

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

SANDRA MARTIN

CIVIL ACTION

VERSUS

NO: 09-432

STATE FARM FIRE & CASUALTY
CO., ET AL.

SECTION: "A" (3)

ORDER AND REASONS

Before the Court is a **Motion to Dismiss or Alternatively Motion for Summary Judgment Based on Res Judicata (Rec. Doc. 13)** filed by defendant State Farm Fire & Casualty Co. Plaintiff Sandra Martin opposes the motion. The motion, set for hearing on November 11, 2009, is before the Court on the briefs without oral argument.

Plaintiff's claim against State Farm was originally part of a mass joinder suit filed against State Farm by the Hurricane Legal Center in CA07-4457, Aguda v. State Farm Fire & Cas. Co. A series of procedural developments led to the severance of the mass action into individual suits. Pursuant to an order issued by Magistrate Judge Wilkinson, Plaintiff filed an amended complaint on January 28, 2009, and the case was allotted to this Section. Plaintiff's claims pertain to damage sustained at 6841 Morrison Road.

State Farm now moves to dismiss the amended complaint with

prejudice on grounds of res judicata contending that Plaintiff's claims have already been adjudicated unfavorably on the merits as part of a ruling by Judge Duval in CA07-5205, Abram v. State Farm Fire & Cas. Co.

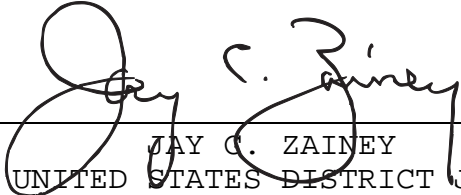
In opposition, Plaintiff contends that the claims in Abram were on behalf of "Jonathan and Sandra Martin," parties with whom she has no connection. Additionally, the claims on behalf of "Jonathan and Sandra Martin" were for damages sustained at 3132 New Orleans Street.

Plaintiff's contentions are uncontroverted. State Farm, as mover, bears the burden of establishing that res judicata applies thereby mandating dismissal. The submissions before the Court do not support a finding of res judicata vis à vis Plaintiff's claims in this action.

Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Dismiss or Alternatively Motion for Summary Judgment Based on Res Judicata (Rec. Doc. 13)** filed by defendant State Farm Fire & Casualty Co. is **DENIED**.

November 20, 2009



JAY C. ZAINY
UNITED STATES DISTRICT JUDGE