

Cangro v Park South Towers Assoc.

2013 NY Slip Op 33354(U)

May 28, 2013

Sup Ct, New York County

Docket Number: 100492/13

Judge: Donna M. Mills

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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 : DONNA M. MILLS
Justice

PART 58

JENNIFER CANGRO,

Plaintiff,

-against-

PARK SOUTH TOWERS ASSOCIATES and
ROSE & ROSE,

Defendants.

INDEX No. 100492/13

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL NO. _____

The following papers, numbered 1 to _____ were read on this motion for _____

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1, 2

Answering Affidavits- Exhibits _____

Replying Affidavits _____

CROSS-MOTION: _____ YES NO

FILED

MAY 31 2013 4, 5

NEW YORK
COUNTY CLERK'S OFFICE

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

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5/28/13


DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION _____ NON-FINAL DISPOSITION

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

JENNIFER CANGRO,

INDEX NO.
100492/13

Plaintiff,

- against -

PARK SOUTH TOWERS ASSOCIATES and
ROSE & ROSE,

DECISION/ORDER

Defendants.

FILED

DONNA M. MILLS, J:

MAY 31 2013

Motion sequence numbers 001 and 002 are consolidated for decision.

NEW YORK
COUNTY CLERK'S OFFICE

Defendants Park South Towers Associates and Rose & Rose each moves to dismiss the complaint as against it on the grounds that the complaint fails to state a cause of action and is barred by the doctrine of collateral estoppel and res judicata. Plaintiff, Jennifer Cangro, opposes both motions.

BACKGROUND

Plaintiff was the tenant of 124 West 60th Street, Apartment 42G New York, New York 10009 pursuant to a written lease agreement with the landlord dated July 3, 2006, commencing on July 1, 2006 and expiring on June 30, 2007. The lease agreement was extended for one year until June 30, 2008 pursuant to a Renewal Lease dated April 30, 2007.

Defendant South Towers Associates is the owner/landlord of the subject building where plaintiff resided. Defendant Rose and Rose was retained by the landlord to commence two summary proceedings in Housing Court against the plaintiff. Plaintiff was subsequently evicted from the subject premises on June 23, 2009.

Plaintiff commenced an action in New York County Supreme Court against the same defendants herein in December of 2009, asserting 23 causes of action including

failure to provide heat in December 2006 and January 2007, failure to eliminate disturbing sounds from the apartment above, repair and maintenance deficiencies, unlawful entries to her apartment, harassment, unlawful eviction, unlawful demand for legal fees, and false statements to various courts. Defendants both moved to dismiss the complaint. Defendants' motions were granted pursuant to Justice Paul Wooten's September 21, 2010 Decision/Order.

Plaintiff's complaint in the instant action is virtually the same complaint that Justice Wooten disposed of in his 2010 Decision/Order. Plaintiff's latest complaint, like her prior complaint, includes twenty three various causes of action. Defendants both contend that as a result of the dismissal of plaintiff's action in the 2010 case before Justice Wooten, her claims against them are barred by the doctrine of collateral estoppel and should be dismissed pursuant to CPLR 3211 (a)(5). This Court agrees.

APPLICABLE LAW AND DISCUSSION

"The doctrine of collateral estoppel . . . precludes a party 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 Tel. Co., 62 NY2d 494, 500 [1984]). Collateral estoppel effect will be given only to matters actually litigated and determined in a prior action or proceeding (see Kaufman v Eli Lilly & Co., 65 NY2d 449, 456 [1985]). It must be shown that the identical issue was decided in the prior action or proceeding, is decisive in the present action, and that the party to be precluded from relitigating the issue had a full and fair opportunity to contest it (*id* at 455).

"The party seeking the benefit of collateral estoppel bears the burden of proving that the identical issue was necessarily decided in the prior proceeding, and is decisive of the present action" (City of New York v College Pont Sports Assn., Inc., 61 AD3d 33, 42

[2009]). Once that burden is met, the party opposing the application of collateral estoppel "bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination" (Id at 42).

Defendants have met their burden by demonstrating that the cause of action in the instant action alleging, inter alia, unlawful eviction is duplicative of the cause of action previously disposed of in this very court which alleged the same facts, and does not seek distinct and different damages (see Ofman v. Katz, 89 A.D.3d 909, 911, 933 N.Y.S.2d 101; Alizio v. Feldman, 82 A.D.3d 804, 805, 918 N.Y.S.2d 218; Mahler v. Campagna, 60 A.D.3d at 1012, 876 N.Y.S.2d 143). In opposition plaintiff failed to demonstrate the absence of a full and fair opportunity to contest the prior determination.

Accordingly, it is

ORDERED that the motion by Park South Towers Associates is granted and the complaint against it is dismissed in its entirety with costs and disbursements to Park South Towers Associates as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that the motion by Rose & Rose is granted and the complaint against it is dismissed in its entirety with costs and disburserments to Rose & Rose as taxed by the Clerk of the Court upon submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

Dated: 5/28/13

FILED

So Ordered
[Signature]

MAY 31 2013
NEW YORK
COUNTY CLERK'S OFFICE

Donna M. Mills, J.S.C.

DONNA M. MILLS, J.S.C.