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25-P-1222

Appeals Court

PAUL ENG, trustee,¹ vs. CHEN'S FOOD ENTERPRISE, INC., & another.²

No. 25-P-1222.

Suffolk. May 7, 2026. - August 24, 2026.

Present: Shin, Ditkoff, & Tan, JJ.

Summary Process, Appeal. Judgment, Preclusive effect. Res Judicata. Real Property, Lease. Landlord and Tenant, Rent, Termination of lease. Notice. Statute, Construction. Practice, Civil, Summary process.

Summary process. Complaint filed in the Roxbury Division of the Boston Municipal Court Department on February 26, 2024.

The case was heard by Kenneth J. Fiandaca, J.

Lenard B. Zide for the plaintiff.
Joshua M. Daniels for the defendants.

SHIN, J. At issue in this appeal is whether G. L. c. 239, § 7, which provides that a judgment in a summary process action

¹ Of the 100 Norfolk Street Realty Trust.

² Limin Chen.

"shall not be a bar to any action thereafter brought by either party to recover the land or tenements in question, or to recover damages for any trespass thereon," supersedes the doctrine of claim preclusion. The plaintiff's first summary process complaint against his commercial tenant, which was based on nonpayment of rent (first action), was dismissed because of his failure to prove that he sent a notice of termination as required by the lease. He cured that defect and then brought this summary process action against the tenant as well as its principal, again claiming unpaid rent. After a bench trial, a Boston Municipal Court judge found in favor of the plaintiff and awarded him possession of the premises and \$198,000 in damages.

On the defendants' appeal, the Appellate Division of the Boston Municipal Court reversed the judgment on the ground that the judgment of dismissal in the first action gave rise to claim preclusion. We conclude that this was error because applying claim preclusion cannot be squared with the plain language of G. L. c. 239, § 7, which authorized the plaintiff to bring this action. Accordingly, we reverse the decision and order of the Appellate Division and remand the matter to the Appellate Division for further proceedings.

Background. In December 2018 the plaintiff and Chen's Food Enterprise, Inc. (Chen's Food),³ entered into a ten-year lease for a portion of a warehouse building in the Roxbury section of Boston. The rent was at all relevant times \$9,000 per month.

In October 2023 the plaintiff filed the first action against Chen's Food, claiming nonpayment of rent and seeking possession and \$193,581 in damages. At the close of the plaintiff's case at trial, which occurred in January 2024, Chen's Food moved for involuntary dismissal of the complaint under Mass. R. Civ. P. 41 (b) (2), 365 Mass. 803 (1974), on the ground that the plaintiff failed to send a notice of termination as required by the lease. The judge allowed the motion, concluding that the plaintiff did not prove that he sent a notice of termination and that under Cambridge St. Realty, LLC v. Stewart, 481 Mass. 121, 129 (2018), this constituted a "failure of the [plaintiff's] prima facie case." Judgment of dismissal entered on February 2, 2024.

On February 12, 2024, the plaintiff sent a notice of termination addressed to Limin Chen, stating that he was terminating the lease based on Chen's Food's failure to pay past

³ The judge found, and we accept for purposes of this appeal, that Chen's Food "in one form or another, has been the de facto nominee tenant throughout, except for periods when no corporation of that name existed. During those times, Limin Chen acted as tenant."

due rent. Two weeks later, the plaintiff filed this action against Chen's Food, claiming both nonpayment of rent and wrongful transfer of the lease. This time the plaintiff sought \$205,267.50 in damages as well as possession.⁴ The plaintiff later moved to amend the complaint to add Limin Chen as a defendant, which the judge (the same judge as in the first action) allowed.

The defendants then moved for judgment on the pleadings, arguing among other things that the dismissal of the first action precluded this action. On the first day of trial, which occurred over three days in June 2024, the judge denied the motion from the bench, stating that "[t]he basis of the dismissal [of the first action] . . . was dismissal for want of compliance with the procedural terms of the lease and the notice of termination, and not an adjudication on the merits." The defendants then renewed their claim-preclusion argument through motions for involuntary dismissal at the close of the plaintiff's case and again at the close of all the evidence. The judge denied both motions.

Following the trial the judge issued a detailed written decision finding that the plaintiff was entitled to possession

⁴ The parties dispute whether the claims in this action are based on the same months of unpaid rent that were at issue in the first action. We need not resolve that dispute as it is not material to our analysis.

and \$198,000 in damages plus interest and costs. The defendants appealed from the judgment to the Appellate Division, raising four arguments in their brief, including claim preclusion. In his responsive brief, the plaintiff argued among other things that under G. L. c. 239, § 7, a judgment in a summary process action is not a bar to a successive summary process action.

