IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

KNOX-TENN RENTAL COMPANY, and ROBERT C. LOWE,	)	C/A NO. 03A01-9512-CH-00459
	)	
	)	KNOX CHANCERY
Plaintiffs-Appellants,	)	
	)	HON. FREDERICK D. McDONALD,
v.	)	CHANCELLOR
	)	
THE HOME INSURANCE COMPANY and RONALD L. JENKINS,	)	AFFIRMED
	)	AND
Defendants-Appellees.	)	REMANDED

PHILIP P. DURAND and RONALD L. GRIMM, AMBROSE, WILSON, GRIMM & DURAND, and ARCHIE R. CARPENTER, CARPENTER & O'CONNOR, Knoxville, for Plaintiffs-Appellants.

THOMAS C. CORTS, ORTALE, KELLEY, HERBERT & CRAWFORD, Nashville, for Defendant-Appellee, The Home Insurance Company.

OPINION

Franks. J.

Plaintiffs' action to require defendant insurance company to satisfy an alleged balance owing on the plaintiffs' state court judgment was dismissed by the Chancellor, who determined the judgment between plaintiffs and defendant in U.S. District Court was *res judicata* on the claim in this action.

The Chancellor filed a memorandum opinion and succinctly narrates the history of this litigation:

> Plaintiff Knox-Tenn Rental Company recovered judgment in this court in a prior lawsuit for $1,058,351.86 against Robert C. Lowe, Ronald L. Jenkins and Jenkins Insurance, Inc. Plaintiffs then sued Defendant Home Insurance Company in federal district court on Home's insurance policy issued to Jenkins Insurance, Inc. Asserting coverage for the judgment that had been recovered. Plaintiffs prevailed, recovering judgment in the federal district court against Home for the amount of the judgment in this court plus interest thereon under Tennessee law at the rate of 10% per annum for a total judgment in the federal court of $1,372,377.88. The federal court judgment, which was entered May 12, 1992, was thereafter affirmed by the United States Circuit Court of Appeals for the Sixth Circuit.
>
> Home paid the federal judgment plus interest thereon at the 4.4% rate payable on judgments under federal law, making a total payment of $1,460,216.79. However, Plaintiffs claim that Home still owes interest additional to the 4.4% interest paid by Home to fully satisfy the judgment in this court, which Plaintiffs point out draws interest at the rate of 10% under Tennessee law, 5.6% more than the federal rate. The amount of additional interest claimed by Plaintiffs in this suit (filed November 1, 1994) is $62,940.08 plus $17.24 a day of accumulating interest at the 10% per annum rate.
>
> Plaintiff asserted its claim for the additional interest in the federal court case, and that assertion was denied there on the basis that while on state claims asserted in federal court state law governs prejudgment interest, federal law governs post judgment interest. Plaintiffs then filed another suit in federal court against Home seeking to collect the asserted unpaid portion of interest. That suit was dismissed. The federal district court ruled that the matter was *res judicata*, holding that the interest issue had been previously litigated in the first federal court action and decided adversely to Plaintiffs. Plaintiffs now seeks [sic] the additional interest in this court, again claiming that the judgment in this court has not been satisfied as to the unpaid portion of the 10% interest.

Plaintiffs' initial action in federal court essentially was seeking a declaration that Home Insurance

provided coverage for the state court judgment and also sought the entry of a judgment in federal court based on the state court judgment against Home. U.S. Magistrate Judge Murrian ruled in plaintiffs' favor, finding that the state court judgment should be paid by defendant with interest at the state rate to the date of the entry of the judgment in federal court. An appeal to the Sixth Circuit ensued, and after the judgment was affirmed the defendant, pursuant to federal rules of civil procedure, moved the Court to enter an order that the judgment was satisfied in full upon the payment of the judgment in federal court, plus interest at the federal rate from entry of the judgment in federal court until the judgment was satisfied. Judge Murrian ruled in favor of the defendant and entered an order to the effect that the judgment was ?satisfied in full.?

Plaintiffs then filed another action in U.S. District Court seeking to collect additional interest on the judgment at the state rate. In response to that action, U.S. District Judge Jarvis said:

> Home Insurance contends that the issue is whether it is required to satisfy the state court judgment against Lowe or if its obligation was to satisfy the federal court judgment in favor of KTR and Lowe against itself. I conclude that its obligation was to satisfy the federal court judgment. I conclude that not only could that issue have been raised, . . . but it was in fact raised. Plaintiff argued that the chancery court state judgment had not been satisfied and that Lowe was still liable to pay KTR the balance of that judgment, including post-judgment interest at the 10% rate. However, the magistrate judge disagreed, thereby disposing of the question of whether Home Insurance Company was obligated the satisfy the state court judgment or the federal court judgment entered against it. The issue which plaintiffs raise in this Court has therefore been previously litigated between the same parties, and the pending claim is barred by the

doctrine of *res judicata*.

As noted above, after this adverse ruling, plaintiffs brought this action in state court.

Plaintiffs' suit in federal court asked that a judgment be entered against the insurance company based on the state court judgment obtained against the insurance company's insured. They were granted the relief sought, and in the two actions in federal court raised the issue of the proper rate of interest to be paid on the judgment by the insurance company, which is precisely the issue raised before Chancellor McDonald. Beginning with the federal litigation, we have the same interested parties and the same issue raised and decided in each of the three actions. Clearly, plaintiffs are bound by the doctrine of *res judicata*. *See Whitsey v. Williamson County Bank*, 700 S.W.2d 562 (Tenn. App. 1985); *Rachels v. Steele*, 633 S.W.2d 473 (Tenn. App. 1981).

Defendant by motion seeks an award of just damages pursuant to T.C.A. §27-1-122, contending plaintiffs' appeal is frivolous. We agree. Plaintiffs have litigated this issue in three separate court actions with the same result.

We remand this cause to the Trial Court for a determination of costs and fees to be awarded to defendant, pursuant to T.C.A. §27-1-122. The costs of the appeal are assessed to appellants.

_____
Herschel P. Franks, J.

CONCUR:

_____
Houston M. Goddard, P.J.

_____
Charles D. Susano, Jr., J.