

Xue Chen v Lockett

2020 NY Slip Op 30343(U)

February 6, 2020

Supreme Court, New York County

Docket Number: 156947/2019

Judge: Adam Silvera

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

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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XUE CHEN

Plaintiff,

- v -

ANITA LOCKETT,

Defendant.

-----X

INDEX NO. 156947/2019

MOTION DATE 11/07/2019

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is ORDERED that defendant’s motion for an order pursuant to CPLR 3211(a)(4) and (5) to dismiss plaintiff’s Complaint is granted.

The action at issue stems from a motor vehicle accident which occurred on November 13, 2012 between plaintiff Xue Ping Chen and defendant Anita Lockett.

Previously, an action was commenced by plaintiff under the index Number 152243/2014 on March 13, 2014 regarding the November 13, 2012 motor vehicle accident. In a Decision/Order dated July 1, 2019, this Court dismissed plaintiff’s complaint pursuant to CPLR §3215(c) for failure to timely move for a default. The Court noted that “plaintiff took no action against defendant Lockett from April 21, 2017 for over one year” (Mot, Exh C at 3).

Pursuant to CPLR 3211(5) a party may move for a judgment dismissing causes of action against them on the ground that “ the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds.” At issue here is collateral estoppel and res judicata. “The doctrine of collateral estoppel precludes a

party from relitigating ‘an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point’” (*Kaufman v Eli Lilly and Co.*, 65 NY2d 449, 455 [1985] quoting *Gilberg v Barbieri*, 53 NY2d 285, 291 [1981]). A party seeking to defeat the application of collateral estoppel “has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action” (see *id.* citing *Ryan v New York Telephone Co.*, 62 NY2d 494, 502 ([1984])). Under *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 seeking a different remedy” (*O’Brien v. City of Syracuse*, 54 NY2d 353, 357 [1981]).

Here, defendant argues that because plaintiff previously brought an action for the same accident and injuries, which was dismissed pursuant to the Court’s Decision/Order dated July 1, 2019, that the within action should be dismissed. Defendant claims that this Court’s Decision/Order “dismissed plaintiff’s Complaint for neglect to prosecute and for failure to take a default judgment” (Mot, Aff in Support, ¶8).

In opposition plaintiff claims that the present action was properly commenced pursuant to CPLR 205(a). Pursuant to CPLR 205(a), a plaintiff may commence a new action within six months of a dismissal as long as the dismissal was not due to a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment on the merits. Plaintiff argues that the case at bar was not dismissed due to the above exceptions to CPLR 205(a). In particular, plaintiff contests defendant’s claim that this Court’s July 1, 2019, Decision/Order amounted to a dismissal of the complaint for neglect to prosecute the action.

The Court finds that its July 1, 2019, Decision/Order was in fact a dismissal for neglect to prosecute the action. The Court specifically noted that “plaintiff took no action against defendant Lockett from April 21, 2017 for over one year. In plaintiff’s opposition papers, plaintiff fails to even allege any cause for why the complaint should not be dismissed” (Mot, Exh C). Plaintiff’s argument that “[t]he Court’s decision specifically does not state that the dismissal was for failure to prosecute the action” is unavailing. The Court specifically addressed the fact that plaintiff took no action against defendant for over a year. Where a plaintiff has failed to proffer an excuse for the delay in prosecution, the Court has found that dismissal of the action was warranted because of lack of prosecution (*Schwartz v. Luks*, 46 AD2d 634 [1st Dept 1974] [finding that “[u]nder the circumstances herein, it is patent that the prior dismissal of the action constituted a dismissal for failure to prosecute within the meaning of CPLR 205”]).

Here, plaintiff failed to offer a valid excuse for delay in the previous case. The Court’s dismissal of index Number 152243/2014 was for neglect to prosecute the action. Thus, plaintiff may not benefit from the safeguards of CPLR 205(a) in a veiled attempt to relitigate a case that was previously dismissed by this Court for neglect to prosecute. Plaintiff had a full and fair opportunity to litigate its case and failed to demonstrate why the complaint should not be dismissed in its opposition papers. Upon dismissal of index Number 152243/2014, plaintiff’s claim was brought to a final conclusion and all claims arising from the underlying November 13, 2012 motor vehicle accident are now barred. Defendant’s motion to dismiss plaintiff’s Complaint is granted.

Accordingly, it is

ORDERED that defendant's motion to dismiss this action is granted and the Clerk is directed to enter judgment in favor of defendant dismissing this action, together with costs and disbursements to defendant, as taxed by the Clerk upon presentation of a bill of costs.

This constitutes the Decision/Order of the Court



2/6/2020
DATE

ADAM SILVERA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE