

Lind v Greenspan

2011 NY Slip Op 33060(U)

November 17, 2011

Sup Ct, NY County

Docket Number: 112223/2006

Judge: Louis B. York

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

PRESENT: LOUIS B. YORK

PART 2

Index Number : 112223/2006
LIND, KAREN
vs.
GREENSPAN, EDITH WOLF
SEQUENCE NUMBER : 006
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

n 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 accompanying decision.*

FILED

NOV 22 2011

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/27/11

L. York
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

-----x
KAREN LIND, ELLEN HAYA and DAVID
GREENSPAN, as preliminary
Executors of the ESTATE OF EZRA
M. GREENSPAN, a/k/a EZRA GREENSPAN,
and KAREN LIND, ELLEN HAYA and
DAVID GREENSPAN, individually,

Plaintiffs,

Index No. 112223/2006

-against-

EDITH WOLF GREENSPAN and MARCIA
GORDON,

Defendants.

-----x

FILED

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NEW YORK
COUNTY CLERK'S OFFICE

Louis B. York, J.:

Defendant Edith Wolf Greenspan (Greenspan), the widow of Dr. Ezra Greenspan (Dr. Greenspan), moves for an order granting her summary judgment dismissing the conscious pain and suffering cause of action, the complaint's sole remaining cause of action, after this court previously dismissed, on summary judgment, the balance of the complaint's causes of action, including the wrongful death and forfeiture causes of action.

Greenspan contends that, as a result of the Surrogate's Court's July 13, 2010 decision and order on Greenspan's summary judgment application in a turnover proceeding, which decision dismissed petitioners' (the plaintiffs herein) claims against Greenspan of fraud and intimidation, but not petitioners' undue influence claim, the conscious pain and suffering cause of action

in the instant action is barred by res judicata or collateral estoppel. Greenspan's argument is without merit, and her motion is denied.

Res judicata requires "that 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." *Xiao Yang Chen v Fischer*, 6 NY3d 94, 100 (2005) (internal quotation marks and citation omitted). Thus, the doctrine also bars claims which "could have been litigated" in the other proceeding. *Marinelli Assoc. v Helmsley-Noyes Co.*, 265 AD2d 1, 5 (1st Dept 2000). A practical approach has been applied to decide "whether the same or related transactions are involved, including whether "the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations" *Xiao Yang Chen v Fischer*, 6 NY3d at 100 (internal quotation marks and citations omitted). Res judicata serves to "ensure finality, prevent vexatious litigation and promote judicial economy." *Id.* (internal citations omitted). The party seeking dismissal of a complaint on res judicata grounds bears the burden of proof. *Seabrook v City of New York*, 306 AD2d 68 (1st Dept 2003).

"Collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue raised in a prior

action or proceeding and decided against that party or those in privity." *Buechel v Bain*, 97 NY2d 295, 303 (2001). The burden of proving the doctrine's applicability is on the party seeking to benefit from it. *Id.* at 304.

In the instant case, Greenspan has failed to demonstrate that the identical issues were involved and necessarily decided, or that the claims arose from the same or related series of transactions. The turnover proceeding commenced by plaintiffs, Dr. Greenspan's children from a prior marriage, concerned whether Greenspan used fraud, intimidation, and undue influence to cause Dr. Greenspan, who was physically and allegedly mentally incapacitated, to transfer, in May 2004, \$400,000 to a joint account he held with his wife, thereby causing those funds to fall outside the estate, which was to be largely inherited by plaintiffs after Dr. Greenspan's death, about four months later, in early September 2004. The claims in the instant action involve whether Greenspan beat her husband and neglected to timely get him treatment for his bed sores, thereby causing him conscious pain and suffering.

The fraud claim, which the Surrogate's Court dismissed, had nothing to do with the allegations in this case. As to the Surrogate's Court's dismissal of the intimidation allegation as a ground for the claimed invalidity of the May 2004 transfer of funds, the Surrogate did not, in her determination, mention the

bed sores and did not address whether Greenspan had neglected her husband's care with respect to the bed sores. All that the Surrogate found was that plaintiffs failed to demonstrate that intimidation caused Dr. Greenspan to transfer the funds. None of the papers, provided by Greenspan on the instant motion, relating to the summary judgment motion before the Surrogate, specifically linked the bed sores to the intimidation issue. Further, while the petition (¶ 10) mentioned the bed sores and Greenspan's alleged refusal to place her husband in a hospital to treat them, the complaint in the instant case seems to indicate (¶¶ 9-13) that Dr. Greenspan was finally admitted to the hospital for treatment in November 2003, where he "dramatically improved." Therefore, it does not appear that plaintiffs' intimidation claim, which arose as a result of the May 2004 transfers, was based on Greenspan's failure to obtain appropriate treatment for her husband's bed sores, since, by that time, he had received appropriate treatment. Even if it can be inferred that the Surrogate eliminated neglected bed sores as a source of intimidation, no finding was necessarily made that Greenspan was not negligent in failing to obtain treatment for those bed sores. Nor, did the Surrogate's finding of a lack of intimidation in May 2004 resolve the issue of whether Greenspan had caused her husband conscious pain and suffering as a result of her allegedly having beaten him, since a beating was alleged to have occurred

in August 2004, i.e., after the transaction in issue in the Surrogate's proceeding. Moreover, as revealed by Greenspan's counsel, the Surrogate's Court previously dismissed petitioners' forfeiture and wrongful death proceeding, which alleged that Greenspan had neglected her husband and beaten him on one occasion, without prejudice to allowing the wrongful death and related claims to be pursued here in the Supreme Court. See Wolfe aff., ¶ 9. Therefore, the parties, had no reason to believe that the Surrogate had any intention of resolving the conscious pain and suffering cause of action in the turnover proceeding.

In conclusion, it is

ORDERED that Edith Wolf Greenspan's motion for an order granting her summary judgment dismissing the complaint is denied.

Dated: 11/17/11

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