

18-1086 LUCKY BRAND DUNGAREES, INC. V. MARCEL FASHIONS GROUP, INC.

DECISION BELOW: 898 F.3d 232

LOWER COURT CASE NUMBER: 17-0361-cv

QUESTION PRESENTED:

In serial litigation between two parties, time-tested principles of claim preclusion and issue preclusion govern when parties may-and may not- litigate issues that were, or could have been, litigated in a prior case. This Court has held that, in a subsequent case between the same parties involving *different claims* from those litigated in the earlier case, the defendant is free to raise defenses that were not litigated in the earlier case, even though they could have been. The Federal Circuit, Eleventh Circuit, and Ninth Circuit have all held the same in recent years. Their reasoning is straightforward: *Claim preclusion* does not bar such defenses, because the claims in the second case arise from different transactions and occurrences from the first case, and *issue preclusion* does not bar them either, because they were never actually litigated. The Second Circuit, however, has now held the opposite. Under the Second Circuit's "defense preclusion" rule, defendants are barred from raising such defenses even if the plaintiff's claims are distinct from those asserted in the prior case and the defenses were never actually litigated.

The question presented is:

Whether, when a plaintiff asserts new claims, federal preclusion principles can bar a defendant from raising defenses that were not actually litigated and resolved in any prior case between the parties.

CERT. GRANTED 6/28/2019