

discovery on him relates to Plaintiff's assertion of irregularities with certain documents that were submitted by Plaintiff in the Delaware proceedings, as well as before this Court. Plaintiff first submitted the documents in question in support of his request for a Writ of Prohibition from the Delaware Supreme Court to force Judge Conner to recuse himself from the Delaware child support proceedings. The documents allegedly revealed a conflict of interest on Judge Conner's part because, as Plaintiff maintains, Judge Conner had an ongoing business relationship with certain defendants in the instant case, including Defendant Marjorie Lamb and Lavender Hill Herb Farm, Inc. ("Lavender Hill")¹. Judge Conner represents that the Delaware Supreme Court on review concluded that none of Plaintiff's allegations had credible factual support, and denied the Writ of Prohibition.

Judge Conner also alleges that Plaintiff's present allegation of Judge Conner being the original source of the documents in question is unfounded, and that Plaintiff's sole purpose is to annoy, harass, and retaliate against him for presiding over the Delaware child support proceedings, and for submitting evidence that led the Delaware Supreme Court to enjoin Plaintiff from engaging in unauthorized practice of law.²

Finally, Judge Conner represents that Plaintiff's discovery efforts fail to comply with Federal Rule of Civil Procedure 45(b)(1) because an individual believed to be Plaintiff left the subpoena and the request for production in "an envelope with a post-it note bearing the

¹ Plaintiff refers to Lavender Hill Herb Farm and Lavender Hill Herb Farm, Inc., interchangeably in his pleadings; Plaintiff's Complaint alleges that Plaintiff was a sole owner of and incorporated Lavender Hill Herb Farm in 1997.

² Plaintiff has been *pro se* in the instant case and in the Delaware child support proceedings. Apparently, in 1983 Plaintiff graduated from the Delaware Law School, but did not become a member of the Bar of the State of Delaware. See Ex. C to the Motion.

Movant's name on a table in the waiting room of the Family Court judicial chambers"; no one accepted service on Judge Conner's behalf; and Plaintiff failed to tender required fees to Judge Conner for attendance of a deposition.³

Plaintiff's Response is not a paragon of clarity or pithiness. The main argument appears to be that Plaintiff's discovery efforts are relevant in this case because Judge Conner has in his possession originals of the documents submitted in the Delaware child support proceedings, which prove that Judge Conner had a financial interest in Lavender Hill "[s]ince on or before 1994 [sic]"; that in 1997-1999 he received payments from Lavender Hill "for his involvement and participation"; that he had actual knowledge of and furthered Defendants Marjorie Lamb and Lavender Hill's alleged violations of the Sherman Antitrust Act and state law via mislabeling and reselling ordinary herbs as organic; and that he has been "implicated" in an alleged forgery of Plaintiff's signature on a certain Stipulation and Order Resolving All Ancillary Matters dated November 22, 2000 in the Family Court of the State of Delaware (the "Stipulation").⁴ Plaintiff also alleges that these documents refute a defense asserted by Defendant Helen Lamb in this case, namely, that she is not involved in any herb business.

Neither Plaintiff nor Judge Conner attach a copy of Plaintiff's subpoena and the request for production. However, Plaintiff's proposed order asks the Court to order Judge Conner to serve on Plaintiff "the original documents of Exhibit A, Exhibit B and Exhibit C."

³ See, e.g., Fed. R. Civ. P. 45(b)(1).

⁴ Since Judge Conner argues that the documents in question are forged and Plaintiff appears to deny being "the source" of these documents, it is not clear whether Plaintiff's argument is that Judge Conner made copies of the originals, "tampered" with them to make them look forged (yet nonetheless still show a business relationship between himself and certain Defendants), and submitted them in the Writ of Prohibition proceedings only to then denounce them as forgeries. If Plaintiff acknowledges that he submitted the copies and not Judge Conner, he does not explain how he acquired such copies, nor how the alleged originals differ from the "tampered with" copies.

The Court therefore assumes that those documents constitute the scope of requested discovery.⁵

In any event, for the reasons described below, the exact scope of Plaintiff's attempted discovery is irrelevant here.

