

<b>Sargsyan v Kaiteur Constr., Inc.</b>
2020 NY Slip Op 34617(U)
May 12, 2020
Supreme Court, Queens County
Docket Number: Index Number 713454/2016
Judge: Joseph Risi
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FILED

Short Form Order

5/15/2020

9:40 AM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JOSEPH RISI  
A. J. S. C.

IA Part 3

COUNTY CLERK  
QUEENS COUNTY

-----X  
KARINE SARGSYAN, a/k/a KARINE YUSUPOV,

Index  
Number 713454/2016

Plaintiff,

-against-

**DECISION/ORDER**

KAIETEUR CONSTRUCTION, INC.,

Sequence Number 2

Defendant.

-----X

The following numbered papers read on this motion by defendant to dismiss the complaint on the grounds that it is barred by res judicata and/or collateral estoppel or, in the alternative, for an order pursuant to 22 NYCRR 202.21(e) vacating the notice of inquest, striking the action from the trial calendar, and compelling plaintiff to provide defendant with authorizations to subpoena plaintiff's medical records and to conduct an independent medical examination of plaintiff.

Papers  
Numbered

Notice of Motion - Affidavits - Exhibits .....	EF 43 - 59
Answering Affidavits - Exhibits .....	EF 60
Reply Affidavits .....	EF 61 - 62

Upon the foregoing papers it is ordered that the motion is determined as follows:

This is an action for personal injuries allegedly sustained by plaintiff on November 25, 2014 when she tripped and fell on construction debris on the sidewalk adjacent to 99-27 62<sup>nd</sup> Road and 99-31 62<sup>nd</sup> Road in Rego Park, New York. Defendant was hired by the owner of the premises located at 99-31 62<sup>nd</sup> Road to perform construction work at the building. On May 15, 2015, plaintiff commenced a separate personal injury action (index No. 5987/2015) in connection with the accident against 99-31 62<sup>nd</sup> Road Realty, LLC, Anzhira Malakova, Osher Malakova, Jian Li Construction, Inc., Jian Li, Inc., and Total Structure Management, Inc. Plaintiff was granted a default judgment on the issue of liability against the defendants in that action. On September 8, 2016, the first action proceeded to inquest on damages, at which Justice Allan B. Weiss awarded plaintiff a judgment in the amount of \$175,000.00 for past and future pain and suffering. On November 9, 2016, plaintiff

commenced the within action against defendant to recover damages for personal injuries allegedly sustained in relation to the same accident. Plaintiff subsequently moved for a default judgment on the issue of liability against defendant for failure to serve a timely answer, which was ultimately granted on appeal, and plaintiff was allowed to proceed to an inquest on damages against defendant.

Defendant now moves seeking dismissal of plaintiff's complaint on the grounds that it is barred by the doctrines of res judicata and/or collateral estoppel. A plaintiff who had a full and fair opportunity to litigate claims and issues is barred by res judicata and collateral estoppel from relitigating those claims and issues (see *O'Brien v City of Syracuse*, 54 NY2d 353 [1981]; *Laramie Springtree Corp. v Equity Residential Props. Trust*, 38 AD3d 850 [2d Dept 2007]; *Luscher v Arrua*, 21 AD3d 1005 [2d Dept 2005]). Under the doctrine of res judicata, a final disposition on the merits bars litigation between the same parties, or those in privity with the parties, of all other claims arising out of the same transaction or set of facts, even if they are based upon a different theory or seeking a different remedy (see *Fitzgerald v Hudson Natl. Golf Club*, 35 AD3d 533 [2d Dept 2006]; *Sterngrass v Soffer*, 27 AD3d 549 [2d Dept 2006]; *Fogel v Oelmann*, 7 AD3d 485 [2d Dept 2004]). Collateral estoppel, a narrower species of res judicata, "precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity" (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500 [1984]; see *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999]). The doctrine 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 plaintiff had a full and fair opportunity to litigate the issue in the earlier action" (*Parker*, 93 NY2d at 349; see *City of New York v Welsbach Elec. Corp.*, 9 NY3d 124, 128 [2007]; *Ryan*, 62 NY2d at 500-501). "[C]ollateral estoppel effect will only be given to matters actually litigated and determined in a prior action" (*Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 456 [1985]). "The party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action" (*Kaufman*, 65 NY2d at 456).

Here, in support of its motion, defendant primarily argues that plaintiff is collaterally estopped from relitigating the issue of damages in this action because the same issue was previously litigated and decided in the prior action. In this court's view, defendant established that the damages being sought in the instant action for personal injuries allegedly sustained by plaintiff in the November 25, 2014 accident are necessarily identical to those determined in the prior action against, an albeit, different group of defendants. Indeed, the record reveals that, at the hearing on damages, plaintiff presented medical evidence and her own testimony regarding the injuries she suffered as a result of the subject accident. Thereupon, Justice Weiss determined that plaintiff was entitled to an award of \$175,000.00 for past and future pain and suffering. In opposition, plaintiff failed to demonstrate that she did not have a full and fair opportunity to litigate the issue of damages she sustained in connection with the accident in the earlier action. As such, the court's finding on the issue of damages in the prior action has collateral estoppel effect here.

In view of the foregoing, the court need not reach defendant's additional contentions or alternative requests for relief.

Accordingly, that branch of defendant's motion to dismiss the complaint on the grounds that it is barred by res judicata and/or collateral estoppel is granted. In all other respects, the motion is denied.

This is the decision and order of the Court.

Dated: May 12, 2020



Hon. Joseph Risi, A.J.S.C.

**FILED**

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QUEENS COUNTY**