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Appeals Court Holds Prior Summary Process Judgment Does Not Bar Later Action

In Eng v. Chen's Food Enterprise, Inc., the Massachusetts Appeals Court considered whether a prior judgment in a summary process action barred a landlord from bringing a second action after curing a defect in the first case. Plaintiff Paul Eng ("Eng"), trustee of the 100 Norfolk Street Realty Trust, leased warehouse space in Roxbury to Chen's Food Enterprise, Inc. Eng's first summary process action for nonpayment of rent was dismissed because he failed to prove that he sent the notice of termination required by the lease. After sending a new termination notice, Eng brought a second action seeking

possession and unpaid rent. The trial court entered judgment for Eng, awarding possession and $198,000 in damages, but the Appellate Division reversed after concluding that the earlier dismissal operated as an adjudication on the merits and therefore barred the later action.

The Appeals Court reversed that decision, holding that G.L. c. 239, § 7 controlled. The statute provides that a judgment in a summary process action "shall not be a bar" to a later action to recover the property or related damages. Because applying claim preclusion would conflict with that language, the court held that the common-law doctrine must give way to the statute. The court also rejected the defendants' reliance on Mass. R. Civ. P. 41(b)(3), explaining that the civil rules cannot be applied in summary process proceedings in a manner inconsistent with the governing statute.

The court also distinguished claim preclusion from issue preclusion, explaining that § 7 does not permit parties to re-litigate issues that were actually litigated and decided in the first action. It also noted that summary process cases are frequently dismissed because of procedural defects and that giving those dismissals claim-preclusive effect could permanently prevent a landlord from recovering possession or unpaid rent even after curing the defect.

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OCM Law 10 Burlington Mall Road Suite 301 Burlington, Massachusetts 01803 United States (781) 359-9000