A panel of the Appellate Division concluded that the judge erred by failing to apply claim preclusion and reversed the judgment. The panel reasoned that claim preclusion barred this action because the involuntary dismissal of the first action was "an adjudication on the merits as to the issues at bar" and the "judge did not indicate the adjudication was without prejudice." The panel found it unnecessary to reach the defendants' remaining arguments.

Discussion. On review of a decision of the Appellate Division, "we can enter such order as that court ought to have entered." Worldwide Commodities, Inc. v. J. Amicone Co., 36 Mass. App. Ct. 304, 308 (1994). We review questions of law, such as those involving statutory interpretation and claim preclusion, de novo. See Sabatini v. Knouse, 497 Mass. 573, 579 (2026); Laramie v. Philip Morris USA Inc., 488 Mass. 399, 404 (2021).

Although the parties devote much of their briefing to debating the application of the elements of claim preclusion, we

need not resolve those issues because we conclude that the summary process statute, in particular G. L. c. 239, § 7, authorized the plaintiff to bring his claims for possession and damages notwithstanding the dismissal of the first action.⁵ In full, G. L. c. 239, § 7, provides that

"[t]he judgment in an action under this chapter shall not be a bar to any action thereafter brought by either party to recover the land or tenements in question, or to recover damages for any trespass thereon; but the amount recovered for rent under section five^[6] shall be deducted in any assessment of damages in such subsequent action by the original plaintiff."

The underlying complaint, brought under the summary process statute to recover possession and damages for unpaid rent, plainly qualifies as an "action . . . to recover the land or tenements in question, or to recover damages for any trespass thereon." Id. The judgment in the first action was therefore "not . . . a bar" to this action. Id. See Miller v. Campello Co-op. Bank, 344 Mass. 76, 79 (1962) (prior judgment in summary process action was "not a bar to any action thereafter brought by either party to recover the land"). And because applying claim preclusion would be inconsistent with the express terms of G. L. c. 239, § 7, "the common-law doctrine [must] necessarily

⁵ We disagree with the defendants that the plaintiff has not adequately briefed any argument based on G. L. c. 239, § 7.

⁶ That section authorizes courts to require defendants to post a bond or make periodic rent payments before pursuing an appeal. G. L. c. 239, § 5.

give way in order to effectuate the purpose of the statute." Business Interiors Floor Covering Business Trust v. Graycor Constr. Co., 494 Mass. 216, 226 (2024), quoting Chelsea Hous. Auth. v. McLaughlin, 482 Mass. 579, 591 (2019).

Without confronting the plain language of G. L. c. 239, § 7, the defendants assert that the preclusive effect of the judgment in the first action is governed by Mass. R. Civ. P. 41 (b) (3), as amended, 454 Mass. 1403 (2009), which provides that, with exceptions not applicable here, an involuntary dismissal "operates as an adjudication upon the merits," "unless the court in its order for dismissal otherwise specifies." We disagree. The rules of civil procedure do "not govern[]" summary process proceedings. Bank of Am., N.A. v. Rosa, 466 Mass. 613, 624 (2013). See Mass. R. Civ. P. 81 (a) (1), as amended, 481 Mass. 1401 (2018). Although they may be used to "fill in any procedural gaps" in the Uniform Summary Process Rules, ROPT Ltd. Partnership v. Katin, 431 Mass. 601, 607 (2000), this cannot be done in a way that would be "inconsistent . . . with applicable statutory law," Rosa, supra, quoting Rule 1 of the Uniform Summary Process Rules (2012). The statute here provides generally that "[t]he judgment" in a summary process proceeding "shall not be a bar" to a successive proceeding to recover possession or damages for trespass and contains no requirement that any prior order of dismissal specify that it

was not an adjudication on the merits. G. L. c. 239, § 7. Thus, it is immaterial that the judge's order of dismissal in the first action did not expressly state that the dismissal was without prejudice. See Fafard v. Lincoln Pharmacy of Milford, Inc., 439 Mass. 512, 515 (2003) ("Because we conclude that the summary process statute precludes counterclaims in commercial actions, it is inappropriate to turn to the Massachusetts Rules of Civil Procedure, as the tenant suggests").

We are also unpersuaded by the defendants' argument, raised in the briefs they filed before the Appellate Division, that G. L. c. 239, § 7, should not be read literally to limit the application of claim preclusion because it would lead to absurd results. It is not the case, as the defendants asserted, that a literal reading would allow a landlord who "loses at trial [to] bring the same case, on the same theory, until he wins (or until the tenant gives in)." That is because issue preclusion, as opposed to claim preclusion, would apply in that situation notwithstanding G. L. c. 239, § 7. As we reasoned in Duross v. Scudder Bay Capital, LLC, 96 Mass. App. Ct. 833, 839 (2020), "[o]n its face, [the] language [of G. L. c. 239, § 7,] speaks to whether a summary process judgment serves as a bar to actions to recover property, not to whether issues actually litigated in a summary process action can be relitigated in a new action." We therefore concluded that any issues that are actually litigated

in a summary process action will be precluded in a subsequent action. See id. at 839-840. Accord Bigelow v. Reem Prop., LLC, 102 Mass. App. Ct. 590, 593-595 (2023).⁷

While the defendants implicitly acknowledged in their Appellate Division briefs that issue preclusion will prevent parties from relitigating issues that they actually litigated and lost, they argued that claim preclusion is still necessary to avoid absurdity because default judgments and agreements for judgment, which are common dispositions in summary process cases, do not involve actual litigation of issues. As a result, they posited, unless such judgments are given claim-preclusive effect, summary process actions "will never be conclusively resolved through those means," opening the floodgates to tenants later suing to reinstate their tenancies. We are not persuaded. The defendants did not identify any cause of action that tenants could bring to recover possession once they have lost a summary process action by default or signed an agreement for judgment, nor are we aware of one. And to overcome the plain language of

⁷ In both Bigelow and Duross, we left open the question whether G. L. c. 239, § 7, limits the application of claim preclusion. See Bigelow, 102 Mass. App. Ct. at 592 n.3; Duross, 96 Mass. App. Ct. at 840 n.12. Furthermore, although we gave claim-preclusive effect to summary process judgments in Santos v. U.S. Bank Nat'l Ass'n, 89 Mass. App. Ct. 687, 692-696 (2016), and Bui v. Ma, 62 Mass. App. Ct. 553, 561-563 (2004), we did so without mentioning G. L. c. 239, § 7, which was not cited by the parties in either case.

G. L. c. 239, § 7, the defendants must do more than raise a possibility that a literal construction will lead to some unintended consequences. Rather, the consequences must be so "'absurd or unreasonable,' such that [they] could not be what the Legislature intended." Ciani v. MacGrath, 481 Mass. 174, 178 (2019), quoting Sharris v. Commonwealth, 480 Mass. 586, 594 (2018).

We do not think a literal construction of G. L. c. 239, § 7, is inconsistent with legislative intent. It is not uncommon for summary process actions to be dismissed because of procedural defects, such as those relating to the notice to quit. See, e.g., Youghal, LLC v. Entwistle, 484 Mass. 1019, 1022 (2020) (tenants entitled to judgment because landlord commenced summary process action before fourteen days had lapsed since tenants' "actual receipt" of notice to quit); Federal Nat'l Mtge. Ass'n v. Nunez, 460 Mass. 511, 520 n.11 (2011) ("A foreclosing owner that has just cause to evict but has not alleged just cause in the notice to quit and the summary process action needs to recommence the summary process procedure and issue a new notice to quit asserting just cause and, if the tenant does not vacate, file a new summary process complaint"). Were claim-preclusive effect to be given to such dismissals, plaintiffs would be forever barred from recovering possession of the property absent some new default committed by the defendant.

And where, as in this case, the plaintiff has also raised a claim for damages, he would be forever barred from recovering them, including for any unpaid rent. This would be a particularly unfair result given that the plaintiff here did not have an opportunity to fully litigate his damages claim, which was dismissed along with his claim for possession because of the unique nature of summary process proceedings. Indeed, had the plaintiff instead chosen not to join his damages claim, there is no question that he could have still raised it in a subsequent proceeding. See G. L. c. 239, § 2 ("Failure to claim rent and use and occupation in the action shall not bar a subsequent action therefor").

For these reasons we conclude that the plain language of G. L. c. 239, § 7, is controlling and authorized the plaintiff to bring this action. The Appellate Division thus erred in applying claim preclusion and reversing the judgment on that basis. Because the Appellate Division did not reach the defendants' remaining arguments, which have not been briefed to us by either party, a remand is necessary for the Appellate Division to address those arguments in the first instance. See Matter of F.C., 479 Mass. 1029, 1030 (2018); Commonwealth v. Drury, 79 Mass. App. Ct. 843, 849 (2011).⁸

⁸ The defendants maintain, and the plaintiff does not contest, that remand to the Appellate Division would be the

Conclusion. The decision and order of the Appellate Division is reversed, and the matter is remanded to the Appellate Division for further proceedings consistent with this opinion.

So ordered.

appropriate disposition were we to conclude that claim preclusion does not bar this action.