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Restatement of the Law, Second, Judgments
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Case Citations

Rules and Principles

Chapter 3 - Former Adjudication: The Effects of a Judicial Judgment

Topic 1 - General Rules Applicable to Judgments

Restat 2d of Judgments, § 16

§ 16 Judgment Based Upon a Judgment That Is Subsequently Reversed

A judgment based on an earlier judgment is not nullified automatically by reason of the setting aside, or reversal on appeal, or other nullification of that earlier judgment; but the later judgment may be set aside, in appropriate proceedings, with provision for any suitable restitution of benefits received under it.

COMMENTS & ILLUSTRATIONS: Comment:

a. How the problem arises. Under § 13, Comments *f* and *g*, a judgment in an action may be regarded as final for purposes of res judicata, and be entitled to conclusive effect in a second action, notwithstanding the fact that it is still liable to be nullified, for example, by a post-judgment motion such as a motion for a new trial, or by reversal on appeal. If judgment is rendered in the second action on the basis of the judgment in the first, and the judgment in the first is then nullified, the problem arises what is to happen to the second, dependent judgment.

b. How the problem may be avoided. This Section states a solution to the problem just put, but it is an inconvenient solution at best. It may be feasible for the court in the second action to avoid the problem. When the second action is being maintained in the same jurisdiction as the first, and is simply repetitious of the first, that is, involves the same claim between the same parties, the second action may be subject from the outset to dismissal ("abatement") on the basis of the defense of "other action pending," leaving only the first action and obviating the problem altogether. When that step has not been taken, or the actions are being maintained in different jurisdictions, or there is not an identity of claims but rather an identity of issues, it may still be advisable for the court that is being asked to apply the judgment as res judicata to stay its own proceedings to await the ultimate disposition of the judgment in the trial court or on appeal. This course commends itself if the disposition will not be long delayed and especially if there is substantial doubt whether the judgment will be upheld.

c. Solution of the problem. As stated in Comment *a* above, the problem when met head-on is that of a judgment based and dependent upon an earlier judgment which subsequently is nullified. It has been contended that the later judgment should then be automatically nullified. The current doctrine, however, is that the later judgment remains valid, but a party, upon a showing that the earlier judgment has been nullified and that relief from the later judgment is

warranted, may by appropriate proceedings secure such relief.

If, when the earlier judgment is set aside or reversed, the later judgment is still subject to a post-judgment motion for a new trial or the like, or is still open to appeal, or such a motion has actually been made and is pending or an appeal has been taken and remains undecided, a party may inform the trial or appellate court of the nullification of the earlier judgment and the consequent elimination of the basis for the later judgment. The court should then normally set aside the later judgment. When the later judgment is no longer open to a motion for a new trial or the like at the trial court level, nor subject to appeal, the fact of the nullification of the earlier judgment may be made the ground for appropriate proceedings for relief from the later judgment with any suitable provision for restitution of benefits that may have been obtained under that judgment. See Chapter 5.

REPORTERS NOTES: (§ 41.3, Tent. Draft No. 1.) *Comment b.* As to "other action pending," see Shipman, Handbook of Common-Law Pleading 390 & n. 19 (3d ed. Ballantine 1923); cf. Annot., 56 A.L.R.2d 335 (1957). Regarding the discretionary stay of an action in deference to another pending action, see *Ray v. Hasley*, 214 F.2d 366 (5th Cir. 1954); *Firestone Tire & Rubber Co. v. Hart's Estate*, 104 Vt. 197, 200-02, 158 A. 92, 93-94 (1932); *Developments in the Law -- Res Judicata*, 65 Harv.L.Rev. 818, 836 (1952); *Restatement, Second, Conflict of Laws* § 107, *Comment e*, § 112, *Comment b*.

Comment c. The rule of this Section, holding that a judgment remains valid despite the reversal or setting aside of a judgment on which it is based, was established by *Reed v. Allen*, 286 U.S. 191, 52 S.Ct. 532, 76 L.Ed. 1054 (1932), criticized in 1B Moore, Federal Practice para. 0.416[4] (2d ed. 1965). The first Restatement § 44 accepted the Reed decision but referred to methods of attack upon the dependent judgment. Local procedure must be consulted to find the appropriate methods and any relevant periods of limitation; counterparts to the following methods, available in federal court, can probably be found in state practice. Federal Rule 60(b)(5) provides that, on motion made within a reasonable time, the court may relieve a party from a final judgment for the reason that "a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." See, e. g., *Michigan Sur. Co. v. Service Mach. Corp.*, 277 F.2d 531 (5th Cir. 1960); *Jackson v. Jackson*, 276 F.2d 501 (D.C.Cir. 1960), cert. denied, 364 U.S. 849, 81 S.Ct. 94, 5 L.Ed.2d 73 (1960); 7 Moore, Federal Practice para. 60.26[3] (2d ed. 1965). Rule 60(b) goes on to provide that "[this] rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment" If the judgment is under appeal, the party may bring to the attention of the appellate court the nullification of the prior judgment, and the appellate court should then grant proper relief through reversal of the judgment appealed from. See *Butler v. Eaton*, 141 U.S. 240, 11 S.Ct. 985, 35 L.Ed. 713 (1891).

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil Procedure Judgments Relief From Judgment Prior Judgment Reversed