Plaintiff's only response to Judge Conner's allegations of improper service of the subpoena and the request for production is that Judge Conner's representation that someone left a subpoena on "a coffee table" is false. Plaintiff fails to even allege that the subpoena and the request for production were properly served in accordance with the Federal Rule of Civil Procedure 45(b)(1). The Court also cannot discern whether Plaintiff served a prior notice of the commanded production of documents on each party in the manner prescribed by Federal Rule of Civil Procedure 5(b). The Court finds that the subpoena and the request for production are invalid because they were not served properly.⁶

In addition to improper service, a more important reason to grant Judge Conner's Motion has been brought to the Court's attention by the submissions on the record. It appears that several issues central to Plaintiff's claims in this case, and specifically his claim that Judge Conner has a financial interest in Lavender Hill, have been litigated and decided by the Delaware state courts. The Court finds that Plaintiff is estopped from relitigating this issue again in the

⁵ Plaintiff attaches as Exhibit A to his Response a document entitled "Lavender Hill Farms, Inc. Income Statement for 1994," with several names typed under a caption "Share to members." Across from the name "Jay H. Conner" is typed a number, "14,050." Exhibit B to the Response is a document with a round "Lavender Hill Herb Farm" logo at the top, slanted to the top right corner, which states "Paid \$1,448.00 to Jay Conner on October 1, 1999" under a caption "CASH PAYMENT." There is a signature line entitled "Jay Conner," with a scribbled signature above it. Plaintiff's Exhibit C, entitled "Memo," has the same round "Lavender Hill Herb Farm" logo, this time slanted to the left and downwards. It is addressed "To: Jay Conner," "From: Marjorie Burns," and states "Dear Judge: As per your conversation with my mother, it is important that nobody knows about Tim's trips to the Philadelphia Produce Market. I'm sending a copy of our PCO application. We are not reporting sales from the herbs that Tim is buying." Underneath there is a typed name, "Marjorie," and a date of 11/02/99.

⁶ Plaintiff's discovery efforts may be moot since the deadline for extended discovery has already expired.

present case.

Because of numerous appeals by Plaintiff in Delaware state courts, the history of the Delaware proceedings is somewhat convoluted. Nonetheless, Plaintiff and Judge Conner's submissions before the Court, as well as available records of the Delaware Supreme Court decisions, make it clear that the issue of Judge Conner's alleged financial interest in Lavender Hill has been asserted and litigated by Plaintiff in not one but two of his appeals from an order of the Family Court finding Plaintiff in contempt of a child support order. Plaintiff's claim was squarely rejected by the Delaware Supreme Court on the merits in both appeals.

The following is the summary of the proceedings in Delaware state courts, all stemming from Plaintiff and Defendant Marjorie Lamb's divorce in 2000. The divorce appears to have been resolved by the Stipulation in Lamb v. Burns, No. CN00-06046, in the Family Court of the State of Delaware, before Judge Conner. Thereafter the Delaware Division of Child Support Enforcement filed a petition for child support arrears against Plaintiff. The Family Court Commissioner (the "Commissioner") found Plaintiff in contempt of a previous Family Court child support order, and ordered Plaintiff to pay child support.⁷ After Plaintiff filed a petition for review of the Commissioner's order, the Family Court dismissed his petition as untimely, and Plaintiff appealed to the Delaware Supreme Court. Plaintiff also appealed from the Stipulation dated November 22, 2000.⁸ The Delaware Supreme Court reversed and remanded to the Family Court for a review of the merits of Plaintiff's claims.⁹

⁷ See Burns v. Lamb, No. 270, 2003, 834 A.2d 826 (Del. 2003) (presenting history of the case).

⁸ Id., 834 A.2d at 826, n.1.

⁹ Id., 834 A.2d at 826.

On remand, Judge Conner affirmed Commissioner's order, found Plaintiff in contempt, and ordered payment of child support. Plaintiff again appealed, arguing (apparently for the first time), among other issues, that Judge Conner failed to notify him that his signature on the Stipulation has been forged, illegally transferred a Pennsylvania grower's license from him to his ex-wife, and that Judge Conner had a personal interest in the outcome of the litigation because of a financial interest in a business that was in dispute between the parties, i.e. Lavender Hill.¹⁰ The Delaware Supreme Court, after reviewing the Family Court's decision as well as the record, affirmed, stating that the Family Court clearly addressed the merits of Plaintiff's claims on his petition for review of the Commissioner's order. The Delaware Supreme Court also specifically found that there was "no factual support in the record for any of Burns' other claims."¹¹

Courts have always been concerned with limiting needless litigation, and with protecting litigants from relitigating identical issues. The doctrine of collateral estoppel, also known as issue preclusion, addresses these concerns by preventing relitigation of a particular fact or legal issue that was litigated and resolved in an earlier action, whether or not the issue arises on the same or a different claim.¹² "Under the doctrine of issue preclusion, a determination by a court of competent jurisdiction on an issue necessary to support its judgment is conclusive in

¹⁰ Burns v. Lamb, No. 573, 2003, 860 A.2d 809 (Del. June 7, 2004).

