

<b>El v City of New York</b>
2016 NY Slip Op 31996(U)
September 16, 2016
Supreme Court, Bronx County
Docket Number: 305266/2012
Judge: Alison Y. Tuitt
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NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA - 5

KING J.A. EL  
MESSIAH ALI BAY,

INDEX NUMBER: 305266/2012

Plaintiff,

-against-

Present:  
HON. ALISON Y. TUITT  
*Justice*

CITY OF NEW YORK, NEW YORK CITY POLICE  
DEPARTMENT 42<sup>ND</sup>, P.O. THOMAS BEAUMONT  
(arresting office), SERGEANT THEANTHONG  
(ordered arrest) OFFICERS DOE 1, 2, 3, 4,  
SOBRO (South Bronx Overall Economic Development  
Corporation), SAMUEL JOSEPH (position unknown),  
DEBORAH JOHNSON (V.P. of Property Management),  
YSELMO MORONTA (Superintendent) and  
EMPLOYEES 1, 2, 3, 4

Defendants.

The following papers numbered 1-3,

Read on this Defendant SOBRO's Motion to Dismiss

On Calendar of 4/27/15

Notice of Motion-Exhibits, Affirmation	<u>1</u>
Affidavit in Opposition	<u>2</u>
Reply Affirmation	<u>3</u>

Upon the foregoing papers, defendant SOBRO's (South Bronx Overall Economic Development Corporation) motion to dismiss the action is granted for the reasons set forth herein.

The instant action was commenced by plaintiffs pro-se arising out of their unlawful occupation of a vacant residential building owned by defendant SOBRO located at 992 Washington Avenue in the Bronx. The claims plaintiffs make in this action have already been adjudicated by the Courts in previous actions that plaintiffs have brought. In 2010, plaintiffs brought a special proceeding against the New York City Police

Department ("NYPD") arising out of a 2009 arrest of plaintiff King J.A. El ("El") for trespass on the subject property in which they claimed they should be restored to the property. The proceeding was dismissed by Justice Kenneth L. Thompson by decision and Order dated September 21, 2012. Specifically, Justice Thompson held as follows:

... although Plaintiff maintains that he is entitled to be restored to 922 Washington Ave. [the subject premises], he fails to proffer a basis for this stance. He does not own the premises nor does he present evidence that he was a lawful tenant of the actual owner. Absent an ownership interest in 922 Washington Avenue, he cannot reasonably claim for damages to the premises or for re-entry to the premises.

Plaintiffs again reentered the subject premises and began illegally squatting therein. Defendant then instituted eviction proceedings in Bronx County Housing Court seeking an order of eviction and judgment of possession against plaintiffs. A default judgment was entered against plaintiffs by Sheldon Halprin on January 24, 2014 when plaintiffs failed to appear for trial. After an Inquest, Judge Halprin issued a judgment of possession in favor of defendant. Upon receipt of the judgment, plaintiffs filed various submissions, including Orders to Show Cause in Housing Court which were denied with reference to the lack of merit of plaintiffs' ownership allegations; an appeal of Judge Thompson's decision which was also denied, and upon reargument, denied again; and, an appeal to the Appellate Division, First Department, which was also denied.

On May 28, 2014, pursuant to a Housing Court Order, a New York City Marshal evicted plaintiffs from the subject premises. Plaintiffs have not gained reentry into the premises. Plaintiffs now seek redress for several alleged intentional torts all arising out of plaintiffs' initial arrests for trespass. Plaintiffs seek a determination by this Court that they had and are entitled to legal possession of the subject premises.

