Liddie v United Community Church of God
2013 NY Slip Op 31004(U)
April 30, 2013
Supreme Court, Queens County
Docket Number: 19566/12
Judge: Howard G. Lane
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE HOWARD G. LANE** **IAS PART 6**
Justice

ALLENE LIDDIE,

Plaintiff,

-against-

UNITED COMMUNITY CHURCH OF GOD,

Defendant.

Index No. 19566/12

Motion
Date February 22, 2013

Motion
Cal. No. 58

Motion
Sequence No. 1

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Upon the foregoing papers it is ordered that this motion by defendant, United Community Church of God ("United Community Church") for an order pursuant to CPLR 3211(a)(7) for failure to state a cause of action and pursuant to CPLR 3211(a)(5) as barred by res judicata and collateral estoppel is hereby decided as follows:

Plaintiff filed this action against United Community Church based on allegations that on December 2, 2010, she was sexually assaulted by Charles Collymore, a pastor of United Community Church, while attending a bible study class at the premises located at 110-10 167th Street, Jamaica, New York. Plaintiff commenced a separate action in which she sued United Community Church, Charles Collymore, and various other church entities for damages arising out of the same incident, alleging eight (8) causes of action on theories of respondeat superior and negligent hiring, retention, and supervision. By decision/order dated April 13, 2012, the Hon. Robert J. McDonald dismissed plaintiff's claims against United Community Church holding that plaintiff cannot maintain an action against United Community Church based upon the doctrine of respondeat superior and that plaintiff has not stated a cause of action based upon negligent hiring,

negligent retention, or negligent supervision.

"It is well settled that on a motion to dismiss a complaint for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts alleged in the complaint to be true and according the plaintiff the benefit of every possible favorable inference" (*Jacobs v Macy's East, Inc.*, 262 AD2d 607, 608 [2d Dept 1999] [internal citations omitted]; *Leon v Martinez* , 84 NY2d 83) and a determination by the Court as to whether the facts alleged fit within any cognizable legal theory (*1455 Washington Ave. Assocs. v Rose & Kiernan, Inc.*, 260 AD2d 770 [3d Dept 1999]). The court does not determine the merits of a cause of action on a CPLR 3211(a)(7) motion (*see Stukuls v State of New York*, 42 NY2d 272 [1977]; *Jacobs v Macy's East, Inc., supra*), and the court will not examine affidavits submitted on a CPLR 3211(a)(7) motion for the purpose of determining whether there is evidentiary support for the pleading (*see Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633). Such a motion will fail if, from its four corners, factual allegations are discerned which, taken together, maintain any cause of action cognizable at law, regardless of whether the plaintiff will ultimately prevail on the merits (*Given v County of Suffolk*, 187 AD2d 560 [2d Dept 1992]). The plaintiff may submit affidavits and evidentiary material on a CPLR 3211(a)(7) motion for the limited purpose of correcting defects in the complaint (*see Rovello v Orofino Realty Co., Inc., supra; Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159). "However, dismissal is warranted if the documentary evidence contradicts the claims raised in the complaint" (*Jericho Group, Ltd. v Midtown Development*, L.P., 32 AD3d 294 [1st Dept 2006][internal citations omitted]).

The Complaint's First Cause of Action claims that United Community Church is liable for the alleged incident due to "Defendant's negligent hiring, supervision, management, control, training, retention, hiring practices, and policies".

The Complaint's Second Cause of Action alleges that defendant "placed plaintiff Allene Liddie in fear of imminent harmful contact by its employee, servant, agent and or representative Charles Collymore" and seeks to hold United Community Church liable for intentional infliction of emotional distress under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Third Cause of Action seeks to hold United

Community liable for rape by Charles Collymore, under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Fourth Cause of Action seeks to hold United Community Church liable for attempted rape by Charles Collymore, under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Fifth Cause of Action seeks to hold United Community Church liable for false arrest by Charles Collymore, under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Sixth Cause of Action seeks to hold United Community Church liable for sexual assault by Charles Collymore, under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Seventh Cause of Action seeks to hold United Community Church liable for attempted sexual assault by Charles Collymore, under a theory of respondeat superior or negligent hiring, retention or supervision.

The Complaint's Eighth Cause of Action seeks to hold United Community Church liable for punitive damages under a theory of respondeat superior or negligent hiring, retention or supervision.

