

Leonard v Law Off. of Julio E. Portilla, P.C.

2023 NY Slip Op 31944(U)

June 8, 2023

Supreme Court, New York County

Docket Number: Index No. 160102/2022

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO PART **33M**

Justice

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LAVERNE M. LEONARD,

Plaintiff,

- v -

LAW OFFICE OF JULIO E. PORTILLA, P.C., JULIO E.
PORTILLA,

Defendant.

-----X

INDEX NO. 160102/2022
MOTION DATE 01/05/2023
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for DISMISSAL

Upon the foregoing documents, and after oral argument, which took place on February 21, 2023, where Plaintiff Laverne M. Leonard ("Plaintiff") appeared *pro se* and Alex DiGiovanna, Esq. appeared for Defendants Law Office of Julio E. Portilla, P.C. and Julio E. Portilla individually (collectively "Defendants"), Defendants' motion to dismiss the Complaint is granted.

This is just one of many prior lawsuits Plaintiff has brought against Defendants as well as other non-parties in connection with a foreclosure proceeding with index number 810093/2010. Most recently, Plaintiff brought an action against Defendants in this Court under index number 156412/2022 with the caption *Laverne M. Leonard v Law Office of Julio E. Portilla, P.C. and Julio E. Portilla*. In that action, in a Decision and Order dated November 25, 2022, Hon. Lisa S. Headley dismissed the action, with prejudice (*see* NYSCEF Doc. 9). On November 28, 2022, just three days after Justice Headley's Decision and Order, Plaintiff commenced this action against the same Defendants making allegations arising out of the same occurrences (*see* NYSCEF Doc. 1).

On December 28, 2022, Defendants moved to dismiss based on collateral estoppel and failure to state a claim (NYSCEF Doc. 6). They also seek to enjoin Plaintiff from filing any further lawsuits. On December 30, 2022, Plaintiff submitted her opposition. The opposition consists of a three page memorandum of law, however the memorandum of law simply lists statutes and does not address any of Defendants' arguments. On January 12, 2023, Defendants filed their reply and pointed out the defects in Defendants' opposition.

Under the doctrine of *res judicata*, a final adjudication of a claim precludes relitigating that claim and all claims arising out of the same transaction or series of transactions by a party (*Martinez v JRL Food Corp.*, 194 AD3d 488 [1st Dept 2021]). Put another way, even if there are new allegations set forth in a complaint, if a prior action is dismissed on the merits, and contains identical parties, if the new allegations are connected to the same transaction or occurrence as the prior dismissed action, the claims will be barred by *res judicata* and collateral estoppel (*Gropper v 200 Fifth Owner LLC*, 151 AD3d 635 [1st Dept 2017]; *Jericho Group, Ltd. v Mid-Town Development Ltd. Partnership*, 129 AD3d 561 [1st Dept 2015]; *Elias v Rothschild*, 29 AD3d 448 [1st Dept 2006]).

In the prior action with index number 156412/2022, Plaintiff alleged a variety causes of action arising from Defendants' alleged malpractice related to a foreclosure action. Plaintiff had a fair and full opportunity to litigate that case. Nonetheless, her claims were all dismissed, with prejudice, by another Justice of this Court. Even though this Complaint may allege new causes of action under different statutes,¹ Plaintiff still brings her claims against the same parties, and the

¹ To be sure, many of the causes of action in this case, including fraud, misrepresentation, breach of trust, violation of the New York Privacy Act, violations of the Identity Theft Protection & Mitigation Services Act, and violations of the Shield Act, are identical to the causes of action in the case dismissed by Justice Headley.

allegations arise out of the same occurrences and transactions, as the prior dismissed lawsuit. The doctrines of *res judicata* and collateral estoppel bar Plaintiffs claims.

As repeatedly held, there are solid public policy reasons for the deployment of *res judicata* and collateral estoppel for situations such as the case at bar. These doctrines protect judicial economy, and fairness to the parties to mandate, at a certain point, the end to litigation (*Howard Carr Companies, Inc. v Cumberland Farms, Inc.*, 456 F.Supp.3d 462 [NDNY 2020]; *Overview Books, LLC v U.S.*, 755 F.Supp.2d 409 [EDNY 2010]; *Reilly v Reid*, 45 NY2d 24 [1978]). It also forwards the public policy of establishing certainty in legal relations (*Ferring B.V. v Serenity Pharmaceuticals, LLC*, 391 F.Supp.3d 265 [SDNY 2019]; *DeCastro v City of New York*, 278 F.Supp.3d 753 [SDNY 2017]).

Although Plaintiff cites in her affirmation to Justice Headley's decision wherein, she denied the motion to enjoin Plaintiff from filing future lawsuits, Plaintiff mistakenly conflates that dictum with the applicability of *res judicata* and collateral estoppel. Indeed, enjoining a party from filing future lawsuits and the doctrines of *res judicata* and collateral estoppel are two distinct concepts, with one being a punitive administrative function, while the others are legal defenses.

As stated in Justice Headley's Decision and Order, "public policy generally mandates free access to the courts" (*see* NYSCEF Doc. 9 quoting *Matter of Leopold*, 287 AD2d 718, 732 [2d Dept 2001]). However, as Defendants argue in the instant motion, a party may forfeit that right if she abuses the judicial process by engaging in meritless litigation motivated by spite or ill will (*see Knauss v Elman*, 171 AD3d 1067 [2d Dept 2019]). In lieu of public policy considerations, and Plaintiff's mistaken belief that Justice Headley's decision not to enjoin Plaintiff from filing lawsuits in general meant Plaintiff should refile her lawsuit, the Court declines to enjoin Plaintiff. The Court does not have sufficient evidence to find that Plaintiff has been motivated by spite or ill

will, and her mistaken reading of Justice Headley's decision may have given her a good faith belief that the instant lawsuit had merit.

However, to be clear, this Court cautions Plaintiff in filing future lawsuits against the named Defendants arising out of their representation of her in the foreclosure action with index number 810093/2010. Lawsuits related to the interaction between Defendants and Plaintiff during the foreclosure action have now been dismissed on at least two occasions, once on the merits and once based on *res judicata* and collateral estoppel.² Given this explanation, if Plaintiff is to file another lawsuit against Defendants based on her interactions with Defendants during the foreclosure action, it may be considered weighty evidence that she is filing lawsuits out of spite or ill will. Such a finding may result in enjoining Plaintiff from filing future lawsuits.

Accordingly, it is hereby,

ORDERED that Defendant's motion to dismiss Plaintiffs' Complaint is granted; and it is further

ORDERED that the branch of Defendants' motion which seeks to enjoin Plaintiff from filing future lawsuits is denied, without prejudice; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on Plaintiff; and it is further

[*The remainder of this page is intentionally left blank.*]

² Because the court elects to dismiss the Complaint on the basis of *res judicata* and collateral estoppel, it need not reach the merits of Defendants CPLR 3211 (a)(7) arguments.

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

6/8/2023
DATE

Mary V Rosado
HON. MARY V. ROSADO, 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