Defendants move to dismiss plaintiff's complaint pursuant to C.P.L.R. §3211(a)(5) on the grounds of res judicata and collateral estoppel; and/or C.P.L.R. §3211(a)(1) upon documentary evidence; and/or C.P.L.R. §3211(a)(7) on the grounds of failure to state a cause of action. When a defendant moves to dismiss the complaint pursuant to C.P.L.R. §3211(a)(7), based on legal insufficiency, plaintiff has no obligation to show evidentiary facts to support the allegations of the complaint. Generally, on a motion to dismiss made pursuant to C.P.L.R. §3211, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory". Leon v. Martinez, 84 N.Y.2d 83 (1994)

In the instant matter, defendant SOBRO's motion to dismiss the action must be granted.

Plaintiffs' Complaint rely upon the same arguments that this Court and the Housing Court have already rejected. Therefore, plaintiffs' claims are barred by the doctrines of res judicata and collateral estoppel. It is well-settled that under the transactional approach adopted by New York in res judicata jurisprudence that 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'Brian v. City of Syracuse, 54 N.Y.2d 353 (1981) citing Matter of Reilly v. Reid, 45 N.Y.2d 24 (1978); Marinelli Associates v. Helmsley-Noyes Co., Inc., 705 N.Y.S.2d 571 (1<sup>st</sup> Dept. 2000). The doctrine bars not only claims that were actually litigated but also claims that could have been litigated. Browning Ave. Realty Corp. v. Rubin, 615 N.Y.S.2d 360 (1<sup>st</sup> Dept. 1994). Collateral estoppel, together with its related principles, merger and bar, is but a component of the broader doctrine of res judicata, which holds that as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action. Gramatan Home Investors Corp. v. Lopez, 46 N.Y.2d 481 (1979). "This principle, so necessary to conserve judicial resources by discouraging redundant litigation, is grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again." Id.

Although collateral estoppel is a corollary to the principles of res judicata, unlike res judicata, which involves claim preclusion, collateral estoppel involves issue preclusion. Singleton Management, Inc. v. Compere, 673 N.Y.S.2d 381 (1<sup>st</sup> Dept. 1998). It is an equitable doctrine, based upon the general notion that a party, or one in privity with a party, should not be permitted to relitigate an issue that was previously decided against it. Id. Since res judicata precludes relitigation of issues actually litigated and resolved in a prior proceeding, the party seeking to invoke the doctrine of res judicata must demonstrate that the critical issue in a subsequent action was decided in the prior action and that the party against whom estoppel is sought was afforded a full and fair opportunity to contest such issue. Sweeney v. New York City Dept. of Health and Mental Hygiene, 935 N.Y.S.2d 511 (1<sup>st</sup> Dept. 2012). Collateral estoppel is grounded on concepts of fairness and should not be rigidly or mechanically applied. It is well settled that, in order to invoke the doctrine of collateral estoppel, a two prong test must be satisfied: 1. the identical issue was necessarily decided in the prior proceeding and is decisive of the present action; and 2. that there was a full and fair opportunity to contest that issue in the prior proceeding. See O'Brien v City of Syracuse, 54 NY2d 353 (1981); D'Arata v. New York Central Mutual Fire, 76 NY2d 659 (1990); Zimmerman v. Tower Insurance Company, 13 AD3D 137 (1st Dept.

2004); Cordon v. 698 Realty, L.L.C. 288 A.D.2d 45, 732 N.Y.S.2d 564 (1<sup>st</sup> Dept.,2001). Satisfaction of the “full and fair opportunity test” requires the examination of a number of factors first set forth by the Court of Appeals in Schwartz v. Public Administrator of County of Bronx, 24 N.Y.2d 65 (1969). These factors include the size of the claim, the forum of the prior litigation, the extent of the litigation, the competence and experience of counsel, the availability of new evidence, differences in the applicable law and foreseeability of future litigation. Id. at 72.

In the instant matter, defendant’s motion to dismiss plaintiffs’ action is granted. Res judicata and collateral estoppel bar plaintiff from raising the claims they previously raised which were rejected by the Courts. This plaintiffs case is dismissed in its entirety.

This constitutes the decision and Order of this Court.

Dated: 9/16/16

  
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Hon. Alison Y. Tuitt