

**Klansky v Weiden Lake Prop. Owners Assn., Inc.**

2013 NY Slip Op 34182(U)

September 19, 2013

Supreme Court, Sullivan County

Docket Number: 3324-2012

Judge: Mark M. Meddaugh

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN**

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**JEFF A. KLANSKY,**

**Plaintiff,**

**-against-**

**WEIDEN LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,**

**Defendant.**

**DECISION/ORDER**

**Index # 3324-2012  
RJI # 52-33912-2013**

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**Present: Hon. Mark M. Meddaugh,  
Acting Justice, Supreme Court**

**Appearances: Kalter, Kaplan, Zeiger & Forman  
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**MEDDAUGH, J.:**

Defendant, Weiden Lake Property Owners Association, Inc., moves pursuant to CPLR 3211(a)(1) for an order dismissing Plaintiff Jeff A. Klansky’s declaratory judgment action, which asked to void a lien, in the amount of \$29, 042.28, that the Defendant placed on Plaintiff’s property to recover for legal fees Defendant incurred in successfully litigating a prior action, *Weiden Lake Property Owners Association, Inc. v. Klansky*, Index Number 3885-2009 (“First Action”). The Defendant also seeks judgment on its counterclaims for a declaration that its lien against Plaintiff is valid and enforceable, that Plaintiff has again violated Defendant’s

Covenants and Restrictions by refusing to pay the legal fees in the First Action, that the Covenants and Restrictions and Bylaws are valid and enforceable against Plaintiff, and further seeks an award of \$29,042.28 plus interest, together with Defendant's reasonable costs and attorneys' fees in defending the current action.

Plaintiff cross-moved, pursuant to CPLR 3212 and CPLR §3215, for dismissal of Defendant's counterclaims, a declaration that Defendant is not entitled to legal fees from Plaintiff, and for an order directing the Sullivan County Clerk to void Defendant's purported lien on Plaintiff's property. Plaintiff also seeks punitive damages, attorneys' fees, costs and expenses.

CPLR 3211(a)(1) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: . . . a defense is founded upon documentary evidence." In order to dismiss a cause of action based on CPLR 3211(a)(1), defendants must show that the "documentary evidence" that forms the basis of this defense resolves all the factual issues as a matter of law and conclusively and definitively disposes of the plaintiff's claim (*Dellith v. Oneonta City School Dist.*, 280 A.D.2d 864, 865 [3d Dept., 2001]; *Vanderminden v. Vanderminden*, 226 A.D.2d 1037, 1039 [3d Dept., 1996]). To meet the test, the "documentary evidence" must be "paper whose content is essentially undeniable and which, assuming the verity of its contents and the validity of its execution, will itself support the ground on which the motion is based. Neither an affidavit nor a deposition can ordinarily qualify under such a test" (Siegel, *Practice Commentaries*, McKinney's Cons. Laws of NY, Book 7B, CPLR 3211:10, at 20).

Defendant has submitted various items of "documentary evidence," but the Court finds that the documentary evidence does not establish that Defendant was entitled to place a lien on Plaintiff's property, much less to unilaterally establish the amount of the lien. Plaintiff submits

Justice Gilpatric's decision in the First Action, which granted to the Defendant the bulk of the relief sought in the First Action, but did not address the Defendant's claim for its attorneys' fees and costs in that action. Defendant concedes that it did not challenge Justice Gilpatric's omission by either moving to reargue, or appealing the omission in that decision.

Instead of returning to Court to obtain an award of its attorneys' fees and costs, the Defendant merely filed a lien on Plaintiff's property, in an attempt to secure Defendant's claim for its attorneys' fees and costs in the First Action. The Defendant asserts that it was entitled to take that course, because Justice Gilpatric's failure to render a specific decision in the First Action allegedly left the issue of Defendant's claim for attorneys fees and costs open and undecided in favor of either party.

Defendant's lien on Plaintiff's property is based on Defendant's assertion that, pursuant to the Deed, Plaintiff as an owner "is liable for the assessments and charges." Defendant has failed, however, to present any document(s) which specifically entitle Defendant to place a lien on the Plaintiff's property in the amount of \$29,042.28, and the affidavit of Defendant's president is not a document that meets the requirements of CPLR 3211(a)(1). Neither the lien, nor any of the other documents submitted by Defendant, states what those assessments and charges are for, why Plaintiff is liable for them, or by what process Defendant calculated the assessments and charges and then imposed them on Plaintiff's property.

Therefore, Defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) is hereby denied. Even assuming for the purposes of argument that Defendant was entitled to file a lien for relief that Justice Gilpatric failed to grant in the First Action, Defendant has failed to produce documentary evidence establishing that Defendant is entitled to dismissal of Plaintiff's declaratory action.

The Court turns next to Plaintiff's motion to dismiss Defendant's counterclaims for reasonable attorneys' fees in the First Action, for a declaration that Defendant is not entitled to legal fees from Plaintiff, and for an order voiding Defendant's lien on Plaintiff's property. Plaintiff urges that Defendant is now barred by the doctrines of res judicata and collateral estoppel from relitigating the issue of attorneys' fees from the First Action.