¹¹ Id., 860 A.2d at 809. As discussed infra n. 21, on September 28, 2004, the Delaware Supreme Court granted Plaintiff's request to supplement the record in Burns v. Lamb, No. 573, 2003, and upon review of documents which included Plaintiff's current Exhibits A-C, denied Plaintiff's motion for a rehearing *en banc* along with Plaintiff's claim of Judge Conner's personal financial interest in Lavender Hill. See Burns v. Lamb, No. 573, 2003 (Del. Oct. 22, 2004).

¹² See New Hampshire v. Maine, 532 U.S. 742, 748-49 (2001).

subsequent suits based on a cause of action involving a party or one in privity.”¹³ Moreover, pursuant to 28 U.S.C. § 1738, the Full Faith and Credit Act, federal courts must give state court decisions the same preclusive effect they would be given in the courts of the rendering state. “The statute directs federal courts considering the preclusive effect of another jurisdiction’s prior judgment to look not to federal preclusion law or practice but to what the other jurisdiction would decide regarding its preclusive effect.”¹⁴

This Court looks, therefore, to the law of the adjudicating state to determine whether it would give preclusive effect to the Delaware Supreme Court’s decision. In Delaware, “where a question of fact essential to the judgment is litigated and determined by a valid and final judgment, the determination is conclusive between the same parties in a subsequent case in a different cause of action.”¹⁵ Delaware, along with other jurisdictions, no longer requires mutuality, i.e. that a party attempting to bar an adversary from litigating the issue already decided have been a party in the prior litigation.¹⁶ And while issue preclusion applies only when the fact sought to be established in the second proceedings has been actually litigated and determined in the first, the issue decided in the first proceedings has to be merely essential to that judgment and not an all-governing question in dispute or the ultimate fact to be decided in order to invoke the

¹³ Delaware River Port Auth. v. Fraternal Order of Police, 290 F.3d 567, 572 (3d Cir. 2002); see also Seborowski v. Pittsburgh Press Co., 188 F.3d 163, 169 (3d Cir. 1999).

¹⁴ Id., 290 F.3d at 573.

¹⁵ Columbia Cas. Co. v. Playtex FP, Inc., 584 A.2d 1214, 1216 (Del. 1991) (collateral estoppel provides repose by preventing relitigation of an issue previously decided and conserves judicial resources by putting an end to litigation).

¹⁶ Id., 584 A.2d at 1217.

rule of preclusion.¹⁷

In this instance, the parties to the Delaware child support proceedings - Thomas Burns and Marjorie Lamb - are currently Plaintiff and Defendant before this Court. The Delaware Supreme Court, a court of competent jurisdiction, entered a valid and final judgment affirming the decision of the Family Court below. In rendering its decision, the Delaware Supreme Court considered and decided several of Plaintiff's claims, including his current claim that Judge Conner had a financial interest in Lavender Hill, finding them to be without any factual support.¹⁸ Issues raised by Plaintiff's claims in his appeal were essential to the Delaware Supreme Court's decision to affirm the order of the Family Court. Therefore, this Court finds that the doctrine of issue preclusion prevents Plaintiff's attempts to raise these claims yet again, in the federal forum (whether Plaintiff enjoys pursuing these Sisyphean endeavors is a different matter altogether).

Even if the judgment of the Delaware Supreme Court is somehow erroneous and/or subject to reversal, the remedy is not to attempt to have another bite at the apple in the federal forum, but to have the judgment set aside or reversed in the original proceedings - in the courts of Delaware.¹⁹ In fact, that is what Plaintiff attempted to do by appealing Judge Conner's Report dated August 11, 2004 (the "Report") to the Delaware Supreme Court.²⁰ However,

¹⁷ See Tyndall v. Tyndall, 238 A.2d 343, 346 (Del. 1968); Bata v. Bata, 163 A.2d 493, 507 (Del. 1960).

¹⁸ Burns v. Lamb, No. 573, 2003, 860 A.2d 809 (Del. 2004).

¹⁹ See Rest. 2d Judgments § 17 ("[s]uch a remedy may be sought by a motion for a new trial or other relief in the court that rendered the judgment, or by an appeal or other proceedings for review of the judgment in an appellate court").

²⁰ Plaintiff applied to the Delaware Supreme Court for a Writ of Prohibition, seeking to force Judge Conner to recuse himself from any proceeding involving Plaintiff and his ex-wife Marjorie Lamb. The Delaware Supreme

Plaintiff is precluded from relitigating the same issues of fact in this case.