Res judicata, or claim preclusion, bars re-litigation of claims "where a judgment on the merits exists from a prior action between the same parties involving the same subject matter" (*Matter of Hunter*, 4 NY3d 260, 269[2005])". [O]nce 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 [2005], *quoting O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). Res judicata precludes re-litigation of all claims which were raised, or could have been raised, in the prior action (*see Xiao Yang Chen v Fischer*, 6 NY3d at 100; *Cypress Hills Cemetery v City of New York*, 67 AD3d 853, 854 [2009], *lv denied* 14 NY3d 712 [2010]). "It is not always clear whether particular claims are part of the same transaction for res judicata purposes. A

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'pragmatic' test has been applied to make this determination-analyzing '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 or business understanding or usage'" *Id.* [internal citations omitted]). "The doctrine of res judicata prohibits a party from re-litigating any claim which could have been, or which should have been litigated in a prior proceeding" (*County of Nassau v New York State Public Employment Relations Board*, 151 AD2d 168 [2d Dept 1989][internal citations omitted]). The rule applies to claims that either were actually litigated or could have been litigated in a prior proceeding (*see Cohen v City of New York*, 2001 NY Slip Op 50028u [Sup Ct, NY County, 2001]). The main objective of res judicata is to "ensure finality, prevent vexatious litigation, and promote judicial economy" (*see Chen, supra*).

Collateral estoppel, or issue preclusion, "precludes a party from re-litigating in a subsequent action . . . an issue clearly raised in a prior action . . . and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Ryan v New York Telephone Co.*, 62 NY2d 494 [1984]; *see also Buechel v Bain*, 97 NY2d 295, 303 [2001], *cert denied* 535 US 1096 [2002]; *Kedik v Kedik,* 86 AD3d 766, 767 [2011]; *Matter of Frontier Ins. Co.*, 73 AD3d 36, 41 [2010]). Moreover, as a general rule, future litigation between parties arising from the same transaction is precluded following a valid final judgment in previous actions, even if a new action is based upon different theories or seeks a different remedy (*see Matter of Josey v Goord,* 9 NY3d 386, 389-390 [2007]; *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999]). Collateral estoppel requires that the party to be precluded from re-litigating the issue "had a full and fair opportunity to contest the prior issue" (*Ryan, supra*, 62 NY2d at 501). The doctrine of collateral estoppel precludes a litigant from re-litigating an issue where that litigant has had a full and fair opportunity to litigate the issue in a prior proceeding where the identical issue was necessarily decided (*Capital Telephone Co., Inc v Pattersonville Telephone Co., Inc*, 56 NY2d 11 [1982]).

As the court held in *Roy-Nickels v St. Mary's Hospital*, 6 Misc 3d 1023A (Sup Ct, Kings County [2004]), and the Appellate Division authority cited therein,

> A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the cause of action may not be maintained because of collateral estoppel or res judicata. *CPLR § 3211 (a)(5)*. This state has

> adopted the transactional analysis approach in deciding *res judicata* issues, so that "once a claim is brought to 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, 357, 429 N.E.2d 1158, 445 N.Y.S.2d 687 (1981), *citing Matter of Reilly v Reid*, 45 N.Y.2d 24, 379 N.E.2d 172, 407 N.Y.S.2d 645. The Court finds that both actions involve the same parties and that both actions are based upon the same transaction or series of transactions regarding negligence and lack of consent for the removal of Richard Nickel's corneas on June 28, 2002. These issues were decided on the merits in the prior action when the court granted defendants' *CPLR § 3211* (a)(7) motion to dismiss for failure to state a cause of action. When no appeal has been taken from a previous dismissal for failure to state a cause of action, a second action is barred on the ground of *res judicata* and should be dismissed *Flynn v. Sinclair Oil Corp.*, 20 A.D.2d 636, 246 N.Y.S.2d 360 [1st Dept 1964]; *McKinney v. City of New York*, 78 A.D.2d 884, 433 N.Y.S.2d 193 [2nd Dept. 1980]). Plaintiff was given a full and fair opportunity to contest those issues and the court's decision.

The court finds that here both actions involve the same parties and that both actions are based upon the same transaction regarding the alleged sexual assault. These issues were decided on the merits in the prior action when the court dismissed the claims against United Community Church for failure to state a cause of action. Just as in the case of *Roy-Nickels v St. Mary's Hospital*, *supra*, plaintiff failed to appeal this dismissal decision. As such, the instant action shall be dismissed.

This constitutes the decision and order of the Court.

Dated: April 30, 2013 ....

Howard G. Lane, J.S.C.