

**MARGARET LA SALA, as Executrix of
THE ESTATE OF FRANK LA SALA ,
Index No. 11728/02
Plaintiff, Motion Date: 10/4/02**

**-against- : DECISION
ROCHAMBEAU REALTY & DEVELOPMENT CORP.,
Defendant.**

The following papers numbered 1 to 15 read on this motion.

PAPERS NUMBERED

Notice of Motion/Affirmation/Exhibits 1-6 1-8
Answering Affirmation/Exhibits A-D/Memorandum of Law, Plaintiff 9-14
Reply Affirmation, Defendant 15

Upon the foregoing papers, it is ORDERED that this motion by defendant, Rochambeau Realty & Development Corp. ("Rochambeau") for an order, pursuant to CPLR §3211(a)(1) and (5) dismissing plaintiff's complaint on the grounds of settlement, payment, release and res judicata, is decided as follows.

Plaintiff's complaint alleges a cause of action to recover \$22,195.00 the amount alleged to be due plaintiff from defendant, Rochambeau pursuant to a shareholder loan to Rochambeau. Plaintiff's estate previously commenced a proceeding, pursuant to Business Corporation Law ("BCL") 1104-a to dissolve defendant, corporation. In that proceeding, Rochambeau elected pursuant to BCL 1118, to buy out the Estate's 50% interest in the common stock of Rochambeau. The parties settled and discontinued the proceeding.

Movant, defendant contends that the settlement of the dissolution proceeding included the subject shareholder's loan. The settlement checks were delivered to plaintiff with a letter from Rochambeau's attorney advising that the checks represent full and final payment of any and all claims in favor of the estate against Rochambeau. Too, the settlement is a bar to any claim for relief that was available, whether or not the claim was actually litigated and the Estate is improperly attempting to split a cause of action.

Plaintiff responds that the loan was not repaid as part of the settlement; nor did the Estate forgive the shareholder loan as part of the settlement. The settlement satisfied and the discontinuance released Rochambeau only from the obligation of its' BCL 1118 Election to determine the fair value of shares owned by the Estate; no general releases were exchanged; the loan liability could have been pursued in the dissolution proceeding.

Defendant replies that the dissolution and liquidation of Rochambeau sought by the Estate necessarily included the loan, which enhanced the value of the Estate's stock. The

loan arose out of Rochambeau's corporate transactions and the Estate's claim is barred by res judicata.

The Court notes that the loan was not specifically mentioned in the petition for dissolution but the loan was a necessary component in the valuation of the Estate's shares in the dissolution proceeding. The Estate had the opportunity to litigate the loan claim in the dissolution proceeding but did not do so and is accordingly barred from raising the loan claim in a subsequent action arising out of the same transactions. See, *Schwartzreich v. E.P.C. Carting Co., Inc.*, 246 AD2d 439. A stipulation of discontinuance has the same effect as a judgment. See, *Nottenberg v. Walker*, 160 AD2d 574, 575. The rule against splitting a cause of action precludes plaintiff from recovering in a later action any part of a due debt that could have been recovered in an earlier action. See, *Golden v. Ramapo Improvement Corp.*, 78 AD2d 648.

Defendant's motion is granted; plaintiff's complaint is dismissed.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
November 1, 2002

E N T E R,

S/
HON. KENNETH W. RUDOLPH
Justice of the Supreme Court