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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Eileen Branston Justice

PART 6

Ralph H. Speken

- v -

Columbia Presbyterian Medical Center

INDEX NO. 113895/01

MOTION DATE 11-20-01

MOTION SEQ. NO. 001

MOTION CAL. NO. 11

The following papers, numbered 1 to 3 were read on this motion to/for dismiss complaint based on res judicata.

	PAPERS NUMBERED
Notice of Motion/ ~~Order to Show Cause~~ — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2
Replying Affidavits	3

SCANNED MAR 18 2002

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.

This constitutes the decision and order of the Court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 3-8-02

Eileen Branston J.S.C.

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

EILEEN BRANSTEN
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 6

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RALPH H. SPEKEN and STEPHANIE Z. SPEKEN, as CO-ADMINISTRATORS of the ESTATE of SETH B. SPEKEN, DECEASED, and RALPH H. SPEKEN and STEPHANIE Z. SPEKEN, individually,

Plaintiffs,

-against-

COLUMBIA PRESBYTERIAN MEDICAL CENTER,

Defendant.

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Index No. 113895/01
Motion Date: 11/20/01
Motion Seq. Nos.: 001
Motion Cal. No.: 11

PRESENT: EILEEN BRANSTEN, J.

Defendant Columbia Presbyterian Medical Center ("Columbia Presbyterian") moves for an order pursuant to CPLR 3211(a)(4) and (5) dismissing the action brought by Ralph H. Speken, MD and Stephanie Z. Speken, MS ("the Spekens"), as Co-Administrators of the Estate of Seth B. Speken ("the deceased") and by the Spekens individually (collectively, "plaintiffs").

In 1994, after the death of their adult son, plaintiffs commenced a medical malpractice action against Columbia Presbyterian. On July 8, 1999--the eve of trial--the parties settled the action. The terms of the settlement agreement were incorporated into a three-page "Release," which provided, among other things, that the Spekens were to receive $500,000. Pursuant to the settlement agreement, the Spekens agreed to "immediately and permanently expunge their website," which dealt extensively with their son's death and was

titled "A Death in the Hospital." The Spekens further agreed that they would not "reissue, open or create another Internet accessible site or website concerning the allegations in this lawsuit, the personnel, physicians, nurses and hospital involved and/or the medical care and treatment rendered to the decedent by the defendant and its medical staff." Release, at 2. The agreement also provided that if the Spekens violated its confidentiality and nondisclosure provisions, they would be liable to the hospital for the full $500,000 settlement consideration.

Before putting the settlement on the record, Supreme Court Justice Sherry Klein Heitler inquired, in open court, as to whether the Spekens understood the terms of the settlement agreement and were settling the action of their own free will. Justice Heitler further specifically asked whether the Spekens understood "that there [was] a confidentiality agreement here with regard to this incident in this hospital." Satisfied that the Spekens understood the terms of the release and that they were knowingly and voluntarily discontinuing the action, Justice Heitler authorized the settlement.

The Spekens temporarily shut down their website. At some point, however, they resurrected it.

In October 1999, the Spekens moved before Justice Heitler to vacate the settlement agreement. In a comprehensive March 2000 decision, Justice Heitler denied the motion, explaining that:

> "Here, the stipulation of settlement was immediately preceded by the in-person testimony of both plaintiffs, who agreed to it under oath. Further, both plaintiffs executed a General Release, which specifically incorporated the terms of the settlement. In response to the Court's questions, both plaintiffs testified, under oath, that they read the General Release and had no questions about it. In addition, they both testified that they were entering into the settlement of their own free will, and were not forced to do so.
> * * *
> "[A] review of the record discloses no competent evidence of fraud, duress or other cause sufficient to invalidate this settlement. Rather, it is clear that, at the time that the stipulation was made, plaintiffs were represented by counsel, knowingly and voluntarily entered into the stipulation in open court, and indicated that they were satisfied with the agreement and that their judgment was not impaired that day.
> * * *
> "Clearly, plaintiffs' accusations appear to be post-settlement expressions of dissatisfaction."

Plaintiffs appealed. The Appellate Division unanimously affirmed, holding "[t]here is no basis shown to set aside the stipulation of settlement entered into in open court after full allocution by the court."

Plaintiffs commenced this action, which again seeks to relitigate the validity of the settlement agreement and its confidentiality provisions. In their first cause of action, plaintiffs allege that the confidentiality provisions of the settlement--most particularly plaintiffs' agreement to discontinue their website--are "void as illegal" because they require plaintiffs to remain silent about a crime (since, according to plaintiffs, Columbia Presbyterian's alleged malpractice constituted the crime of reckless endangerment in the second degree). In their second cause of action, plaintiffs allege that the confidentiality

provisions are void as against public policy because "the right of the public to know about medical malpractice supersedes [Columbia Presbyterian's] right to enforcement" of the confidentiality provisions. Complaint, at ¶ 50. Plaintiffs seek a judgment, vacating "that provision of the parties' settlement as requires plaintiffs to keep silent about defendant's criminal conduct and to expunge their website."

Columbia Presbyterian argues that this action is barred by *res judicata* and should be dismissed, urging that because the validity of the settlement agreement was addressed in a prior action between the same parties, the Spekens are foreclosed from bringing this new, second action. The Spekens counter that this action seeks to litigate issues that were raised in the prior action but were never decided--such as "the criminality of defendant's conduct * * * and the legality of the provision in the General Release requiring our silence about such criminal behavior." Because neither Justice Heitler nor the Appellate Division addressed the particular issues, the Spekens argue that the action is not barred by *res judicata*.

The doctrine of *res judicata*--also known as claim preclusion--is not narrowly limited to barring relitigation of issues that were necessarily decided in a case. Indeed, not only does the doctrine preclude relitigation of matters that were actually litigated in a prior action, it also bars revisiting any issues that *could* have been litigated. *Schuykill Fuel Corp. v. B & C Nieberg Realty Corp.*, 250 N.Y. 304 (1929); *Boorman v. Deutsch*, 152 A.D.2d 48, 52 (1st

Dep't 1989), *lv dismissed* 76 N.Y.2d 889 (1990). In New York the law is well-settled: "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" and regardless of whether the court actually addressed them in the prior action. *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981); *Brooklyn Welding Corp. v. City of New York*, 198 A.D.2d 189 (1st Dep't 1993), *lv dismissed* 83 N.Y.2d 795 (1994).

Thus, *res judicata* precludes the Spekens from maintaining this cause of action, which is asserted against the same party and raises the same issues and transactions as their 1999 action. The Spekens had an opportunity to fully litigate, and indeed did fully litigate, the validity of the settlement agreement. In fact, the Spekens concede that they raised the very issues that are the subject of this action in their earlier action before Justice Heitler. If the Spekens believed that in its March 2000 decision the court overlooked the issue of whether the settlement agreement violated public policy, their remedy was to seek reargument or raise the issue on appeal in a timely manner. *Res judicata*, however, precludes them from bringing this second action based on matters that the parties litigated in the prior action.

Accordingly, it is ORDERED that the defendant's motion is granted and the clerk is directed to enter judgment dismissing plaintiffs' complaint pursuant to CPLR 3211(a)(5).

This constitutes the decision and order of the Court.

Dated: New York, New York
March 8, 2002

ENTER

Hon. Eileen Bransten