

**Shouela v Pfeiffer**

2023 NY Slip Op 32168(U)

June 9, 2023

Supreme Court, Kings County

Docket Number: Index No. 515697/2018

Judge: Ingrid Joseph

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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 9<sup>th</sup> day of June, 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

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ELI SHOUELA,

Plaintiff (s),

-against-

SAMUEL PFEIFFER A/K/A SHABSI PFEIFFER,  
FORTY ONE ROYAL CONSTRUCTION, LLC,  
AND 1273 STREET LLC,

Defendant(s).

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**DECISION AND ORDER,**  
Index No. 515697/2018  
Mot. Seq. No. 8

**The following e-filed papers considered herein:**

Notice of Motion/Affirmation in Support/Exhibits Annexed.....

**NYSCEF E-filed docs**

102-105

In this action, Eli Shouela (“Plaintiff”) moves (Motion Seq. 8) for a default judgment to quiet title pursuant to RPAPL § 1501 and to void a deed pursuant to DCL §§ 274-76 against Samuel Pfeiffer a/k/a Shabsi Pfeiffer (“Pfeiffer”), Forty One Royal Construction, LLC, and 1273 Street LLC (“Collectively Defendants”) based upon Defendants’ failure to file an answer or otherwise respond to the second amended complaint.

This action arises from a contractual dispute in which Plaintiff alleges that Defendant breached an agreement regarding the sale and transfer of a property located at 1273 41<sup>st</sup> Street, Brooklyn, NY (“Subject Premises”). However, the issues raised by Plaintiff in this case were adjudicated in a related matter pursuant to a decision entered by Hon. Lawrence Knipel on July 27, 2018 (Index # 514691/2016) and a sheriff enforcement order dated March 4, 2019. Additionally, an appeal of Justice Knipel’s decision was dismissed by the Appellate Division Second Department on June 22, 2022.

In the related matter, Plaintiff Pfeiffer commenced an action against Defendant Isaac Shouela (the brother of Eli Shouela, Plaintiff in this case), for specific performance of a contract dated September 29, 2014 which provided that Defendant Isaac Shouela would convey to Pfeiffer (1) his 50% interest in 1273 41st St. Brooklyn, New York, (2) in combination with the remaining 50% interest in the property owned by his brother Eli Shouela which was conveyed by deed on September 17, 2015 to Forty One Royal

Construction, LLC (“Forty One Royal”) which is owned by Pfeiffer, and (3) Defendant Isaac Shouela’s entire interest in an adjoining property located at 1275 41<sup>st</sup> St, Brooklyn, New York.

In that action, Pfeiffer also alternatively moved pursuant to CPLR § 3126 to strike Defendant Isaac Shouela’s answer based on noncompliance with a Final Discovery order, and for summary judgment pursuant to CPLR § 3212 on the cause of action for specific performance. Defendant Isaac Shouela cross-moved for summary judgment dismissing the complaint or in the alternative to preclude. In an order dated June 8, 2018, Justice Knipel granted Pfeiffer’s motion, only to the extent that Isaac Shouela’s answer was stricken because he failed to comply with the Final Discovery Order dated December 8, 2017, and denied Isaac Shouela’s cross motion.

Thereafter, Defendant Isaac Shouela moved to vacate the June 8, 2018, order and for leave to reargue his opposition to Plaintiff’s motion and to renew his cross motion based upon the argument that Pfeiffer had submitted a fraudulent “proof of funds” document in a motion. On July 27, 2018, Justice Knipel denied Defendant Isaac Shouela’s motion on the grounds that he failed to address the underlying reason why his answer was stricken which was due to his failure to comply with discovery orders, and in an order dated August 1, 2018, Justice Knipel granted Pfeiffer’s motion and ordered specific performance of the contract. Thereafter, on March 1, 2019, an enforcement order, directing the sheriff to deliver the executed deeds conveying the two properties, was granted. Defendant Isaac Shouela then appealed that branch of the July 27, 2018, order that denied his motion for leave to reargue. The appellate division ultimately dismissed the appeal on the grounds that no appeal lies from an order denying re-argument (see *Doctors for Surgery, PLLC v Aristide*, 192 A.D.3d 991, 992 [2021]). The appellate court held that the Supreme Court properly exercised its discretion in striking Defendant Isaac Shouela’s answer pursuant to CPLR § 3126 and as a result of having his answer stricken, he was deemed to have admitted all traversable allegations in the complaint, including the basic allegation of liability.

While his brother was defending his action, Plaintiff Eli Shouela commenced this action on August 1, 2018. Eli Shouela’s attorney in the instant matter was the same attorney representing Isaac Shouela in the related matter, and Pfeiffer was represented by the same attorney in both matters until their withdrawal from this matter on August 23, 2022. In his initial complaint, Eli Shouela asserted a breach of contract cause of action against Forty One Royal, alleging that on September 17, 2015, the parties executed a deed whereby Forty One Royal agreed to purchase Eli Shouela’s 50% interest in the Subject Premises for \$460,000.00 and that following the execution of the deed, Defendants have failed to make any payments to satisfy the purchase price or the mortgage encumbering the property.

Pfeiffer moved to dismiss the complaint pursuant to CPLR § 3211(a)(1) and (a)(7) and CPLR 3024(a) requiring Plaintiff to replead a more definite statement alleging that Plaintiff’s complaint was vague and failed to provide basic information necessary for Defendants to form a reasonable response.

