

**Cartagena v Lee**

2019 NY Slip Op 34723(U)

July 29, 2019

Supreme Court, Queens County

Docket Number: Index No. 718955/18

Judge: Timothy J. Dufficy

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**ORIGINAL**

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**ALEXANDER CARTAGENA,**

**Plaintiff,**

**Index No.: 718955/18**

**Mot. Date: 6/25/19**

**-against-**

**Mot. Seq. 1**

**STEPHEN K. LEE AND CHAK L. LEE,**

**Defendants.**

-----X  
The following papers were read on this motion by defendants, to *inter alia*, dismiss plaintiff's Complaint against them pursuant to CPLR 3211(a)(5) on the grounds of *res judicata* and collateral estoppel.

	<u>PAPERS NUMBERED</u>
Notice of Motion - Affidavits - Exhibits.....	EF 5-12
Amended Notice of Motion - Affidavits - Exhibits.....	EF 15-23
Answering Affidavits-Exhibits.....	EF 44-60
Replying Affidavits.....	EF 61-62

Upon the foregoing papers, it is ordered that defendants' motion to dismiss plaintiff's Complaint against them pursuant to CPLR 3211(a)(5) on the grounds of *res judicata* and collateral estoppel, is granted.

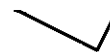
The underlying action is one for personal injuries arising out of a motor vehicle accident, that occurred on April 6, 2016, in Nassau County, New York, wherein there was contact between the vehicle operated by plaintiff Alexander Cartagena and the vehicle owned by defendant Chak L. Lee and operated by defendant Stephen K. Lee.

CPLR 3211(a)(5) allows for summary dismissal based on the grounds of *res judicata* or collateral estoppel.

FILED  
AUG -7 2019  
COUNTY CLERK  
QUEENS COUNTY

“Principles of res judicata require 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’” (*Chen v Fischer*, 6 NY3d 94 [2005])[internal citations omitted]. “It is not always clear whether particular claims are part of the same transaction for res judicata purposes. A ‘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 relitigating 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, New York County 2001)). Res judicata will only be applicable where there “has been a final judgment on the merits” (*Lewis v City of New York*, 844 NYS2d 650 [Sup Ct, Bronx County 2007]). 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 relitigating 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 relitigating the issue “had a full and fair opportunity to contest the prior issue” (*Ryan, supra*, 62 NY2d at 501).



The doctrine of law of the case “ is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned” (*Martin v City of Cohoes*, 37 NY2d 162, 165 [1975 ]). The doctrine "applies only to legal determinations that were necessarily resolved on the merits in [a] prior decision" (*Baldasano v Bank of N.Y.*, 199 AD2d 184, 185[1993]; see *Erickson v Cross Ready Mix, Inc.*, AD3d , 2012 NY Slip Op 06062 [2012]; *Gay v Farella*, 5 AD3d 540, 541[2004]; *Gilligan v Reers*, 255 AD2d 486, 487 [1998]), "and to the same questions presented in the same case" (*RPG Consulting, Inc. v Zormati*, 82 AD3d 739, 740[ 2011], citing *People v Evans*, 94 NY2d 499, 502 [ 2000]).

In the instant action, the defendants have established a *prima facie* case that there was a prior proceeding where the identical issue was necessarily decided or that a claim in this case actually was litigated in a prior proceeding.

Defendants present a *prima facie* case in support by establishing the following: Plaintiff Alexander Cartagena previously commenced an action against the same parties, Stephen K. Lee and Chak L. Lee for the same relief, in the Supreme Court, Queens County, under Index Number 6812/16, which action was subsequently transferred to Civil Court, Queens County, pursuant to CPLR 325(d), in August, 2017, and assigned Index Number 30075-QTS-2017. In that action, a jury was picked and a trial was begun before Honorable Phillip Hom, on November 5, 2018. On November 5, 2018, after motion *in liminie* proceedings, Judge Hom issued a directed verdict in favor of defendants Stephen K. Lee and Chak L. Lee, and against plaintiff Alexander Cartagena after ruling that the plaintiff was precluded from offering any evidence to the jury about his claim of thoracic spine injury, the main injury allegedly sustained. Judge Hom dismissed the case with prejudice after the plaintiff stated that he was unable to proceed.

As this Court has already determined that the defendants in this case, Stephen K. Lee and Chak L. Lee, were entitled to a directed verdict dismissing the Complaint of the plaintiff Alexander Cartagena against them for the same cause of action now asserted in the instant action now before this Court, the plaintiff's instant Complaint shall be dismissed. The Court finds the arguments raised in plaintiff's opposition papers to be wholly unavailing.

In conclusion, the defendants established a *prima facie* case that the instant action is barred by the principles of *res judicata* and collateral estoppel, and the plaintiff has failed to raise any triable issues of fact in opposition.

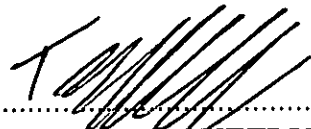
Accordingly, it is

**ORDERED** that the defendants' motion is granted; and it is further

**ORDERED** that the plaintiff's Complaint shall be dismissed as against defendants Stephen K. Lee and Chak L. Lee.

The foregoing constitutes the decision and order of the Court.

**Dated: July 29, 2019**

  
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**TIMOTHY J. DUFFICY, J.S.C.**

