

Palmer v Casale

2012 NY Slip Op 31803(U)

July 3, 2012

Sup Ct, Richmond County

Docket Number: 8143/12

Judge: John A. Fusco

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X

GEORGE PALMER,

Petitioner(s),

-against-

DOMINICK CASALE and TONI ANN BARONE,

Respondent(s),

-----X

DCM Part 4

Present:
Hon. John A. Fusco

DECISION AND ORDER

Index No.: 80143/12

Motion No.: 1544-001

The following papers numbered 1 to 4 were marked fully submitted on this 22nd day of June, 2012:

Papers	Numbered
Order to Show Cause by Petitioner(s) with supporting Papers (dated May 18, 2012).....	1
Affirmation In Opposition by Defendant(s) Dominick Casale with Exhibits (dated March 31, 2012).....	2
Affirmation In Opposition by Defendant(s) Toni Ann Barone with Exhibits (dated May 31, 2012).....	3
Sur-Reply by Defendant(s) Toni Ann Barone (dated June 14, 2012).....	4
Reply by Petitioner consisting of the Order to Show Cause, unsworn affidavit and Exhibits.....	5

Upon the foregoing papers, the motion of petitioner is denied.

By Order to Show Cause, petitioner filed this special proceeding to recover for his “money spent in repairs and rent, violation of [his] Human Right to work and earn and honest living, violation of the supreme court order, violation of [his] right as a U.S. Citizen and to overturn the decision of the NYS DHR” against defendants Dominick Casale and Toni-Ann

Barone. Defendant Casale was the sole owner and principal of 590 Richmond Realty, Inc., the owner of premises leased by petitioner. Defendant Barone was appointed receiver of said premises. Both defendants have opposed the motion.

This case stems from a foreclosure action filed under Index No. 132036/2009 for the premises known as 590 Richmond Road, Staten Island, New York. The action was filed by Mendel Group, Inc. in Supreme Court, Richmond County against 590 Richmond Realty, Inc., Dominick Casale, et al.. By Order of the Honorable Judith McMahon dated May 28, 2010 defendant Toni Ann Barone was appointed Receiver of 590 Richmond Road. A copy of the Order is attached to Ms. Barone's opposition as Exhibit "A".

On February 1, 2011, petitioner leased the premises from 590 Richmond Realty, Inc. and entered into a commercial lease on February 1, 2011. A copy of the lease is attached to petitioner's Order to Show Cause. Petitioner desired to start a new business. Petitioner claims that the premises required extensive renovations and a partition to be useful for his purposes. Petitioner entered the premises in January 2011 and began making alterations to the premises. Around that time, petitioner claims that defendant Barone approached him and stated she was the appointed receiver of the premises. She asked him to stop work and relinquish the keys to the premises, which he did. Petitioner then contacted defendant Casale and his real estate broker to discuss the visit from the receiver. It was at this time that petitioner discovered that the premises were in foreclosure.

Approximately two weeks later, petitioner was granted access to the premises by the receiver to continue his tenancy. Petitioner reentered the premises and, at the request of the receiver, purchased liability insurance. Defendant Casale then asked petitioner to obtain the

required permits for his construction on the premises, pursuant to the lease. After these requests, petitioner researched the foreclosure action and asked defendant Casale to terminate his tenancy and return his deposit.

In or about April 2011, petitioner ceased the payment of rent on the premises. On July 19, 2011, 590 Richmond Realty, Inc. filed an eviction proceeding in Richmond County Civil Court. A copy of the filing is attached to Petitioner's Reply Exhibit "J". Petitioner was evicted from the premises by order of the Honorable Orlando Marrazzo, Jr. dated September 20, 2011. A copy of the order is attached to defendant Barone's Opposition papers as Exhibit "B". Petitioner defended the action by claiming that he was entitled to a setoff for the repairs and alterations he made to the premises, which, he found out, were in foreclosure. This defense was unavailing and the decision and order indicated that Mr. Palmer was not entitled to any rent adjustment for repairs or improvement made to the premises.

Petitioner then filed a new action with a Summons with Endorsed Complaint in the Richmond County Civil Court under Index Number CV-016816-11/RI dated September 30, 2011 against Dominick Casale, the Plaintiff in the foreclosure action, and the real estate broker alleging discrimination. In that action, Mr. Palmer made a claim for services rendered in the amount of \$15,000. A copy of the Endorsed Complaint is attached to defendant Barone's opposition papers as Exhibit "C". A motion to dismiss this action was filed by defense counsel and again documents were submitted in opposition to this action. An Order signed by Hon. Orlando Marrazzo, Jr. and dated December 12, 2011, dismissed the Complaint with prejudice. A copy of the Order is attached to defendant Barone's opposition as Exhibit "D". These decisions were not appealed.

