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

D32142
C/kmb

_____AD3d_____ Submitted - June 24, 2011

REINALDO E. RIVERA, J.P.
JOSEPH COVELLO
ANITA R. FLORIO
PLUMMER E. LOTT, JJ.

2010-06282 DECISION & ORDER

Louis Serio III, appellant, v Town of Islip,
et al., respondents.

(Index No. 642/09)

Tor Jacob Worsoe, Jr., Holtsville, N.Y., for appellant.

Alicia S. O'Connor, Town Attorney, Islip, N.Y. (John R. DiCioccio of counsel), for respondents.

In an action, inter alia, for specific performance of an option to purchase certain real property, the plaintiff appeals from a judgment of the Supreme Court, Suffolk County (Cohen, J.), entered May 21, 2010, which, upon an order of the same court dated March 10, 2010, denying his motion, among other things, to stay a proceeding for a judgment of eviction pending in the Fifth District Court, Suffolk County, under Index No. ISLT-07/001810, and granting the defendants' cross motion, inter alia, pursuant to CPLR 3211(a)(5) to dismiss the complaint on the ground that the action is barred by the doctrine of res judicata, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed, with costs.

"'[T]he general doctrine of res judicata gives binding effect to the judgment of a court of competent jurisdiction and prevents the parties to an action, and those in privity with them, from subsequently re-litigating any questions that were necessarily decided therein'" (*Landau, P.C. v LaRossa, Mitchell & Ross*, 11 NY3d 8, 13, quoting *Matter of Grainger* [*Shea Enters.*], 309 NY 605, 616; *see Toscano v 4B's Realty VIII Southampton Brick & Tile, LLC*, 84 AD3d 780). Under New York's transactional approach to res judicata, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon

different theories or if seeking a different remedy" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357; *Toscano v 4B's Realty VIII Southampton Brick & Tile, LLC*, 84 AD3d 780).

Here, the plaintiff seeks the same relief requested by him in a prior action, namely, specific performance of an option to purchase certain real property located in Bay Shore, New York. Moreover, although the plaintiff alleges in the instant action that the defendants engaged in fraud, this purported new claim or theory is grounded on the same transaction or series of transactions as the prior action (*see Fogel v Oelmann*, 7 AD3d 485, 486).

Accordingly, the Supreme Court properly dismissed the complaint on the ground that the instant action is barred by the doctrine of res judicata.

RIVERA, J.P., COVELLO, FLORIO and LOTT, JJ., concur.

ENTER: z

Matthew G. Kiernan
Clerk of the Court