

MERRIMACK, SS

SUPERIOR COURT

BEFORE THE COURT APPOINTED REFEREE
IN THE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIM DOCKET

In Re Liquidator Number:	2009-HICIL-44
Proof of Claim Number:	CLMN711647
Claimant's Name:	Adebowale O. Osijo
Claimant's Number:	CDV-2007-745
Policy or Contract Number:	GL-1692617
Insureds' Names:	Housing Resources Management, Inc., Acorn I Ltd., & Acorn II, Ltd.
Date of Loss:	October 7, 1988

CLAIMANT'S REPLY TO THE LIQUIDATOR'S SECTION 15 SUBMISSION REGARDING ISSUE AND CLAIM
PRECLUSION, PER ORDER OF JULY 21, 2009

1.

Where Is A Copy Of The Order That Authorized Attorney Georgia Ann Michell-Langsam To Settle Claimant's Personal Injury Action On July 30, 1991?; Where Is The Claimant's Signature On The Settlement Check Issued By The Home Insurance Company?; Where Is A Copy Of The "Full Release And Satisfaction Of All Claims And Demand," With The Claimant's Signature On It, Before The Settlement Check Was Cashd On July 30, 1991 By Attorney Georgia Ann Michell-Langsam?

Because the Liquidator filed "Exhibits To Liquidator's Section 15 Submission," in response to the July 21, 2009, Order, regarding res judicata (claim and issue preclusion), Claimant, Adebowale O. Osijo respectfully ask that the Liquidator in his sur-rebuttal, identify and specify, or produce the followings:

A. A copy of the Order or a final judgment on the merit, issued by any Court in the State of California, which authorized Attorney Georgia Ann Michell-Langsam to settle Claimant's personal injury action in the Alameda County Superior Court, CA. The "Settlement Agreement," and its Enforcement Order of October 10, 1991, did not authorize her to settle the Claimant's personal injury action on July 30, 1991. Please see the Exhibits G & H of the "Exhibits to the Liquidator's Section 13 Submission."

B. A copy of the cancelled Bank of America check No. 51990219, dated July 26, 1991, issued by the Home Insurance Companies, in the amount of Two Hundred and Fifty Thousand Dollars,

(\$250,000), into the "Trust Account of Ganong & Michell, As Trustees For Wale O. Osijo, In Full & Final Settlement," with the Claimant's signature on it, as requested by the personal injury Defendants' attorney, David Raymond Pinelli, in his letter of July 29, 1991. A copy of the aforementioned check, identified as Exhibit H, in the "Exhibits To Liquidator's Section 15, Submission," does not have the Claimant's signature on it, for any purpose.

C. A copy of the "Full Release And Satisfaction Of All Claims And Demand," with the Claimant's signature on it, before the aforementioned settlement check was negotiated and cashed, as requested by the Defendants' attorney, David Raymond Pinelli, in his covering letter of July 29, 1991. No argument necessary!

Claimant respectfully reminds the Court and the Liquidator that the Liquidator has the burden of proof, under the laws in the State of California, and in all other jurisdictions of the United States, because he is the one claiming *res judicata* (claim and issue preclusion). Please see *Vella v Hudgins* (1977) 20 Cal.3d 251, 257-258.

2.

"The Doctrine Of Res Juridicata Was Never Intended To Operate So As To Prevent A Re-Examination Of The Same Question Between The Same Parties Where, In The Interval Between The First And Second Actions, The Facts Have Materially Changed Or new Facts Have Occurred Which May Have Altered The Legal Rights Or Relations Of The Litigant"

The law in the State of California, as established by the California Supreme Court, in the *Matter of Hurd et al, v Albert, et al* (1931) 214 Cal. 15, 3 P.2d 545, 76 A.L.R. 1348, and by the Supreme Courts of other jurisdiction in the United States of America, is that:

"The doctrine of *res judicata* was never intended to operate so as to prevent a re-examination of the same question between the same parties where, in the interval between the first and the second actions, the facts have materially changed, or new facts have occurred which may have altered the legal rights or relations of the litigants. (*Matter of Snowball*, 156 Cal. 240, [244 Pac. 444], *Williamson v Grider*, 97 Ark. 588 [135 S.W. 361]); 34 Cor. Jur. 905, sec. 1313"

"These cases are also authority for the point that when the second action is tried

it is permissible for the Court to consider, not only the facts that have occurred since the prior suit, but it may and should consider all facts that exist, both prior and subsequent to the first action, so as to determine, properly what effect all of the facts, as they exist at the time of the second action, have on the rights of the parties"

What the Liquidator is trying to do in this Insurance Liquidation Proceeding, under the camouflage of *res judicata*, is to prevent the Court from examining the fact that Georgia Ann Michell-Langsam had settled the Claimant's personal injury action in the Superior Court of California, Alameda County, in the Matter of Osijo v Housing Resources Management, Inc., Prostaff Security Services, Inc., Acorn I, Ltd., and Acorn II, Ltd., Case No.: C-649881, on Tuesday, July 30, 1991, and had misappropriated the settlement proceeds to herself, for her own use and purposes, without the Claimant's knowledge or consent, and in collusion with the then personal injury Defendants' attorney, David Raymond Pinelli, before the personal injury Defendants' Motion to Enforce Settlement Agreement, was filed, heard and decided, on September 5, 1991.

The facts that Attorney Georgia Ann Michell-Langsam had settled the said personal injury action on Tuesday, July 30, 1991, and had misappropriated the settlement proceeds to herself for her own use and purposes, without the Claimant's knowledge or consent, was not made known to the Claimant until early 1993. This was after the California Court of Appeals, First District, Division II, had affirmed the Order Enforcing Settlement Agreement, in July 1992, and after the California Supreme Court denied Claimant's Petition for Review, in late October 1992.

Claimant substantiates the foregoing, with the following evidences:

<u>Evidence Number</u>	<u>Description of Evidence</u>	<u>Specific Substantiation</u>
1.	Transcript of Hearing	a. Not one word was stated in the entire transcript that Attorney Georgia Michell had settled the personal injury case on July 30, 1991. b. The entire proceeding was to enforce "Settlement Agreement," not to enforce the settlement of the personal injury action, by Attorney Georgia Ann Michell-Langsam,

on July 30, 1991.

c. There is no way that Claimant can have a fair and full opportunity to present his case with the Plaintiff's and the Defendants' attorneys in cohort with one another, and against him, in the open courtroom of Department 18, of the Alameda County Superior Court.

2. Declaration of Georgia Michell
 - a. Not one word was stated in the entire declaration that she had settled the personal Injury case on July 30, 1991.
 - b. Georgia Michell's conduct in the proceeding was egregious such that it deprived the Claimant of a full and fair opportunity to present his case.
 - c. The declaration was in support of the Defendants' Motion to Enforce Settlement Agreement, not Motion to Enforce Settlement, as stated by the Liquidator in the Section 15 Submission.

3. Declaration of Charles S. Baker
 - a. Not one word was stated in the entire declaration that he came to Fresno to try and pay the Claimant \$75,000 in cash, from the settlement proceeds, that Georgia Michell received on July 30, 1991.
 - b. The declaration was in support of the Defendants' Motion to Enforce Settlement Agreement, *not Motion to Enforce Settlement* as stated by the Liquidator in the Section 15 Submission.

4. Declaration of David R. Pinelli
 - a. Not one word was stated in the entire declaration that he has paid Georgia Michell to settle the personal injury action on July 30, 1991.
 - b. The entire declaration was in support of the Defendants' Motion to Enforce Settlement Agreement, *not Motion to Enforce Settlement*, as stated by the Liquidator in the Section 15 Submission.

Based on the foregoing authority, and evidentiary facts, Claimant respectfully ask that the Court

deny the Liquidator's Section 15 Submission, regarding *res judicata* (claim and issue preclusion), and

grant Claimant's Request For An Evidentiary Hearing, in this Insurance Liquidation Proceeding, to

Establish the fact that the then Claimant's attorney, in the underlying personal injury action, in the Superior Court of California, Alameda County, in the Matter of Osijo v Housing Resources Management, Inc., Prostaff Security Services, Inc., Acorn I, Ltd., and Acorn II, Ltd., Case No.: C-649881, Attorney Georgia Ann Michell-Langsam, settled his personal injury action on July 30, 1991, without his knowledge or consent, or a Court's order, before the Court ever heard and decided the Defendants' Motion to Enforce Settlement Agreement, on September 5, 1991.

3.

Attorneys' Egregious Conduct Which Undermines Due Process Fairness In A Judicial Proceeding Cannot Form The Basis Of Res Juridicata

For the umptieth time, Claimant has requested the Court's ruling that the Plaintiff's and the Defendants' attorneys conduct in the aforementioned personal injury action is egregious, such that Claimant was prevented from fully and fairly presenting his case in the Defendants' Motion to Enforce Settlement Agreement.