This Court notes that it may also lack subject matter jurisdiction over Plaintiff's allegations of Judge Conner's financial interest in Lavender Hill under the Rooker-Feldman doctrine, which prohibits federal courts from reviewing final judgments or decrees of state courts.²¹

For all of the aforementioned reasons, the Court finds it unnecessary to address the issue of the scope of immunity afforded to Judge Conner from inquiries into his decision-

Court denied Plaintiff's petition, finding that Plaintiff failed to demonstrate a factual basis for his allegation of Judge Conner's personal interest in the outcome of proceedings. In re Petition of Burns for a Writ of Prohibition, No. 129, 2004 (Del. June 3, 2004). However, on July 6, 2004, pursuant to Plaintiff's "motion to supplement the record," the Delaware Supreme Court's directed the Family Court to enlarge its records and take whatever action is necessary to resolve Plaintiff's application. See In re Petition of Burns, No. 129, 2004 (Del. Oct. 4, 2004); see also Ex. E to Pl. Resp.

The resulting Report, after finding that Plaintiff submitted forged and falsified documents in support of his petition for the Writ of Prohibition, recommended denying the Writ. See Ex. E to Pl. Resp. The documents submitted by Plaintiff in support of his petition for the Writ appear to be the same as Exhibits A-C to his current Response.

Plaintiff filed several appeals from the Report, all of which were denied by the Delaware Supreme Court. See Burns v. Lamb, No. 573, 2003 (Del. Oct. 22, 2004) (denying motion for rehearing *en banc* because Plaintiff failed to present any credible evidence in support of his claims of Judge Conner's personal financial interest in the disputed business and claims of various wrongful conduct by Judge Conner, Marjorie Lamb, and her attorney); Burns v. Lamb, No. 361, 860 A.2d 809 (Del. Oct. 19, 2004) (dismissing Plaintiff's appeal from the Report as duplicative of another pending appeal); In re Petition of Burns for a Writ of Prohibition, No. 129, 2004 (Del. Oct. 4, 2004) (denying Plaintiff's motion for a rehearing *en banc* of denial of his petition for a writ of prohibition because Plaintiff had a remedy at law through the ordinary appeal process). In its last decision dated October 22, 2004, the Delaware Supreme Court stated that even after enlarging the record in Burns v. Lamb, No. 573, 2003, to include documents that were presented by the parties in In re Petition of Burns, No. 129, 2004 (including Plaintiff's current Exhibits A-C), the record reflected that Plaintiff has failed to present any credible evidence in support of any of his claims. Burns v. Lamb, No. 573, 2003 (Del. Oct. 22, 2004).

²¹ See Stern v. Nix, 840 F.2d 208, 211 (3d Cir. 1988); see also Marran v. Marran, 376 F.3d 143, 150 (3d Cir. 2004) (Rooker-Feldman doctrine applies, among other instances, where granting relief sought by plaintiff would require federal court to determine that state court judgment was erroneously entered, or to take action that would render state judgment ineffectual). Granting Plaintiff relief requested may require this Court to determine that the Delaware Supreme Court erred in finding Plaintiff's claims of Judge Conner's financial interest in Lavender Hill to be without any factual support, and in denying Plaintiff's request for a Writ of Prohibition. See Burns v. Lamb, No. 573, 2003 (Del. Oct. 22, 2004); Burns v. Lamb, No. 573, 2003, 860 A.2d 809 (Del. June 7, 2004). Such a determination would be in contravention of the Rooker-Feldman doctrine.

making processes, which Judge Conner asserts as one of the defenses to Plaintiff's discovery efforts.

Finally, the Court notes that Plaintiff's standing to maintain the majority of his claims in the Amended Complaint before this Court is premised on Plaintiff's ability to prove that he was and/or is the rightful owner and proprietor of Lavender Hill. In light of the Stipulation entered into by Plaintiff and Defendant Marjorie Lamb in the Family Court of Delaware, and the subsequent proceedings in the Delaware courts, the parties are directed to submit legal argument and citations to case law *only* (any additional factual submissions will be stricken) on the issue of what preclusive effect, if any, the Stipulation between Thomas Burns and Marjorie Lamb has on Plaintiff's standing in this action.²² The Stipulation states, among other things, that "Wife shall continue to be the sole owner and operator of the business known as the Lavender Hill Herb Farm., Inc."²³ Plaintiff challenged the validity of his signature on the Stipulation in the Delaware proceedings, as mentioned above. However, his claims appear to have been denied by the Delaware Supreme Court as lacking any factual basis.

An appropriate Order follows.

²² See Green v. Ancora-Citronelle Corp., 577 F.2d 1380, 1383 (9th Cir. 1978) (parties' stipulation was a conclusive determination of merits of that action for purposes of collateral estoppel where parties intended the stipulation and judgment entered thereon to adjudicate once and for all the issues raised in that action).

²³ Pl. Resp., Ex. D. (emphasis added).

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.