is closely held, this exception by its terms applies to bar relitigation of issues determined in a prior action, not of claims that could have been asserted in that action.

As to the Husbands' status as agents or employees of the corporation, assuming arguendo that the corporation would have been liable for their actions in that capacity, the general principle set forth in § 51 of the Restatement is:

"If two persons have a relationship such that one of them is vicariously responsible for the conduct of the other, and an action is brought by the injured person against one of them, the judgment in the action has the following preclusive effects against the injured person in a subsequent action against the other.

. . . .

"(2) A judgment in favor of the injured person is conclusive upon him as to the amount of his damages, unless [specified conditions are met]."

This principle would not completely bar the lessor's action against the Husbands, but it might operate to bar the lessor from seeking more damages in the action against the Husbands than it obtained in the action against the corporation. We need not decide that question, because the amount of damages that the lessor was awarded in its judgment against the Husbands was, as already mentioned, the same as the amount awarded in its judgment against the corporation.

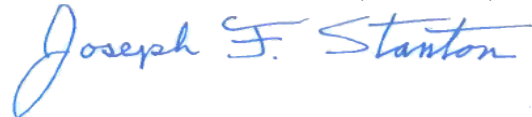
Our discussion of the various grounds on which the Husbands might have sought to establish that they were in privity with the corporation, so as to entitle them to the claim preclusive effects of the summary process judgment, is not intended to be comprehensive or definitive. We include it only to demonstrate that the Husbands' assertion that such privity flows from their status as officers, agents, or employees of the corporation is subject to considerable doubt. The Husbands, as the appellants here, have the burden of establishing some error in the motion judge's rejection of their claim preclusion argument. They have not done so, and thus we decline to reverse the judgment on claim preclusion grounds.

2. Issue preclusion. The Husbands also appear to assert that they are entitled to the issue-preclusive effects of the summary process judgment. "The doctrine of issue preclusion provides that when an issue has been 'actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties whether on the same or different claim.'" Jarosz v. Palmer, 436 Mass. 526, 530-531 (2002), quoting Cousineau v. Laramee, 388 Mass. 859, 863 n.4 (1983). This argument is unavailing because, even if the Husbands were entitled to the issue-preclusive effect of the summary process judgment, nothing in that judgment actually

determined that the Husbands were not liable to the lessor for back rent. That issue simply was not addressed in the summary process action, leaving the lessor free to litigate it later in Superior Court.⁵

Judgment affirmed.

By the Court (Meade,
Sullivan & Sacks, JJ.⁶),



Clerk

Entered: October 16, 2020.

⁵ In light of our conclusions that neither claim preclusion nor issue preclusion barred the Superior Court judgment against the Husbands, we need not address any limitations that G. L. c. 239, § 7, imposes on the summary process judgment. See Duross v. Scudder Bay Capital, LLC, 96 Mass. App. Ct. 833, 839-840 & n.12 (2020).

⁶ The panelists are listed in order of seniority.