

Harrison v Masclin

2008 NY Slip Op 30725(U)

March 10, 2008

Supreme Court, New York County

Docket Number: 0117905/2005

Judge: Joan Madden

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PRESENT: Hov Jacv A. madder
Justice

PART 11

Index Number : 117905/2005
HARRISON, CLARENCE H.
VS.
MASCLINE, CLAUDE
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE 12/13/07
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

in this motion to/for _____

PAPERS NUMBERED

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 is decided in accordance with the attached memorandum Decision + order.

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

FILED
MAR 13 2008
NEW YORK
COUNTY CLERK'S OFFICE

Dated: March 10, 2008

J
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
CLARENCE H. HARRISON,

Index No.: 117905/05

Plaintiff,

-against-

CLAUDE MASCLIN,

Defendant.

JOAN MADDEN, J.:

FILED
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Defendant moves to dismiss the complaint as barred by the doctrines of res judicata and collateral estoppel and for failure to comply with statutory notice and pleading requirements under the Public Housing Law. Plaintiff Clarence Harrison ("Harrison"), who is pro se, opposes the motion, which is granted for the reasons below.

Defendant is the former manager of the Drew-Hamilton Houses, a New York City Housing Authority ("NYCHA") development in Manhattan.¹ Harrison's mother, who leased a NYCHA apartment, moved out in April 2003. Harrison, who was apparently residing with his mother, then sought to succeed to the lease for the apartment pursuant to NYCHA's remaining family-member policy. On December 5, 2003, defendant as manager of the Drew-Hamilton Houses denied Harrison's request to succeed to his mother's lease based on Harrison's failure to pay use and occupancy after his mother vacated the premises. On December 23, 2003, the Manhattan District Manager also denied Harrison's request. Harrison requested and received an

¹Harrison apparently sues defendant in his official capacity instead of naming NYCHA, which is the proper party. However, NYCHA does not seek dismissal on this ground.

administrative grievance hearing to review these decisions. The Hearing Officer dismissed the grievance based on a finding that Harrison was in arrears in paying use and occupancy. On October 4, 2004, Members of NYCHA's Board issued a final determination dismissing Harrison's grievance and Harrison failed to bring an Article 78 proceeding challenging this determination.

In May 2005, NYCHA commenced a holdover proceeding against Harrison. After a bench trial, on or about May 5, 2005, the Civil Court awarded NYCHA a final judgment of possession and a money judgment for arrears. In reaching this decision, the court considered, inter alia, whether Harrison had any succession rights to the lease of the subject apartment, whether Harrison owed any arrears, whether NYCHA owed Harrison any interest on the security deposit for the apartment, and whether NYCHA was responsible for Harrison's hospitalization.

With respect to succession rights to the lease, the court found that Harrison was given a full and fair opportunity to challenge NYCHA's determination, and that the court was bound by NYCHA's determination that Harrison was not qualified to succeed to the apartment. The court also found that NYCHA's records established that Harrison owed \$5,605 for use and occupancy of the apartment. With respect to the interest on the security deposit, the court found that Harrison had no standing to claim any interest which would belong to his mother. The court also found that there was not proof that NYCHA was responsible for Harrison's hospitalization.

Harrison filed a notice of appeal of the Civil Court decision and sought a stay of its enforcement from the Appellate Term. By order dated June 6, 2006, the Appellate Term denied his request, and Harrison never perfected the appeal.

In the meantime, on December 5, 2005, Harrison filed this action. While the complaint is

difficult to comprehend, it apparently seeks to recover damages in connection with the holdover proceeding, the failure to pay Harrison moneys for the security deposit, and his hospitalization, and the violation of his Sixth Amendment rights.

Defendant moves to dismiss the complaint as barred by the doctrines of res judicata and collateral estoppel, arguing that the issues raised in the complaint were already litigated and necessarily decided in the holdover proceeding, and that the Sixth Amendment rights apply only to criminal proceedings. Defendant also asserts that Harrison failed to comply with a condition precedent to an action against NYCHA by presenting a notice of claim for damages. See Public Housing Law § 157(1). Harrison opposes the motion, although the basis for his opposition is unclear.

The doctrine of res judicata or “claim preclusion” provides that “as to parties in a litigation ... 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.” Singleton Management, Inc. v Compere, 243 AD2d 213, 215 (1st Dept 1998)(citation omitted). Under the transactional approach to res judicata adopted by New York courts, “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.” Marinelli Associates v Helmsley-Noyes Co., Inc., 265 AD2d 1, 5 (1st Dept 2000)(quoting, Q’Brien v City of Syracuse, 54 NY2d 353, 357 (1981), citing Matter of Reilly v Reid, 45 NY2d 24, 29-30).

The related doctrine of collateral estoppel or “issue preclusion” prevents a party from relitigating an identical issue which has previously been decided against it in a prior action in

* 5]
which it had a fair opportunity to fully litigate the issue. See Allied Chemical v Niagara Mohawk Power Corp., 72 NY2d 271 (1988), cert denied, 488 US 1005 (1989).


Here, with the exception of the allegations regarding the denial of Harrison's Sixth Amendment rights, the claims asserted in the complaint were fully litigated and necessarily decided in the holdover proceeding or at the very least arise out of the same transaction and occurrence that was the subject of the holdover proceeding. Accordingly, these claims are barred by the doctrines of collateral estoppel and res judicata. In addition, to the extent Harrison asserts a claim based on the violation of his Sixth Amendment rights, the claims must also be dismissed as such rights are inapplicable to a civil proceeding in which Harrison does not face imprisonment. See e.g., Morgenthau v. Erlbaum, 59 NY2d 143, 154, cert denied, 464 US 993 (1983)(holding that Sixth Amendment right to jury trial applies only to defendants charged with serious criminal offense); In re Smiley, 36 NY2d 433, 437-438 (1975)(while there is a constitutional right to counsel in criminal cases, no similar provision applies to private litigation); People ex rel. Lobenthal for and on Behalf of Goldberg v. Koehler, 129 AD2d 28, 32 (1st Dept 1987)(noting that Sixth Amendment right to counsel applies in criminal cases). Accordingly, the court need not reach whether the complaint also should be dismissed based on failure to comply with Public Housing Law § 157(1).

In view of the above, it is

ORDERED that the complaint is dismissed in its entirety; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

DATED: March/0,2008


FILED
MAR 13 2008
NEW YORK
J.S.C. COUNTY CLERK'S OFFICE