

Iqbal v Parikh
2018 NY Slip Op 33405(U)
November 27, 2018
Supreme Court, Richmond County
Docket Number: 152768/2017
Judge: Jr., Orlando Marrazzo
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ABID IQBAL

DECISION/ORDER

DCM PART 21

HON. ORLANDO MARRAZZO, JR.

Index No.: 152768/2017

Motion No. 1 & 2

Plaintiff,

-against-

ASHISH PARIKH, AMISH PARIKH, PRABODH PARIKH, individually, and as owners of THE PARIKH NETWORK, PARIKH NETWORK, LLC

Defendants.

The following numbered 1 through 8 were marked submitted on October 23, 2018

Papers Numbered

Plaintiff's Notice of Motion, dated April 16, 2018.....1

Defendants' Notice of Cross-Motion, dated May 14, 2018.....2

Affirmation in Opposition to Plaintiff’s Motion and in Support of
Defendants’ Cross-Motion, with Exhibits, dated May 14, 2018,3

Defendant Amish Parikh's Affidavit in Opposition to Plaintiff's Motion and in Support
Of Defendants' Cross-Motion, with Exhibits, dated May 11, 2018.....4

Affirmation in Opposition to Defendants' Cross-Motion, with Exhibits,
dated August 14, 2018.....5

Reply Affirmation in Further Support of Defendants' Cross-Motion, dated August 27, 2018.....6

Plaintiff brought a motion for default judgment against Defendants, who were served between January 2018 and March 2018. This case concerns Plaintiff's claims against Defendants for breach of contract, unjust enrichment and quantum meruit relating to the starting up and management of 14 Popeyes stores in Minnesota and Defendants' alleged promise to Plaintiff that he would gain ownership interest in Twin Cities MGMT, LLC ("Twin Cities"). In response to the

instant motion, Defendants filed a Cross-Motion, seeking an order dismissing the action against Defendants based on (1) res judicata and collateral estoppel, (2) lack of jurisdiction and (3) documentary evidence. Defendants are also seeking costs and request that if the Court does not dismiss the action, their time to answer would be extended. The Court hereby grants Defendants' Cross-Motion and denies Plaintiff's Motion. The case against Defendants is hereby dismissed based on res judicata and collateral estoppel.

In support of their Cross-Motion, Defendants argue that this instant action is the third action in which Plaintiff, individually and/or through his entity Iggy Management, LLC, has sued in connection with his purported ownership interest in Twin Cities which is a limited liability company that Defendants Ashish and Amish are members of and owns 14 Popeyes chicken franchises in Minnesota. In the instant action, Plaintiff claims Defendants promised Plaintiff a salary of \$80,000 to manage the 14 Popeyes in Minnesota and an ownership interest in such stores. Plaintiff claims that in relying on this promise, he invested \$112,500.00 in the 14 Popeyes and moved to Minnesota to operate them.

The Court finds that Plaintiff's claims are barred based on res judicata and collateral estoppel. The Appellate Division notes that "under New York's transactional approach to res judicata, '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.'" *See Sosa v. JP Morgan Chase Bank*, 33 A.D.3d 609, 611, 822 N.Y.S.2d 122, 124 (App. Div. 2d Dep't., 2006). The Second Department has held that res judicata doctrine bars the litigation of a claim or defense "if, in a former litigation between the parties, or those in privity with them, in which there was a final conclusion, the subject matter and the causes of action are identical or substantially identical." *Williams v City of Yonkers*, 160 A.D.3d 1017, 1018, 76

N.Y.S.3d 92, 94 (App. Div. 2d Dep't April 25, 2018). *See Xiao Yang Chen v Fischer*, 6 NY3d 94, 100, 843 N.E.2d 723, 810 N.Y.S.2d 96 (2005); *O'Connell v Corcoran*, 1 NY3d 179, 184-185, 802 N.E.2d 1071, 770 N.Y.S.2d 673) (2003). That is the case here, as there was a final resolution to the two previous New Jersey actions between the parties and the subject matter and causes of action are substantially identical. Plaintiff's claims in the instant action are the same as those in his counterclaims in the first New Jersey action, which was resolved by a final jury verdict.¹ In this first New Jersey action, a judgment was entered in New Jersey Superior Court, Camden County, in favor of Defendant Abid Iqbal and against Plaintiff Twin Cities Management LLC in the amount of \$421,197.00 and in favor of Plaintiff Twin Cities Management LLC and against Defendants Abid Iqbal and Iggy Management, LLC declaring that the Defendants were not entitled to any ownership interest in Twin Cities Management. Plaintiff's claims were also present in the second New Jersey action, in which the Judge granted partial summary judgment in favor of Plaintiffs Twin Cities Mgmt., Inc., Ashish Parikh and Amish Parikh and against Defendant Abid Iqbal, dismissing the Counterclaim of the defendant in its entirety and with prejudice since such counterclaim was decided in the first action.² Therefore, Plaintiff's causes of action and the subject matter of this instant case are barred by the doctrine of res judicata.

The Court also finds that this case is barred by the doctrine of collateral estoppel, which precludes a party "...from relitigating an issue which has been previously decided against him in a prior proceeding where he had a full and fair opportunity to litigate such issue." *Luscher v. Arrua*, 21 A.D.3d 1005, 1007, 801 N.Y.S.2d 379, 381 (App. Div. 2d Dep't., 2005). *See D'Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 564 N.E.2d 634, 563 N.Y.S.2d 24 (1990). For

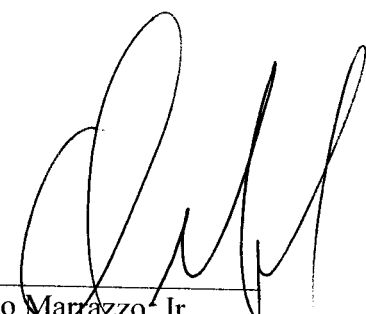
¹ Docket: L-4316-15, New Jersey Superior Court, Camden County Order for Judgment signed by Steven J. Polansky, J.S.C.

² Docket Number L 2672-16, Superior Court of New Jersey, Law Division, Camden County, Order Granting Partial Summary Judgment, signed by Michael J. Kassel, J.S.C.

collateral estoppel to apply, it must be determined that (1) the identical issue was decided in the previous action and it is decisive in the present action and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest that prior issue. *See Montoya v JL Astoria Sound, Inc.*, 92 A.D.3d 736, 738, 939 N.Y.S.2d 92, 94 (App. Div. 2d Dept., 2012); *Luscher v. Arrua*, 21 A.D.3d 1005, 1007, 801 N.Y.S.2d 379, 381 (App. Div. 2d Dep't., 2005). Defendants have proven both elements under this doctrine. In both New Jersey Actions, Plaintiff's claims for ownership in Twin Cities were decided and Plaintiff had a full and fair opportunity to litigate this issue. Therefore, Plaintiff's claims are also barred by the doctrine of collateral estoppel.

Plaintiff's Motion is hereby dismissed and Defendants' Cross-Motion to dismiss the action against them is dismissed. Defendants' Cross-Motion for costs is also granted.

Dated: November 27, 2018
Staten Island, New York


Orlando Marrazzo, Jr.,
Justice, Supreme Court

Hon. Orlando Marrazzo, Jr.
Acting Supreme Court Justice