





## **I. FACTUAL AND PROCEDURAL BACKGROUND**

Pursuant to the attendant briefs, record, and the arguments made by counsel and pro se Plaintiff at the hearing on December 16, 2019, the factual and procedural background is as follows. In approximately April 1998, Plaintiff and the named individual Defendants and their corporate entities entered into a working partnership agreement. Plaintiff previously worked as a real estate developer and pursuant to the partnership was to create projects for Defendants as he had done throughout his previous employment using his knowledge and relationships while Defendants would finance the projects. The relationship between the parties deteriorated, and in March 2010, Plaintiff's wife, Mary Berryhill, filed a Complaint against many of these same Defendants arising from the Berryhill and Khouri business dealings (Case No. CV-10-721073).

In September 2010, Mary Berryhill filed an Amended Complaint. In October of the same year, the Defendants Answered and filed a Counterclaim against Mary Berryhill, while also naming Robert Berryhill, the current Plaintiff, as a Counterclaim-Defendant. The Counterclaim describes the 1998 business relationship before asserting 11 individual claims arising out of the Berryhills' conduct with respect to Robert Berryhill's work for these Defendants. Robert Berryhill was served with that Answer and Counterclaim on October 22, 2010.

The underlying case was actively litigated at the trial court level for several years. On May 9, 2013, the trial court granted the Khouri Defendants summary judgment as to all of Mary Berryhill's claims, and dismissed her claims with prejudice. The court also granted the Khouri Defendants' summary judgment against Robert Berryhill on their claim for embezzlement.

In November 2014, the Eighth District Court of Appeals affirmed the trial court's decision granting the Khouri Defendants' summary judgment on all of Mary Berryhill's claims.

On January 22, 2015, the trial court granted the Khouri Defendants yet another partial summary judgment and awarded damages, attorney fees and costs. On February 27, 2015, the Khouri Defendants filed a notice voluntarily dismissing their remaining counterclaims, and on March 3, 2015 the trial court entered a final order dismissing those claims.

In July 2015, Plaintiff filed a Motion to reopen judgment, which was denied by the trial court. Pursuant to its journal entry, dated May 3, 2018, the Eighth District Court of Appeals affirmed the denial of said motion while stating that Berryhill's challenge was barred by res judicata and law of the case.

Plaintiff filed the current Complaint on May 8, 2019, setting forth many allegations, causes of actions and requests for damages stemming from the business relationship with the named defendants. This relationship is the exact same business relationship that was the subject of the litigation that began in 2010 and ended in 2015.

Plaintiff spends numerous pages in his Complaint reciting the background facts between the parties regarding this partnership. Plaintiff goes on to assert 14 causes of action including Violation of Ohio Corrupt Practices Act, Conspiracy to Violate the Ohio Corrupt Practices Act, Intentional Fraudulent Transfer, Constructive Fraudulent Transfer, Fraudulent Concealment, Embezzlement, Conspiracy, Aiding and Abetting Tortious Conduct, Quantum Meruit, Unjust Enrichment, Breach of Partnership Agreement, Abuse of Process, Theft by Deception and Recovery of Real Estate. Plaintiff also makes demands for relief resulting from said claims.

On July 10, 2019, the Defendants filed their Motion for Judgment on the Pleadings Pursuant to Rule 12(C) or, in the alternative, for Summary Judgment Pursuant to Rule 56. For purposes of the motion at issue, the Court must take all allegations as true.

For all the reasons set forth below, this Court grants Defendants' Motion for Judgment on the Pleadings.

## **II. APPLICABLE LAW AND ANALYSIS**

### **A. 12(C) Motion for Judgment on the Pleadings**

The appropriate test to determine whether a complaint can be dismissed pursuant to Civ.

R. 12(C) is as follows:

Under Civ. R. 12(C), dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt, that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.

*Carson v. Carrick*, 2019-Ohio-4260. A review of a Civ. R. 12(C) motion for judgment on the pleadings raises only questions of law and may take into consideration both the complaint and the answer. *Id.* The original civil action in this matter was raised in both Plaintiff's Complaint and Defendants' answer and this Court takes judicial notice of the prior proceedings.

### **B. The Doctrine of Res Judicata and Compulsory Counterclaims**

Pursuant to the doctrine of res judicata, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grill v. Artistic Renovations*, 2018-Ohio-747. It is well established under Ohio law that an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first lawsuit. The doctrine of res judicata applies to those who were parties in the prior action, to those who

were in privity with the litigants, and also to those who could have joined the action and did not.

A party's failure to assert a compulsory counterclaim constitutes a form of res judicata. *Id.*

A court must apply claim preclusion and dismiss a subsequent suit where the party seeking to invoke the doctrine demonstrates four things:

(1) there is a final, valid decision on the merits by a court of competent jurisdiction; (2) there is a second action that involves the same parties, or their privies, as the first action; (3) the second action raises claims that were or could have been litigated in the first action; and (4) the second action arises out of a transaction or occurrence that was the subject matter of the first action.

*Daniel v. Shorebank Cleveland*, 2010-Ohio-1054. Ohio courts use the logical relation test to determine whether a claim is a compulsory counterclaim. Under this test, a compulsory counterclaim exists if that claim is logically related to the opposing party's claim such that separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts. Accordingly, multiple claims are compulsory counterclaims where they involve many of the same factual issues, or the same factual and legal issues, or where they are offshoots of the same basic controversy between the parties. *Id.*

Compulsory Counterclaims are codified in Civ. R. 13(A) which reads in pertinent part:

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 of whom the court cannot acquire jurisdiction.

*Carson* at P. 23. Compulsory counterclaims under Civ. R. 13(A) must be litigated in the original action or are forever barred. *Id.*

In the case at issue, Plaintiff's claims are admittedly stemming from the business relationship entered into by the parties in 1998. *Plaintiff's Complaint* at ¶ 2, 6, 15, 16, 19, 20, 26,

28, 120. Plaintiff's defense to the assertion of res judicata is primarily based on the assertion that his claims were not ripe at the time of the original case. This argument disregards the facts and court orders of that case, as well as the corresponding decisions of the Court of Appeals.

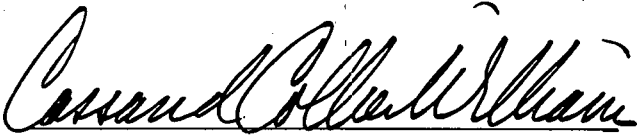
When viewing both the complaint and answer as true, this Court finds that Plaintiff's claims should have been brought as compulsory counterclaims in the original case and are now barred by res judicata. Defendants' Motion in the alternative for summary judgment is therefore moot.

**Conclusion**

Pursuant to Civ. R. 12(C) and Civ. R. 13(A), the Court, having considered all of the evidence and having construed the evidence in a light most favorable to the Plaintiff, determines that Plaintiff can prove no set of facts in support of his claims that would entitle him to relief.

Defendants' Motion for Judgment on the Pleadings Pursuant to Rule 12(C) is hereby GRANTED in full. Judgment is hereby entered in favor of all Defendants and against Plaintiff Robert Berryhill. Plaintiff's Complaint is hereby dismissed. Final.

**IT IS SO ORDERED.**

  
JUDGE CASSANDRA COLLIER-WILLIAMS  
12/19/2019