

# Commonwealth of Kentucky

## Court of Appeals

NO. 2007-CA-000169-MR

TIMOTHY WEDDINGTON

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDY COLEMAN, JUDGE  
ACTION NO. 05-CI-01353

TRAVELERS PROPERTY & CASUALTY  
INSURANCE COMPANY; TRAVELERS  
CASUALTY AND SURETY COMPANY;  
AND SALYERSVILLE NATIONAL BANK

APPELLEES

### OPINION AFFIRMING

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BEFORE: ACREE AND LAMBERT, JUDGES; ROSENBLUM,<sup>1</sup> SENIOR JUDGE.

LAMBERT, JUDGE: Timothy Weddington appeals the decision below granting summary judgment to Salyersville National Bank (Bank) and the Travelers Insurance Group (Travelers). For the reasons stated herein, we affirm the Pike Circuit Court's grant of summary judgment to the Bank and to Travelers.

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<sup>1</sup> Senior Judge Paul W. Rosenblum, sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and KRS 21.580.

## **Background**

While Timothy Weddington was employed as the President of Salyersville National Bank, he engaged in criminal activities that caused the Bank to sustain nearly \$1,000,000 in losses. The Bank recovered more than \$500,000 from Travelers Insurance Group, which had bonded Weddington. In consideration of that payment, the Bank assigned all its claims against Weddington to Travelers. Travelers then filed suit against Weddington and eventually settled those claims with Weddington for \$60,000.

Subsequently, the United States charged Weddington with criminal bank fraud. As a result of that charge, Weddington entered into a plea bargain in which he agreed to plead guilty and to pay more than \$300,000 in restitution to the Bank. Furthermore, Weddington also promised not to appeal or collaterally attack his plea, conviction, or punishment restitution payment.

Pursuant to the plea bargain, the United States garnished a financial account held by Weddington, transferring the proceeds to the Bank. Weddington objected to this garnishment before the sentencing court, arguing that his prior settlement agreement with Travelers regarding the claims assigned by the Bank should preclude further restitution payments. In a well reasoned, written opinion, the sentencing court ruled against Weddington.

By bringing the present civil action against the Bank and Travelers, Weddington is essentially seeking recovery of all monies garnished by the United States as restitution under his plea bargain. In effect, Weddington seeks to relitigate whether his

settlement of the Bank's assigned claims with Travelers precludes the Bank's retention of criminal restitution payments from the United States. In granting summary judgment against Weddington, the circuit court held that Weddington's present action is estopped by the prior federal litigation.

### **Issue**

Although Weddington's complaint is couched in such terms as breach of contract and unjust enrichment, the uncontroverted record indicates that the sole issue is whether Weddington's settlement of the Bank's claims against him assigned to Travelers precludes the Bank from retaining criminal restitution recovered from Weddington by the United States. And while the merits of this legal question are intriguing, the record clearly shows that this issue has already been litigated and adjudicated against Weddington in federal court. Consequently, Weddington is now estopped from relitigating it.

### **Legal Standards**

Under the well-established doctrine of judicial estoppel, a party may not make solemn representations or agreements in one court then subsequently impeach them. *See, e.g., Griffith v. Wal-Mart Stores, Inc.*, 135 F.3d 376, 380 (6<sup>th</sup> Cir. 1997) (listing elements of judicial estoppel). Under the equally well-settled doctrine of collateral estoppel or issue preclusion, a party is bound by a prior adjudication against it on an issue if the prior issue was an essential component of that action, even though the parties were not completely identical in each action. *See, e.g., Jellenik v. Capitol Indem.*

*Corp.*, 210 S.W.3d 168, 171 (Ky.App. 2006) (explaining doctrine of collateral estoppel or issue preclusion). Finally, the courts shall grant summary judgment to a party so entitled as a matter of law when no material facts are in issue. *See* CR 56.03.

### **Analysis**

#### **A. Judicial Estoppel**

As part of his plea agreement in federal court, Weddington waived “the right to appeal and the right to attack collaterally the guilty plea, conviction, and sentence, including restitution.” Because the federal court accepted this agreement as part of the final judgment of conviction, Weddington is now estopped from taking a position contrary to his waiver. Moreover, as his present action is plainly a collateral attack on the federal court's grant of criminal restitution to Salyersville National Bank, his present suit constitutes an obvious impeachment of his prior waiver. Thus, we hold that Weddington is judicially estopped from relitigating the merits of the question of whether the Bank may receive and retain criminal restitution payments garnished from him by the United States.

#### **B. Collateral Estoppel**

In Weddington's federal criminal case, the parties also fully litigated the question of whether criminal restitution could be awarded to Salyersville National Bank in light of Weddington's prior settlement with Travelers of the claims against him assigned by the Bank. Moreover, litigation of this issue was a part of the court's now final decision to grant restitution to the Bank. Thus, even though neither Travelers nor

the Bank were parties to the prior federal litigation of the restitution issue, Weddington was. Consequently, under the well-settled principles of collateral estoppel or claim preclusion previously set out herein, Weddington is bound by the federal court's adverse adjudication. Thus, we also hold that Weddington is collaterally estopped from relitigating whether the Bank may retain criminal restitution payments garnished from Weddington by the United States.

### **Conclusion**

For either or both of our foregoing holdings, we affirm the circuit court's decision granting summary judgment to the Bank and Travelers.

ACREE, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT.

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