Plaintiff then moved for leave to amend his complaint raising a quiet title cause of action based on the claim that he was fraudulently induced into executing a deed to convey his 50% ownership interest in the subject property to Defendant based on false representations made by Pfeiffer that Isaac Shouela would be made a 50% member of Forty One Royal and would be entitled to half of all profits generated by Forty One Royal. Plaintiff Eli Shouela argues that these false representations were made in order to trick him into relinquishing his rights in the property for no consideration or benefit. In opposition to the cross motion, Pfeiffer raised an argument that Isaac's rights to the property have already been adjudicated and are now barred by res judicata and that Eli Shouela does not have standing because he is not seeking to assert a claim or cause of action on his behalf since the entirety of the proposed second amended complaint is based upon the purportedly oral agreement to give his brother Isaac Shouela an interest in Forty One Royal.

Defendant's motion to dismiss was denied as moot in an order by this Court dated May 18, 2020, on the grounds that Plaintiff did adequately plead facts to support a claim for a breach of contract and alter-ego liability causes of action. In that same order, Plaintiff's cross motion was granted with the Court holding that the first through fourth causes of action under the New York Debtor Creditor Law were necessitated by a conveyance involving the property that occurred during the pendency of these proceedings. The action was stayed for 45 days following the withdrawal of Pfeiffer's attorney on August 23, 2022, and on January 9, 2023, Plaintiff moved for a default judgment serving the Defendants via first class mail at their last known addresses.

Under the doctrine of res judicata, a final disposition on the merits bars litigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the prior proceeding (*Josey v Goord*, 7 N.Y.3d 386 [20007]; *Blue Sky, LLC v Jerry's Self Storage, LLC*, 145 A.D.3d 945 [2d Dept. 2016]). For res judicata, privity includes those who are successors to a property interest, those who control an action although not formal parties to it, those whose interests are represented by a party to the action, and possibly co-parties to a prior action (Restatement, Judgments 81-90; *Watts v Swiss Bank Corp.*, 27 N.Y.2d 270 [2d Dept. 1970]). Res judicata may only apply when there is a final judgment on the merits in the first action (*In re Hunter*, 4 N.Y.3d 260 [2005]; *Hae Sheng Wang v Pao-Mei Wang*, 96 A.D.3d 1005 [2d Dept. 2012]). In instances when a dismissal of a claim occurs prior to the close of a proponent's evidence, the dismissal will not be deemed to be on the merits so as to preclude the commencement of a second action (see CPLR 5013; *Maitland v Trojan Elec. & Mach. Co.*, 65 N.Y.2d 614 [1985]). Thus, where a party's noncompliance with a disclosure order does not result in a dismissal with prejudice or an order of preclusion or summary judgment in favor of the other party so as to effectively close that party's proof, a dismissal resulting from the noncompliance is not a determination

on the merits so as to bar the commencement of a second action pursuant to the doctrine of res judicata (*Maitland* at 615-616; *Daluise v Sottile*, 40 A.D.3d 801 [2d Dept. 2007]).

Under the doctrine of collateral estoppel, a party is precluded 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, whether or not the tribunals or causes of action are the same (*Ryan v New York Telephone Co.*, 62 N.Y.2d 494 [1984]; *Vitello v Amboy Bus Co.*, 83 A.D.3d 932 [2d Dept. 2011]; *Arcamone-Makinano v Perlmutter*, 196 A.D.3d 479 [2d Dept. 2021]). The doctrine applies 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 v Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343 [1999]; *Arcamone-Makinano* at 480). Privity, as a requirement of collateral estoppel, may be found where a nonparty to prior litigation has a relationship with a party to the prior litigation such that his or her own rights or obligations in the subsequent proceeding are conditioned in one way or another on, or derivative of, the rights of the party to the prior litigation [*D’Arata v New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659 [1990]; *New York State Thruway Authority v Ketco, Inc.*, 195 A.D.3d [2d Dept. 2021]).

Here, the Court finds, that Isaac Shouela’s noncompliance with the Final Discovery Order in the prior action resulted in the court granting summary judgment in favor of Pfeiffer as well as the striking of Isaac Shouela’s answer and dismissing his counterclaim and all affirmative defenses is a final determination on the merits for the purposes of res judicata. As stated by the Appellate Division, while public policy favors the resolution of cases on the merits, a court may strike a pleading as a sanction if a party refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed. This drastic remedy is appropriate in instances where there is a clear showing that the failure to comply with discovery orders was willful and continuous. The Appellate Division found no basis to disturb the lower court’s determination to strike the defendant’s answer. Consequently, Isaac Shouela was deemed to have admitted all traversable allegations in the complaint, including the basic allegation of liability and was precluded from contesting the merits of Pfeiffer’s underlying respective motion and cross motion for summary judgment. By holding that the lower court properly granted that branch of Pfeiffer’s motion for summary judgment on the cause of action for specific performance, all aspects of the case regarding Isaac Shouela’s rights to the property were determined as being binding to the contract and the remaining contentions were disposed of constituting a full adjudication of the matter. Therefore, Isaac Shouela must comply with the contract and convey his entire interest in the properties, including the 50% interest that Plaintiff Eli Shouela had also conveyed by deed transfer. Additionally, the Court finds that under the circumstances, Plaintiff Eli Shouela was clearly in privity with Isaac Shouela and is bound by the prior determination of his liability.

Accordingly, it is hereby

ORDERED, that Plaintiff Eli Shouela's motion for a default judgment to quiet title pursuant to RPAPL 1501 and to void a deed pursuant to DCL 274-76 against Samuel Pfeiffer a/k/a Shabsi Pfeiffer, Forty One Royal Construction, LLC, and 1273 Street LLC is denied.

This constitutes the decision and order of the Court.



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HON. INGRID JOSEPH J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**