

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

D24949
C/kmg

_____AD3d_____

Argued - October 13, 2009

REINALDO E. RIVERA, J.P.
STEVEN W. FISHER
ARIEL E. BELEN
LEONARD B. AUSTIN, JJ.

2008-07624

DECISION & ORDER

Galit Schloss, appellant, v Stephen J. Jones,
et al., respondents.

(Index No. 22732/07)

Jeffrey Levitt, Amityville, N.Y., for appellant.

Jones Garneau, LLP, Scarsdale, N.Y. (Stephen J. Jones pro se and Marcy Blake of
counsel), for respondents.

In an action, inter alia, to recover damages for fraud, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Westchester County (Loehr, J.), entered July 16, 2008, as granted that branch of the defendants' motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as barred by the doctrine of res judicata and denied her cross motion pursuant to CPLR 3212(g) to limit the issues of fact to be decided at trial.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The doctrine of res judicata operates to preclude the reconsideration of claims actually litigated and resolved in a prior action, as well as claims for different relief against the same party which arise out of the same factual grouping or transaction, and which should have or could have been resolved in the prior action (*see Mahler v Campagna*, 60 AD3d 1009, 1011; *Matter of Kafka v Meadowlark Gardens Owners, Inc.*, 34 AD3d 676, 677). In the instant action, the plaintiff sets forth the same allegations that were or could have been resolved in a prior action. Accordingly, the

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Supreme Court properly granted that branch of the defendants' motion which was to dismiss the complaint as barred by the doctrine of res judicata (*see QFI, Inc. v Shirley*, 60 AD3d 656, 657; *Lefkowitz v Schulte, Roth & Zabel*, 279 AD2d 457; *Pappas v Cerrone*, 281 AD2d 608).

The plaintiff's remaining contention is without merit.

RIVERA, J.P., FISHER, BELEN and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court