Claimant has presented a copy of the "Stipulation In Lieu Of Discipline," on file with the State Bar of California, wherein, Georgia Ann Michell-Langsam stipulated with The State Bar of California that she represented Claimant with an actual conflict of interest. Please see the Supplement to the Amended Claimant's Mandatory Disclosure, filed on July 15, 2009.

In addition to the foregoing, Claimant submits Exhibits 1 to 4, for the reasons described in pages 3 through 4 above.

Finally, Claimant submits Exhibits 5 and 6, to prove that the then Plaintiff's attorney and the Defendants' attorneys, were in cohort with one another with their exchange of drafts of motion and declaration. If the opposing attorneys agree with one another, what do they need the Court to adjudicate in the Defendants' Motion to Enforce Settlement Agreement? This tantamount to a stipulation between the parties, which will have been very obvious or apparent.

Georgia Ann Michell-Langsam had settled the personal injury action in cohort and collaboration with David Raymond Pinelli, with the hope that Claimant will accept the Court's ruling. This was the declaration of Charles Samuel Baker, on page 2, Paragraph 5, Exhibit 3, which reads:

"After several hours of discussion with Mr. Osijo, we discussed the fact that Mr. Pinelli had promised that if Mr. Osijo did not sign the release that the defendants would make a 664 motion to enforce the settlement. Thereafter, Mr. Osijo indicated to me that if he was ordered to take the settlement by a judge, it will not be as offensive that was not the same as him agreeing to accept less than his \$2,500,000.00 demand."

Finally, we must not forget that Attorney Georgia Ann Michell-Langsam was concurrently an insured of the Home Insurance for legal malpractice of the same personal injury action. Attorney Georgia Ann Michell-Langsam was concurrently a client of personal injury Defendants' attorneys' law firm. The same Home Insurance hired the same personal injury Defendants' attorneys' law firm to defend a subsequent legal malpractice action brought Claimant, against Attorney Georgia Ann Michell-Langsam, in the Superior Court of California, Contra Costa County.

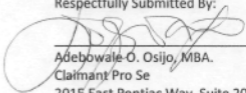
4.

Conclusion

Claimant's due process right to fairness in a judicial proceeding is guaranteed by the *Fourteenth Amendment to the Constitution of The United States of America*, and the *California Constitution, Article 1, Section 7(a)*. There is no way that Claimant can have a full and fair opportunity to present his case in the aforementioned personal injury Defendants' Motion to Enforce Settlement Agreement, when the attorneys who were supposed to be in opposition with one another, are instead in cohort with one another, and against the Claimant, as evidenced above. The Liquidator's claim of *res judicata* is inapplicable.

ated this 11th day of September, in the year 2009.

Respectfully Submitted By:

A handwritten signature in black ink, appearing to read 'A. Osijo', is written over a horizontal line. The signature is stylized and somewhat cursive.

Adebowale O. Osijo, MBA.

Claimant Pro Se

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Fresno, California 93726-3978

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Email: adebowaleosijo@att.net

I, Jhoe F. Ajayi declare the following:

1. I am not a party in this action, nor do I have any interest in its outcome. I am over the age of eighteen years. I am a resident of the City and County of Fresno, California. On August 3, 2009, I served the following document:

"Claimant's Response To Liquidator's Section 15 Submission Regarding Claim & Issue Preclusion Per Order Of July 21, 2009"

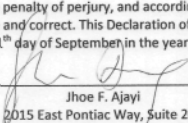
On the following persons:

Ms. Raelynn Armstrong
The Home Insurance Company in Liquidation
C/O Merrimack County Superior Court
163 North Main Street
Post Office Box 2880
Concord, New Hampshire 03301-2880
help@hiclclerk.org

Mr. Eric A. Smith
Rackemann, Sawyer & Brewster
A Professional Corporation
160 Federal Street
Boston, Massachusetts 02110-1700
Attorneys for the Liquidator
esmith@rackemann.com

by placing these documents in envelopes addressed as above, with first class stamps affixed on them. I thereafter sealed the envelopes and deposited them with the United States Postal Service for delivery at the respective addresses.

2. I declare under the penalty of perjury, and according to the laws in the State of California that the foregoing is true and correct. This Declaration of Oath is executed in the City and County of Fresno, California, this 11th day of September in the year 2009.



Jhoe F. Ajayi
2015 East Pontiac Way, Suite 203
Fresno, California 93726