Res judicata (claim preclusion) is part of a larger family of kindred concepts, which includes collateral estoppel (issue preclusion) and law of the case doctrine. Each of these doctrines limits relitigation of issues. The doctrine of res judicata or claim preclusion bars not only those claims actually litigated previously in an action between the parties, but also those issues which might have been raised in the former action provided they arise from the same transaction or series of transactions (Landau, PC v. LaRossa, Mitchell & Ross, 11 N.Y.3d 8, 12 [2008]; Parker v. Blauvelt Volunteer Fire Co., Inc., 93 N.Y.2d 343, 347 [1999]; Lake George Park Commission v. Salvador, 245 A.D.2d 605, 606-607 [3d Dept., 1997]). Thus, under New York's transactional approach to res judicata issues, once a claim between parties 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 (Landau, PC v. LaRossa, Mitchell & Ross, 11 N.Y.3d 8, 12 [2008]; Parker v. Blauvelt Volunteer Fire Co., Inc., 93 N.Y.2d 343, 347 [1999]; O'Brien v. City of Syracuse, 54 N.Y.2d 353, 357 [1981]; Kinsman v. Turetsky, 21 A.D.3d 1246, 1247 [3d Dept., 2005]; Whitman v. Mastrodonato, 11 A.D.3d 796, 797 [3d Dept., 2004]).

Collateral estoppel (issue preclusion) is an equitable doctrine that rests on considerations of fairness and efficiency. Where a pending issue was previously raised, material to, and necessarily decided in a prior action in which the party to be estopped had a full and fair opportunity to litigate the issue, then fairness and efficiency dictate that the party should not be

permitted to try the issue again (Bansbach v. Zinn, 1 N.Y.3d 1, 10 [2003]; Pinnacle Consultants v. Leucadia Natl. Corp., 94 N.Y.2d 426, 431-432 [2000]; D'Arata v. New York Cent. Mut. Fire Ins. Co., 76 N.Y.2d 659, 664 [1990]; Olsson v. MacDonald, 16 A.D.3d 1017, 1017 [3d Dept., 2005]; Pahl v. Grenier, 279 A.D.2d 882, 883 [3d Dept., 2001]). Collateral estoppel applies only if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the party to be estopped had a full and fair opportunity to litigate the issue in the earlier action (City of New York v. Welsbach Elec. Corp., 9 N.Y.3d 124, 128 [2007]; Parker v. Blauvelt Volunteer Fire Co., Inc., 93 N.Y.2d 343, 349 [1999]).

Plaintiff argues that Defendant is barred from asserting its claim for attorneys' fees and costs against Plaintiff, because Defendant had already included its claim against Plaintiff for attorneys' fees and costs in the First Action, and the claim was denied when Justice Gilpatric failed to grant Defendant attorneys' fees and costs against Plaintiff. Plaintiff is correct in asserting that a court's failure to specifically address a motion or a part thereof is not a failure to decide, but is the implicit equivalent of a denial (People v. Bailey, 58 N.Y.2d 272, 275 [1983]; Shields v. Carbone, 78 A.D.3d 1440, 1443 [3d Dept., 2010]; Dickson v. Slezak, 73 A.D.3d 1249, 1251 [3d Dept., 2010]; Matter of Longton v. Village of Corinth, 49 A.D.3d 995, 995-996 [3d Dept., 2008]; Love v. New York State Thruway Auth., 17 A.D.3d 1000, 1002 [3d Dept., 2005]; Barrett v. Huff, 6 A.D.3d 1164, 1167-1168 [4th Dept., 2004]; Pyptiuk v. Kramer, 295 A.D.2d 768, 769 [3d Dept., 2002]; Brown v. U.S. Vanadium Corp., 198 A.D.2d 863, 864 [4th Dept., 1993]). The party that is aggrieved by such an implicit denial may either move to reargue or appeal the denial (see Love v. New York State Thruway Auth., 17 A.D.3d 1000, 1002 [3d Dept., 2005]; Barrett v. Huff, 6 A.D.3d 1164, 1167-1168 [4th Dept., 2004]; Pyptiuk v. Kramer, 295 A.D.2d 768, 769 [3d Dept., 2002]).

The Court recognizes that there are circumstances when an issue, which was not considered, shall not be deemed to have been decided adversely to the party advancing such issues (*see e.g., Matter of Longton v. Village of Corinth*, 49 A.D.3d 995, 996 [3d Dept., 2008]), but such exceptions primarily occur when a decision lacks finality, or where the party advancing the issue is not actually aggrieved by the implicit determination. In the *Matter of Longton v. Village of Corinth, id.*, there was no need for a determination of every issue where the court did not finally resolve the matter, but sent it back for a new hearing. Similarly, it would make no sense to require a victorious movant to reargue or appeal where the court granted their motion to dismiss the case, based on one of the movant's objections, but which fails to address all of the movant's other objections. The movant is in no way aggrieved by the failure to render a decision on the other objections unless the initial dismissal is later reversed, at which time the court may consider the neglected objection (*Brown v. Zaino*, 226 A.D.2d 492 [2d Dept., 1996]).

