

<b>Ali v GYW fJHlg'GYW'GYfj g"l G5 `bW</b>
2012 NY Slip Op 33092(U)
December 21, 2012
Supreme Court, New York County
Docket Number: 116700/09
Judge: Cynthia S. Kern
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** \_\_\_\_\_  
*Justice*

**PART** \_\_\_\_\_

Index Number : 116700/2009  
ALI, ROZOB  
vs.  
SECURITAS SECURITY SERVICES  
SEQUENCE NUMBER : 001  
AMEND SUPPLEMENT PLEADINGS

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	<b>No(s).</b> _____
Answering Affidavits — Exhibits _____	<b>No(s).</b> _____
Replying Affidavits _____	<b>No(s).</b> _____

Upon the foregoing papers, it is ordered that this motion is

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is decided in accordance with the annexed decision.

**FILED**  
JAN 04 2013  
NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S): \_\_\_\_\_

Dated: 12/21/12

e9K, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
ROZOB ALI,

Plaintiff,

Index No.116700/09

-against-

**DECISION/ORDER**

SECURITAS SECURITY SERVICES USA INC.  
AND ANTHONY CURTIS,

Defendants.  
-----X

**HON. CYNTHIA KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<b>FILED</b> 1
Answering Affidavits and Cross Motion.....	2
Replying Affidavits.....	3
Exhibits.....	JAN 04 2013

**NEW YORK  
COUNTY CLERKS OFFICE**

Defendant Securitas Security Services USA, Inc. ("Securitas") has brought the present motion for leave to amend its answer and for summary judgment. As will be explained more fully below, the motion is granted and the complaint is dismissed as against Securitas.

Plaintiff commenced this action for personal injuries he allegedly sustained at the Workers' Compensation Board ("WCB") offices. At the time he was injured, plaintiff was sitting on a wooden bench in the customer service waiting area at the WCB office. At that time, defendant Anthony Curtis, who was a security guard employed by Securitas, discovered as he was talking on his cell phone, that his grandfather had passed away. Curtis then allegedly came

over and punched the bench that was directly in front of plaintiff, causing it to fall over and injure him.

Based on this incident, plaintiff commenced two separate actions. He commenced the instant action against Securitas and Curtis and he commenced a separate action against the State of New York in the Court of Claims. In this action, he asserted claims against Securitas based on a respondeat superior theory and based on a negligent hiring theory. In the Court of Claims action, plaintiff asserted claims against the State based on a respondeat superior theory, based on a negligent hiring theory and based on other negligence theories. The Court of Claims action against the State has already been tried and the Court of Claims entered a decision dismissing all of the plaintiff's claims against the State of New York on May 17, 2012. The Court there held that even though Curtis was employed by Securitas, Curtis was an employer of the State for purposes of tort liability under respondeat superior. The Court further found that the evidence did not establish that Curtis was acting within the scope of his employment when he punched the bench in reaction to sad personal news. As a result, the Court found that Curtis's actions in hitting the bench were not within his scope of employment and the State could not be held liable under the doctrine of respondeat superior. The Court also specifically held that the evidence at trial did not support a finding that the State negligently hired, retained or supervised Curtis because it was not shown that the State knew or should have known of Curtis's propensity for the conduct that caused plaintiff's injury. Defendant Securitas now seeks leave of this court to amend its answer to assert the defenses of res judicata and collateral estoppel based on the determination of the Court of Claims and it also seeks summary judgment based on these defenses.

The doctrine of res judicata “provides that as to the parties in a litigation and those in privity with them, a judgment on the merits by a court of competent jurisdiction is conclusive of the issues of fact and questions of law necessarily decided therein in any subsequent action.” *Singleton Mgt. v Compere*, 243 A.D.2d 213, 215 (1<sup>st</sup> Dept 1998). This doctrine is applied “when the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first.” *Id.* Collateral estoppel involves issue preclusion rather than claim preclusion and it is based on the principle that a party should not be able to relitigate an issue which was previously decided against it. *Id.* For collateral estoppel to be invoked, the identical issue must have been decided in the prior action and be decisive in the present action and the party to be precluded must have had a full and fair opportunity to contest the prior determination. *Id.* at 215-216. If these requirements are met, there is no need, as there is with res judicata, that the cause of action sought to be barred is substantially identical to the one decided in the prior action or that the party seeking to invoke the doctrine have had any connection to the prior action. *Id.* The proper doctrine to be applied is collateral estoppel rather than res judicata where the prior disposition was not made in the course of litigation between the same parties but in prior litigation between one of the parties and a third party. *See Malloy v Trembley*, 50 N.Y.2d 46 (1980).

In the present case, Securitas is granted leave to amend its complaint to assert the affirmative defenses of res judicata and collateral estoppel as these defenses only became available to Securitas after the Court of Claims issued the decision dismissing the claims against the State. Moreover, Securitas is entitled to summary judgment dismissing the claims against it based on the doctrine of collateral estoppel. As previously stated, where the party seeking to

invoke the preclusion is not a party to the prior action, the proper doctrine to apply is collateral estoppel rather than res judicata. In the present case, all of the requirements for the application of collateral estoppel have been met. Initially, the identical issue that is decisive in this action against Securitas was necessarily decided in the prior action against the State. In this action against Securitas, plaintiff has two claims—that Securitas is liable under the doctrine of respondeat superior and that Securitas is liable under a theory of negligent hiring, retention and supervision. The exact issue of whether there is any liability based on a respondeat superior theory was necessarily decided in the prior action brought by plaintiff against the State. The Court in that action specifically found that Curtis's actions in hitting the bench were not within the scope of his employment. Based on this prior determination, there can be no liability on the part of Securitas based on a respondeat superior claim as the prior Court found that Curtis's actions in hitting his bench were not in the scope of his employment. Similarly, the other issue of whether there is any liability based on a negligent hiring, retention and supervision claim was also necessarily decided in the prior action as the Court specifically found that there was no evidentiary basis for a finding of negligent hiring, retention or supervision. Based on this prior determination, there can be no liability on the part of Securitas for negligent hiring, retention and supervision. Moreover, there is no question that plaintiff had a full and fair opportunity to contest the prior determination as there was a trial in that action. Additionally, the Court of Appeals has found that a party who litigates a personal injury claim in the Court of Claims can be precluded in a later personal injury action based on the determination of the Court of Claims. *See Malloy v Trembley*, 50 N.Y.2d 46 (1980). Based on the foregoing, plaintiff is precluded from asserting either of these claims against Securitas and Securitas is entitled to summary

judgment dismissing these claims.

The court finds there is no basis for plaintiff's argument that the summary judgment motion is untimely. The motion was timely made based on the date that defendant obtained the decision of the Court of Claims and the date it was entered.

Based on the foregoing, the motion by Securitas to amend its answer and for summary judgment dismissing the complaint is granted and the complaint is hereby dismissed as against Securitas. This constitutes the decision and order of the court. The clerk is directed to enter judgment accordingly.

Dated: 12/21/12

                    C.K.                    

J.S.C.

**FILED**  
JAN 04 2013  
NEW YORK  
COUNTY CLERK'S OFFICE