

Murray v New York City
2007 NY Slip Op 31017(U)
April 23, 2007
Supreme Court, New York County
Docket Number: 0403178/2005
Judge: Eileen A. Rakower
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SCANNED ON 5/2/2007
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EILEEN A. RAKOWER
J.S.C.
Justice

PART Part 5

Index Number : 403178/2005
MURRAY, JOEL
VS.
NYC DEPT OF CORRECTIONS
SEQUENCE NUMBER : 004
EXTEND TIME

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1
2
3

notice of motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

FILED
MAY 02 2007
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE _____ FOR THE FOLLOWING REASON(S):

Dated: April 23, 2007


EILEEN A. RAKOWER J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT, STATE OF NEW YORK
COUNTY OF NEW YORK: PART 5

-----X

JOEL MURRAY,

Plaintiff,

Index No.
403178/05

- against -

NEW YORK CITY, DEPARTMENT OF
CORRECTIONS COMMISSIONER and
CAPT. JOHNSON, # 260,

Decision
And Order

Defendants.

-----X

HON. EILEEN A. RAKOWER:

FILED

MAY 02 2007

NEW YORK
COUNTY CLERK'S OFFICE

Stat. Seq. 004

Plaintiff brings this action seeking damages for gross negligence and alleged violations of his equal protection and due process rights as a result of an incident on November 15, 1999, when he was walking down the steps of a New York City Department of Corrections (Corrections) bus, tripped over his cane and fell to the ground. Specifically, Plaintiff alleges that although Corrections was aware that he needed to walk with the aid of a cane, he was shackled and handcuffed from behind and therefore could not use the cane, causing him to trip and fall. Plaintiff claims that his treatment by Corrections violated his constitutional rights. Plaintiff, however, admits that he was shackled in this manner because he was classified as a "red card" security risk after having smuggled a razor blade into the Rikers Island Correctional Facility. Plaintiff also claims that, subsequently, he was denied necessary medical attention after his fall. Plaintiff filed a timely notice of claim and later filed and served a summon and complaint. Plaintiff has been incarcerated since this incident.

Plaintiff now brings this motion seeking enlargement of his time to file a note of issue. The City of New York, The Department of Corrections and Captain Johnson, # 260 (collectively, "City") cross moves seeking an order from the Court pursuant to CPLR § 3025(b), permitting it to amend its answer to include the affirmative defense of collateral estoppel, dismissing this action pursuant to CPLR § 3211(a)(5) because the action is barred by collateral estoppel, dismissing pursuant to CPLR § 3211(a)(7) for failure to state a cause of action upon which relief may be obtained or, in the alternative, granting summary judgment pursuant to CPLR § 3212.

Plaintiff states that he needs an extension of the time to file his note of issue because he did not receive copies of the Court's decisions on his last two discovery motions until recently. City ignores Plaintiff's note of issue argument and focuses on its application pursuant to CPLR § 3025(b) for leave to amend its answer to include the affirmative defense of collateral estoppel. It has apparently come to City's attention that Plaintiff filed a lawsuit in the United States District Court for the Southern District of New York (Federal action) which, using different terminology, involves the identical incident and issues that Plaintiff pursues in this State action. Additionally, the Federal action has been decided on the merits against Plaintiff. City seeks an order from the Court permitting it to amend its answer to include the affirmative defense of collateral estoppel and dismissing pursuant to CPLR § 3211(a)(5). City also argues that if the Court will not permit it to amend its answer, then it is entitled to summary judgment. Plaintiff replies that City's cross motion "is not material and relevant."

CPLR § 3025(b) states, in relevant part, "A party may amend his pleadings . . . at any time by leave of the Court or by stipulation of the parties. Leave shall be freely given upon such terms as may be just . . ." Here, although the application to amend is late, there is no barrier to amendment because the Plaintiff has not demonstrated that he is prejudiced by it. (*Seda v. New York City Housing Authority*, 181 AD2d 469 [1st Dept. 1992]). Accordingly, City's motion for leave to amend its answer to include the affirmative defense of collateral estoppel is granted.

[C]ollateral Estoppel involves issue preclusion. It is an equitable doctrine, based upon the general notion that a party . . . should not be permitted to relitigate an issue that was previously decided against it. There are two requirements that must be satisfied before the doctrine may be invoked. First, the identical issue necessarily must have been decided in the prior action and be decisive in the present action. Second, the party to be precluded from relitigating an issue must have had a full and fair opportunity to contest that prior determination. (See, *Singleton Management v. Compere*, 243 A.D.2d 213 [1st Dept. 1998]).

Plaintiff's Federal action named the three defendants named here, along with two others. In his Federal action Plaintiff claimed five causes of action which, although inartfully pleaded, amount to claims arising under the equal protection and due process clauses of the Fourteenth Amendment and equivalent provisions of the

New York City Charter. In this State action Plaintiff alleges an equal protection claim, a due process claim and a gross negligence claim against each of three defendants. Plaintiff's gross negligence claim echos his Federal 42 USC § 1983 equal protection and due process claims.

In the Federal action, Magistrate Judge Dolinger found that Plaintiff did not sustain either his equal protection or due process claims. Additionally, the Magistrate found that Plaintiff did not demonstrate City's "deliberate indifference to his serious medical needs." (*Hathaway v. Coughlin*, 37 F3d 63 [2nd Cir. 1994]). United States District Court Judge Richard Conway Casey adopted Magistrate Dolinger's findings and granted City's motion for summary judgment in the Federal action on August 3, 2005. Plaintiff filed this State action in September, 2005. It is clear from a review of Plaintiff's Federal and State Court complaints that this State action presents the identical issues raised and previously decided on the merits in Federal Court. Additionally, the report and recommendation of Magistrate Dolinger, along with the decision of Judge Casey which additionally addresses Plaintiff's objections to the Magistrate's report demonstrate that Plaintiff had a full and fair opportunity to litigate all of the issues presented in the Federal Court which he now seeks to relitigate here in State Court. City has met the criteria to invoke the doctrine of collateral estoppel and therefore it's motion is granted.

Wherefore, it is hereby

ORDERED that City's motion to amend its answer to include the affirmative defense of collateral estoppel is granted; and it is further

ORDERED that City's motion pursuant to CPLR§ 3211(a)(5) to dismiss in accordance with the doctrine of collateral estoppel is granted.

Accordingly, the matter is dismissed.

All other relief requested is denied.

This constitutes the decision and order of the Court.

Dated: April 23, 2007


EILEEN A. RAKOWER, J.S.C.

FILED

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