Vermont Superior Court
Filed 10/20/26
Windham Unit

VERMONT SUPERIOR COURT
Windham Unit
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CIVIL DIVISION
Case No. 26-SC-01412

Mark Feinberg v. Stacy Paetzel et al

ENTRY REGARDING MOTION

Title: Motion to Reconsider (Motion: 3)
Filer: Mark A. Feinberg
Filed Date: September 10, 2026

The motion is DENIED.
While the court has reconsidered, the prior ruling granting the Motion to Dismiss is confirmed.

This court granted Defendant's Motion to Dismiss on September 10, 2026 on the ground that the claim made in this suit had been a compulsory counterclaim in a prior suit, Paetzel v Feinberg, 26-SC-162; affirmed in 26-CV-3313 (hereinafter "prior suit.")

Plaintiff Feinberg has filed a post judgment motion which the court is treating as a Motion to Reconsider; Defendants' lawyer filed a Response and Mr. Feinberg filed a Reply.

Both parties now agree that the doctrine requiring compulsory counterclaims, which this court relied on in dismissing the case, does not apply in Small Claims Court. 12 V.S.A. 5533 (c). Defendants now argue that the dismissal is nonetheless justified based on the doctrine of collateral estoppel, or issue preclusion. Plaintiff argues that collateral estoppel is inapplicable because his current claims were not litigated.

Both parties rely on the decision of the Vermont Supreme Court in *Cold Springs Farm Development, Inc. v. Bell,* 163 Vt 466 (1995). Defendants argue that although 12 V.S.A. 5533 (c) provides that failure to assert a counterclaim in a small claims case does not prevent a defendant from bringing a later action, the doctrine of collateral estoppel or issue preclusion applies because Mr. Feinberg asserted a counterclaim in the small claims action on the exact issue he now seeks to litigate –damage from burst pipes in premises Defendants rented from Plaintiff— and the claim was addressed in the prior case. Plaintiff argues that the claim was not litigated and decided in the prior case as no evidence was heard or facts found and the particular damages were not litigated. He asserts that adequacy of heat and responsibility for insurance are additional claims that were not in the prior case.

The court acknowledges its error in relying on the inapplicable compulsory counterclaim doctrine in originally dismissing the case. The case remains dismissed nonetheless on the basis of the issue preclusion doctrine.

The Vermont Supreme Court set forth the criteria for issue preclusion in *Cold Springs:*

> Generally, issue preclusion is appropriate when:
>
> (1) [it] is asserted against one who was a party or in privity with a party in the earlier action; (2) the issue was resolved by a final judgment on the merits; (3) the issue is the same as the one raised in the later action; (4) there was a full and fair opportunity to litigate the issue in the earlier action; and (5) applying preclusion in the later action is fair. *Trepanier v. Getting Organized, Inc.,* 155 Vt. 259, 265, 583 A.2d 583, 587 (1990).

Cold Springs at 469.

Plaintiff relies on the circumstance that no evidence was heard and findings made in the prior case on his counterclaim for damages from burst pipes. However, in the prior case a hearing was scheduled with ample advance notice to Plaintiff to hear both the claim of the Plaintiffs (Defendants in this case) and the counterclaim of Defendant (Plaintiff in this case), which was the burst pipe claim. Mr. Feinberg failed to attend to litigate his counterclaim. There "was a full and fair *opportunity* to litigate the issue in the earlier action." *Id.* (Emphasis added.) The opportunity to present evidence at the hearing and pursue his *counterclaim* was available to him but he waived it by failing to attend the scheduled hearing. *Feinberg v. Paetzel,* 26-CV3313, Decision on Appeal, September 29, 2026.

Mr. Feinberg claims that there are additional issues that were not in the prior case, specifically whether the tenants maintained adequate heat to keep pipes from bursting and availability of tenant insurance proceeds. Both of these are evidentiary matters that pertain to elements of his burst pipe claim: causation (whether adequate heat) and damages (financial responsibility for costs of harm). Evidence on these subjects would have been relevant if Plaintiff had appeared at the hearing in the prior case to pursue his counterclaim. The fact that he gave up his opportunity to litigate the counterclaim in the prior case does not entitle him to exemption from the effect of the issue preclusion doctrine: one cannot bring the same claim previously asserted when a hearing was held on the claim. The fact that he failed to attend the hearing does not entitle him to bring the claim a second time. It would not be fair to the Defendants in this case to have to prepare for a second hearing on the same claim when Mr. Feinberg's failure to attend the hearing in the prior case to litigate his counterclaim was the result of his own actions.

The analysis in *Cold Springs* addressed an exception to application of the issue preclusion doctrine when the subsequent case is litigated under a different set of procedural rules and standards than the first court (full civil court procedures vs. restricted simplified small claims

court procedures). That is not an issue in this case, as both the first and second cases were brought in small claims court such that identical court rules and procedures are applicable.

While the court has reconsidered the prior decision granting the Motion to Dismiss and acknowledges that it was based on inapplicable law, the result of dismissal is unchanged based on the legal analysis set forth herein.

Electronically signed October 20, 2026 pursuant to V.R.E.F. 9 (d).

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned