

Brown v New York City Dept. of Corr. Officers

2015 NY Slip Op 32156(U)

October 9, 2015

Supreme Court, Bronx County

Docket Number: 308662/11

Judge: Eddie J. McShan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

JONATHAN BROWN,

Plaintiff,

- against -

Index No.: 308662/11

DECISION/ORDER
HON. EDDIE J. MCSHAN

NEW YORK CITY DEPARTMENT OF CORRECTION
OFFICERS CAPTAIN S. TAIA, SHIELD #980; OFFICER
J. RIGAULT, SHIELD #13265; OFFICER A. MELI,
SHIELD #18715; OFFICER J. MUNIZ, SHIELD #17501,
and other individual employees whose identities have not
yet been determined,

Defendants.

The following Papers Numbered: 1 to 26 were read on this motion seeking an order of dismissal.

No	on Calendar of	PAPERS NUMBERED
Amended Notice of Motion -Exhibits and Affirmation Annexed -----		<u>1 - 11</u>
Affirmation in Opposition and Exhibits -----		<u>12 - 15</u>
Replying Affirmation -----		<u>16</u>
Other -----		

Upon the foregoing cited papers, the Decision/Order of this motion is as follows:

Defendants move for an order dismissing Plaintiff's Verified Complaint based upon the doctrines of res judicata and/or collateral estoppel pursuant to CPLR § 3211(a)(5). Defendants also move for an order dismissing the Plaintiff's federal claims for failure to specifically plead a cause of action against any of the named defendants pursuant to CPLR § 3211(a)(7). The Plaintiff opposes both of the defendants' applications.

This action is one for personal injuries sustained when Plaintiff was assaulted by three inmates during his incarceration. The incident occurred at Module 1 in the Robert N Davoren Center within Rikers Island located in East Elmhurst, NY on October 6, 2008. Plaintiff suggests that the correction officers at the scene failed to provide him with appropriate and timely medical

attention after the incident. Plaintiff originally commenced an action in the New York State Supreme Court in and for Queens County against The City of New York, The New York City Police Department, The Department of Corrections for the City of New York, and their individual employees whose identities have not yet been determined in 2009. By Short Form Order (Order) dated November 17, 2011, the Honorable Kevin J. Kerrigan granted the defendants motion for summary judgment dismissing the Plaintiff's complaint because Plaintiff failed to file a timely notice of claim pursuant to General Municipal Law § 50-e. Judge Kerrigan also denied the Plaintiff's cross-motion which sought leave to serve a late notice of claim and to file an amended complaint.

Plaintiff commenced the instant action against the above-named defendants for alleged negligence and civil rights violations. Plaintiff notes that he commenced the instant action against the defendants to protect his claims from being barred by the statute of limitation in the event his motion for leave to renew and reargue were denied by Judge Kerrigan. He notes that the City of New York refused to transfer his original case filed in Queens County after he realized that Rikers Island cases are venued in Bronx County. Plaintiff asserts that he notified the Queens Court and the City attorneys that a claim against the individual officers would be filed in Bronx County if the case he filed in Queens County was dismissed. By Short Form Order dated November 17, 2011, Judge Kerrigan denied the Plaintiff's applications for leave to renew and reargue.

Res Judicata

Initially, the Court finds that the doctrine of *res judicata* bars Plaintiff from bringing the instant action. It is well settled that a party is barred by the doctrine of *res judicata* when there is a judgment on the merits from a prior action between the same parties involving the same subject

matter (*Gellman v Henkel*, 112 AD3d [1st Dept 2013]). According to the doctrine of *res judicata*, “a disposition on the merits bars litigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding” (*Bayer v City of New York*, 115 AD3d 897 [2d Dept 2014]). Privity is established when the nonparty is represented by a party in the prior proceeding (*Green v Santa Fe Indus*, 70 NY2d 244 [1987]). Parties in privity include those whose interests are represented by a party to the previous action and those “[whose] own rights or obligations in the subsequent proceeding are conditioned in one way or another on, or derivative of, the rights of the party to the prior litigation” (*D’Arata v New York Cent Mut Fire Ins Co*, 76 NY2d 659 [1990]).

It is unquestioned on this record that the individually named defendants herein, although not named in the Queens’ action, are in privity with the defendants in the prior action. In fact, Plaintiff in the prior action included “. . . individual employees whose identities have not yet been determined” as parties to the action. The individual employees are now identified in the instant proceeding. The doctrine of *res judicata* “operates to preclude the renewal of issues actually litigated and resolved in a prior proceeding, as well as claims for different relief which arises out of the same factual grouping or transaction and which should have or could have been resolved in the prior proceeding” (*Koether v Generalow*, 213 AD2d 379 [2d Dept 1995]). Any claims Plaintiff has against the individually named defendants herein could have been and were attempted to be litigated in the Queens’ action (*Koether*, 213 AD2d 379). Plaintiff’s claims herein arise out of the same transaction or series of transactions as those raised in the Queens’ action (*Bayer*, 115 AD3d 897). This Court agrees with the defendants that New York’s transactional approach precludes the Plaintiff from commencing the instant proceeding (*see for*

example *Thomas v City of New York*, 239 AD2d 180 [1st Dept 1997]). Moreover, although the individually named officers in this proceeding were not named in the Queens' action, they are the employees of the City who were working within the scope of their employment that both claims are centered around (*Kentucky v Graham*, 473 US 159 [1985]).

Based upon the Court's findings, the defendants' applications to dismiss this proceeding based upon collateral estoppel and failure to plead a cause of action are both denied as moot.

In light of the foregoing, it is hereby

ORDERED AND ADJUDGED that Defendant's motion pursuant to CPLR 3211(a)(5) is hereby granted as determined hereinabove, and it is further

ORDERED AND ADJUDGED that the Clerk shall dismiss this matter in its entirety accordingly.

The foregoing shall constitute the decision and order of this Court.

Dated: October 9, 2015



J.C.C.