

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19304
W/hu

_____AD3d_____

Argued - April 14, 2008

STEVEN W. FISHER, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2007-01741

DECISION & ORDER

Peter Stassou, etc., appellant, v MGS World,
Inc., et al., respondents, et al., defendants.

(Index No. 19296/01)

Wimpfheimer & Wimpfheimer, New York, N.Y. (Michael C. Wimpfheimer of
counsel), for appellant.

Farber Rosen & Kaufman P.C., Rego Park, N.Y. (John Feijoo of counsel), for
respondent MGS World, Inc.

Dollinger, Gonski & Grossman, Carle Place, N.Y. (Michael J. Spithogiannis of
counsel), for respondents NARA Bank National Association and Boythern Limited.

In an action to enjoin the defendants from interfering with an easement over certain
real property and to recover damages for breach of the easement, the plaintiff appeals, as limited by
his brief, from so much of an order of the Supreme Court, Queens County (Schulman, J.), entered
November 15, 2006, as granted the cross motion of the defendants NARA Bank National Association
and Boythern Limited, and the separate cross motion of the defendant MGS World, Inc., for summary
judgment dismissing the complaint insofar as asserted against each of them on the ground that the
action is barred by the doctrine of res judicata.

ORDERED that order is affirmed insofar as appealed from, with one bill of costs
payable to the respondents appearing separately and filing separate briefs.

May 13, 2008

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“Under the doctrine of res judicata, a disposition on the merits bars litigation between the same parties or those in privity with them of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior action” (*Barbieri v Bridge Funding*, 5 AD3d 414, 415; see *Matter of Hunter*, 4 NY3d 260, 269).

Here, the Supreme Court properly awarded summary judgment dismissing the complaint insofar as asserted against the defendants NARA Bank National Association (hereinafter NARA), Boythern Limited (hereinafter Boythern), and MGS World, Inc. (hereinafter MGS). The plaintiff’s claims, relating to the destruction of an easement he reserved for himself over real property adjoining his own, were adjudicated in an action entitled *Stassou v Casini & Huang Construction, Inc.*, commenced in the Supreme Court, Queens County, under Index No. 6863/1985 (hereinafter *Stassou I*), in which the plaintiff was awarded the sum of \$630,000. The claims in the instant action are identical to those raised in *Stassou I*, and NARA, Boythern, and MGS are all in privity with the defendants in *Stassou I* (see *Matter of Juan C. v Cortines*, 89 NY2d 659, 667; *Bay Shore Family Partners v Foundation of Jewish Philanthropies of Jewish Fedn. of Greater Fort Lauderdale*, 270 AD2d 374, 375). As such, NARA, Boythern, and MGS were all entitled to summary judgment dismissing the complaint insofar as asserted against them on the ground of res judicata (see *Sterngass v Soffer*, 27 AD3d 549, 550; *Barbieri v Bridge Funding*, 5 AD3d at 415).

FISHER, J.P., COVELLO, ANGIOLILLO and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court