

Gardiola v Schwartz

2007 NY Slip Op 30964(U)

March 29, 2007

Supreme Court, Queens County

Docket Number: 0020949/2006

Judge: Patricia P. Satterfield

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Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: HONORABLE PATRICIA P. SATTERFIELD IAS Part 19
Justice

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ZENAIDA GARDIOLA,
FOREST PARK OWNERS CORP.,

Index No: 20949/06
Motion Date: 2/21/07
Motion Cal. No: 13

Plaintiffs,

-against-

PAUL L. SCHWARTZ,

Defendant.

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The following papers numbered 1 to 13 read on this motion by defendant Paul L. Schwartz for an order, pursuant to CPLR 3211(a)(5), dismissing plaintiff Zenaida Gardiola’s Complaint and plaintiff Forest Park Owners Corp.’s Complaint as against defendant under the principles of res judicata and collateral estoppel

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affidavits-Exhibits-Memorandum	1 - 5
Affirmation in Opposition-Memorandum.....	6 - 9
Affirmation in Reply-bits-Memorandum.....	10 - 13

Upon the foregoing papers, it is ordered that the motion is disposed of as follows:

This is an action by plaintiff Zenaida Gardiola (“Gardiola”), an owner of shares of stock allocated to Apartment #242 in plaintiff Forest Park Owners Corp., a cooperative apartment complex located at 115-25 Metropolitan Avenue, Kew Gardens, New York, and plaintiff Forest Park Owners Corp. (“Forest Park”) against defendant Paul L. Schwartz (“Schwartz”), former president of Forest Park and owner of shares of stock allocated to Apartment 344. Gardiola seeks to recover the costs of legal, rental, engineering and contracting fees incurred by Gardiola in connection with a prior lawsuit entitled, *Zenaida Gardiola v. Forest Park Owners Corp.(Queens County Index No. 25128/04)*; Forest Park seeks to recover damages for Schwartz’ alleged breach of the fiduciary duty owed to Forest Park. Gardiola commenced the prior action against Forest Park for declaratory judgment and a Yellowstone Injunction to prevent it from terminating her leasehold, pending a determination of her declaratory judgment action that addressed her receipt of a notice of default pertaining to her failure to pay \$14,664.10 for emergency repairs made to units 242, Gardiola’s

apartment, 232, and 344, Schwartz's apartment, necessitated by renovations undertaken in Gardiola's apartment. That action was resolved by a Stipulation of Settlement dated August 26, 2005, between Gardiola and Forest Park; Schwartz, who was then president of the coop board, was not a party to that action. Schwartz nonetheless moves, pursuant to CPLR 3211(a)(5), for an order dismissing the complaint under the principles of res judicata and collateral estoppel. The motion is denied.

At the outset, the effect of the Stipulation of Settlement in the prior action must be addressed. Although a stipulation of settlement, which discontinues a claim with prejudice, is subject to the doctrine of res judicata (State v. Seaport Manor A.C.F., 19 A.D.3d 609 (2d Dept.2005)), such a stipulation will be given res judicata effect and will bar litigation only of the same cause of action. Vigliotti v. North Shore University Hosp., 24 A.D.3d 752 (2d Dept. 2005); Mosello v. First Union Bank, 258 A.D.2d 631 (2d Dept. 1999); Van Hof v. Town of Warwick, 249 A.D.2d 382 (2d Dept. 1998). Here, as the two actions are based upon totally different causes of action, the Stipulation of Settlement executed between the plaintiffs herein resolving the prior action is of no consequence and is of no preclusive effect. Nor is there any basis for applying principals of res judicata or collateral estoppel.

Under the doctrine of 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 N.Y.2d 353, 356; Eagle Insurance Co. v. Facey, 272 A.D.2d 399 (2d Dept. 2000). Pursuant to this approach, the doctrine bars not only claims that were actually litigated but also claims that could have been litigated, if they arose from the same transaction or series of transactions." Marinelli Associates v. Helmsley-Noyes Co., Inc., 265 A.D.2d 1, 5 (1st Dept. 2000); see, also, Fogel v. Oelmann, 7 A.D.3d 485 (2d Dept. 2004); MacGregor-Phillips v. MacGregor, 273 A.D.2d 206 (2d Dept. 2000). "In order for res judicata to apply, however, the foundational facts must be related in 'time, space, origin, or motivation [as well as] form a convenient trial unit' and it must be established that the 'treatment [of the foundational facts] as a unit conforms to the parties' expectations' '(Smith v Russell Sage Coll., 54 N.Y.2d 185, 192-193 [445 N.Y.S.2d 68, 429 N.E.2d 746], supra, quoting from Restatement [Second] of Judgments [Tent Draft No. 1] § 61)[internal quotations omitted]." Coliseum Towers Associates v. County of Nassau, 217 A.D.2d 387, 390-391 (2d Dept.1996). Here, not only are the requisite foundational facts lacking, but neither of the claims asserted could have been litigated in the prior proceeding, which was based upon Forest Park, as defendant, issuing a challenged Notice of Default, and involved Schwartz, the defendant herein, in his capacity as President of Forest Park. Hence, this action is not barred by res judicata.

Nor does collateral estoppel present a bar. The doctrine of collateral estoppel precludes a party from "relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party" (Ryan v. New York Tel. Co., 62 N.Y.2d 494, 500, 478 N.Y.S.2d 823, 467 N.E.2d 487). To invoke the doctrine, the identical issue must have been decided in the prior action or proceeding, and be decisive of the present action, and the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination (citations omitted)." Martin v. Geico Direct Ins., 31 A.D.3d 505, 506 (2d Dept. 2006). Collateral

estoppel effect thus will only be given to matters “‘actually litigated and determined’ in a prior action’ or proceeding (citations omitted).” Id. “The two elements that must be satisfied to invoke the doctrine of collateral estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue” (Luscher v. Arrua, 21 A.D.3d 1005, 1007, 801 N.Y.S.2d 379).” In re Noble, 31 A.D.3d 643 (2d Dept. 2006).

Here, the first cause of action alleges that Schwartz intentionally harassed Gardiola, causing her to incur legal fees, rental expenses, engineering fees and contracting fees. The second cause of action alleges that Schwartz abused his position as President of the Board of Forest Park and breached his fiduciary duty owed to Forest Park. Because the issues of Schwartz conduct that is the subject of the instant action were not actually litigated in the prior action, collateral estoppel does not lie. See, North Shore-Long Island Jewish Health System, Inc. v. Aetna US Healthcare, Inc., 27 A.D.3d 439, (2d Dept. 2006). A “preclusive effect may be given to issues that were actually litigated, squarely addressed and specifically decided.” Ross v. Medical Liability Mut. Ins., 75 N.Y.2d 825, 826 (1990); Merchants & Business Men's Mut. Ins. v. Savemart, Inc., 213 A.D.2d 607 (2d Dept. 1995). “[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identity and decisiveness . . . of the issue.” Parker v. Blauvelt Volunteer Fire Co., Inc., 93 N.Y.2d 343 (1999). Schwartz did not meet that burden. Accordingly, based upon the foregoing, Schwartz’ motion for an order, pursuant to CPLR 3211(a)(5), under the principles of res judicata and collateral estoppel, is denied.

Dated: March 29, 2007

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J.S.C.