During the fall of 2011, petitioner also filed a Complaint with the New York State Division of Human Rights alleging violation of his human rights based on race and unlawful discrimination, naming both Toni Ann Barone and Dominick Casale, as Respondents. This Complaint was also dismissed after a thorough investigation. A copy of this Order is attached to defendant Barone's opposition as Exhibit "E".

Petitioner herein asks this court to change the outcomes of these previous actions. Petitioner states vagues claims that mirror the claims in the previous actions. In support of his motion, petitioner submits his affidavit dated May 18, 2012; the decision of the New York State Division of Human Rights dated March 19 2012; the Judgment of Foreclosure and Sale in Index No. 132036/2009 signed by the Honorable Judith McMahan and dated February 14, 2011; the Order Appointing a Receiver in Index No. 132036/2009 and signed by the Honorable Judith McMahan dated May 28, 2010; the Commercial Lease Agreement between Petitioner and 590 Richmond Realty Inc.; and a letter from the New York City Department of Health and Mental Hygiene dated February 13, 2012. Petitioner also submits a reply with an unsigned unsworn affidavit and exhibits. In his affidavit, petitioner claims he was forced to invest money into a property that was already "foreclosed," and that petitioner did not know of the pending foreclosure until sometime after he entered into his lease. He also claims that defendant Casale had no right to enter into the lease with petitioner because of the pending foreclosure. Petitioner also asserts that there was unlawful discriminatory, but he does not claim by who and for what. Petitioner also does not identify what claims are asserted against defendant Casale or defendant Barone.

Both defendants have opposed the order to show cause.

Ab intio, the petitioner's claims are barred under the doctrine of collateral estoppel. The doctrine of collateral estoppel precludes a litigant from re-litigating an issue clearly decided in a prior action. (*see*, *Ryan v. New York Tel. Co.*, 62 N.Y. 2d 494 [1984]) For collateral estoppel to apply, the identical issues must necessarily been decided in the prior action and decisive in the present action, and the party to be precluded must have had a full and fair opportunity to litigate the prior determination (*See, id.; Clemens v. Apple*, 65 N.Y. 2d 746 [1985]). The burden rests upon the proponent of the collateral estoppel to prove the identity and decisiveness of the issue, while the opponent must show the absence of the full and fair opportunity to litigate. (*Id.*)

Petitioner has made the claims in this proceeding, as vague as they are, in his previous proceedings before the Hon. Orlando Marrazzo, Jr. Each of the issues before the Hon. Orlando Marrazzo, Jr. was decided and resolved on the merits. Therefore, collateral estoppel bars those claims.

To the extent it can be said that any of petitioner's claims were not previously litigated, those claims are denied. Petitioner's claims are not specific and are not supported by evidence in admissible form. Petitioner submits the copies of the previous proceedings and the correspondence between the parties. This evidence, if considered admissible, would indicate that petitioner had leased the premises and had duties pursuant to a commercial lease. (*See* CPLR 2214.) Petitioner did not fulfill his obligation under the commercial lease and his leasehold was terminated. Petitioner was confused by the legal status of the ownership of the property, however, that issue would not affect petitioner's leasehold. The fault for the failure of the commercial lease appears to lie with petitioner himself, and unfortunately, those issues have

already been adjudicated in the prior proceedings.

Furthermore, in his “reply,” petitioner submits his interpretation and unsworn unsigned statement which only supports this interpretation of the facts, if it was an admissible pleading. Finally, this matter cannot be further be converted to an Article 78 proceeding since more than sixty (60) days has passed since the New York State Division of Human Rights (“NYSDHR”) determination, and moreover, NYSDHR was not served as a party to this proceeding.

Upon the foregoing papers, it is hereby

ORDERED, that the motion of petitioner is for relief denied and the Petition is dismissed with prejudice; and it is further

ORDERED, that defendant Barone is awarded \$3181.30 in legal fees and costs and disbursements for her time and effort opposing the petition; and it is further

ORDERED, that defendant Casale shall submit an affidavit of legal fees and costs and disbursements for his time and effort opposing the petition and upon such submission, this Court shall award such reasonable fees; and it is further

ORDERED, that the Clerk of the Court shall mark the file accordingly.

Dated: July 3, 2012

E N T E R

Hon. John A. Fusco
Justice of the Supreme Court