Defendant's efforts to collect attorneys' fees and costs for the First Action in this action are barred by the doctrines of res judicata and collateral estoppel. Defendant was immediately aggrieved in the First Action by Justice Gilpatric's implicit denial of Defendant's attorneys' fees and costs. Justice Gilpatric's decision was the final determination on the matter, and he did not reserve his decision on the issue of attorneys' fees and costs, nor otherwise preserve Defendant's right to raise the matter later. In the absence of either, a successful motion by Defendant to reargue, or an appeal of Justice Gilpatric's decision, the Defendant was denied attorneys' fees and costs in the First Action and may not relitigate that issue in this action.

Plaintiff is entitled to a declaration that Defendant is not entitled to attorneys' fees or costs from Plaintiff in the First Action, nor in defending the instant action, or in prosecuting its claims for further attorneys' fees and costs in this action. Plaintiff is also entitled to an order directing the Sullivan County Clerk to void Defendant's purported lien on Plaintiff's property.

Turning next to Plaintiff request for punitive damages, attorneys' fee, costs and expenses, the Court notes that Plaintiff is not entitled to counsel fees simply because he has won. New York follows the "American Rule," which provides that attorney's fees are incidents of litigation, and a prevailing party may not collect them from the loser unless an award is authorized by agreement between the parties, court rule, or statute, such as costs permitted pursuant to CPLR § 8101 (*Baker v. Health Mgt. Sys.*, 98 N.Y.2d 80, 88 [2002]; *LaBarbera v. Town of Woodstock*, 29 A.D.3d 1054, 1056-1057 [3d Dept., 2006]; *Hooper Assoc. v. AGS Computers*, 74 N.Y.2d 487, 491 [1989]).

Part 130 of the Uniform Rules for the New York State Trial Courts, permits a court, in its discretion, to award costs and impose sanctions for frivolous conduct in a civil action or proceeding (22 NYCRR §130-1.1[c]). Conduct is regarded as frivolous if "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law," if "it asserts material factual statements that are false," or if it is undertaken to "delay or prolong the resolution of the litigation, or to harass or maliciously injure another" (22 NYCRR § 130-1.1[c][1], [2]; *Kaygreen Realty Co., LLC v. IG Second Generation Partners, L.P.*, 78 A.D.3d 1008, 1010 [2d Dept., 2010]; *Mascia v. Maresco*, 39 A.D.3d 504, 505 [2d Dept., 2007]). Plaintiff's counsel's arguments and conclusory statements in support of this part of Plaintiff's application fail to demonstrate that the award of punitive damages, attorneys' fees, or costs would even be permissible under the circumstances of this action. Assuming for the purposes of the argument that Plaintiff had met its burden, the Court would exercise its discretion by denying Plaintiff's application for the award of punitive damages, attorneys' fees, or costs.

**WHEREFORE**, based on the foregoing, it is

**ORDERED** that Defendant's motion is denied in its entirety; and it is further

**ORDERED** that Plaintiff's motion is granted to the extent of dismissing Defendant's counterclaims; and it is further

**DECLARED** that Defendant is not entitled to collect legal fees and/or costs from Plaintiff in this action for either the First Action or this action; and it is further

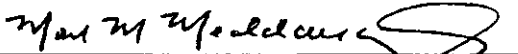
**ORDERED** that the Sullivan County Clerk void Defendant's purported lien on Plaintiff's property dated February 6, 2012 and filed on February 8, 2012; and it is further

**ORDERED** that the Plaintiff's application for the award of punitive damages, attorneys' fees, and costs is denied.

This memorandum shall constitute the Decision and Order of this Court. The original Decision and Order, together with the motion papers have been forwarded to the Clerk's office for filing. The filing of this Order does not relieve counsel from the obligation to serve a copy of this order, together with notice of entry, pursuant to CPLR § 5513(a).

Dated: September 19, 2013  
Monticello, New York

**E N T E R:**

  
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**HON. MARK M. MEDDAUGH**  
Acting Supreme Court Justice

Papers Considered:

1. Notice of Motion, dated February 15, 2013;
2. Affirmation of Brian P. Rourke, Esq., dated February 15, 2013, with Exhibits annexed;
3. Affidavit of Richard J. Marcel, dated February 8, 213;
4. Notice of Motion, dated March 21, 2013;
5. Affirmation of Terry S. Forman, Esq., dated March 21, 2013, with Exhibits annexed;
6. Affirmation of Brian P. Rourke, Esq., dated April 12, 2013;
7. Affirmation of Terry S. Forman, Esq., dated April 24, 2013, with Exhibits annexed.