Paar v Bay Crest Assoc.
2014 NY Slip Op 30389(U)
February 6, 2014
Sup Ct, Suffolk County
Docket Number: 2013-02406
Judge: Jeffrey Arlen Spinner

[* 1]

SHORT FORM ORDER

INDEX NO. 2013-02406

SUPREME COURT STATE OF NEW YORK
I.A.S. PART XXI SUFFOLK COUNTY

PRESENT:

JEFFREY ARLEN SPINNER
J.S.C.

Mot. Seq. 001-MG CASEDISP

----------x

LOUIS PAAR and SUZANNE DeLISI,

Original Return Date: 08-29-2013
Final Submit Date: 09-11-2013

Plaintiffs

-against-

ORDER ON MOTION

BAY CREST ASSOCIATION a/k/a BAY CREST ASSOCIATION INC. a/k/a BAY CREST HOMEOWNER'S ASSOCIATION a/k/a BAY CREST BEACH ASSOCIATION, CHIEF EXECUTIVE OFFICERS KNOWN AND UNKNOWN, DIRECTORS KNOWN AND UNKNOWN, GEORGE C. PEZOLD, PEZOLD SMITH HIRSCHMAN SELVAGGIO LLC, RICHARD HAMBURGER and HAMBURGER MAXSON YAFFE WISHOD & McNALLY LLP,

Defendants

----------x

The within matter, commenced by Plaintiffs *pro se*, is but the most recent filing, as part of a plethora of actions brought against various individuals and a body corporate, both in this Court as well as the Third District Court. Various appeals have been filed by Plaintiffs in those actions (albeit unsuccessfully) to the Appellate Term, the Appellate Division and the Court of Appeals. This Court will not attempt to embark upon a lengthy discourse as to the background of the matter nor will it attempt to address matters that have already been decided, invoking the veneable and respected principle of *res judicata*. Familiarity with the background herein is presumed; indeed, this Court will take judicial notice of its determinations under Suffolk County index nos. 2006-21628, 2007-31111 and 2009-40286 as well as the decisions of the Appellate Division, Second Department, which may be found at 72 AD 2d 713 (2010) and 99 AD 2d 744 (2012) as well as the determination by the Court of Appeals dated February 19, 2013 at 2013 NY Slip Op 64872.

The present application (seq. 001) is a motion to dismiss made by Defendants RICHARD HAMBURGER and his law firm, who are designated as the last two named Defendants in the caption. Said motion is made pursuant to CPLR § 3211(a)(1),(3),(5),(7) & (8) and seeks dismissal of the complaint in its entirety. The application also demands the imposition of sanctions pursuant to 22 NYCRR § 130-1.1 together with attorney's fees and costs in favor of BAY CREST by virtue of what are essentially claimed to be Plaintiffs' serial and frivolous filings.

As to dismissal, Defendants assert that this new complaint is nothing more than a reiteration and rehash of matters that have been decided in the past. If Defendants are correct, then the doctrine of *res judicata* would be applicable.

The principle of *res judicata* is intended to ensure the finality of judicial decisions, thereby avoiding needless litigation. Its underlying theory is that the party has been afforded its proverbial day in court and thus has been afforded the opportunity to present its claims against the opposing party. It may be invoked not only as to claims that have already been litigated and decided but it also may be applied to those which reasonably could have been litigated, *Schuylkill Fuel Corp. v. B. & C. Nieberg Realty Corp., 250 NY 304 (1929)*. In modern parlance, this would be designated as "claim preclusion" which is a first cousin to the doctrine of collateral estoppel or "issue preclusion." Here, the Court is of the opinion that collateral estoppel, while substantially narrower in scope than *res judicata*, is nonetheless controlling and therefore warrants dismissal of the complaint *in toto*.

A thorough examination of all of the papers filed herein leads the Court to the inescapable conclusion that the matter that is *sub judice* is nothing more than another attempt by Plaintiffs to re-litigate matters that have already been finally determined, though not in their favor. Indeed, in order for collateral estoppel to lie, there must have been a final judgment on the merits of the claim, *Bannon v. Bannon 270 NY 484 (1936)*. Where the dispositive directive is in the nature of an order rather than a judgment (such as a motion for summary judgment), the order will nonetheless be given preclusive effect if the doctrinal pre-requisites for *res judicata* are satisfied (identity of parties, identity of issues, opportunity to be heard, disposition on the merits, finality), *Vavolizza v. Krieger 33 NY 2d 351 (1974)*. This is particularly applicable where the order is, by its very terms, final and not interlocutory. Here, it is facially obvious that the complaint must be dismissed on collateral estoppel grounds.

Defendants' application for sanctions, costs and attorney's fees is made and considered pursuant to 22 NYCRR § 130-1.1 and is granted as hereinafter set forth.

The provisions of 22 NYCRR § 130-1.1, insofar as applicable herein, read as follows:

> *"(a) The court, in its discretion, may award to any party or attorney...except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct...*
>
> *(c) For purposes of this Part, conduct is frivolous if (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material facts that are false...*
>
> *In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party."*

In considering this branch of Defendants' application, the Court cannot help but note that both Plaintiffs have personally appeared on numerous occasions. Moreover, the Court finds, from these multiple encounters, that each of the Plaintiffs present as both highly sophisticated and well educated individuals and further, that they both enjoy a not insubstantial grasp of both statutory law and civil procedure. In short, both Plaintiffs impress the Court as being in the nature of seasoned litigators with a great deal of legal acumen, no small feat when it is considered that neither one, to the best of the Court's knowledge, possesses a law degree.

That having been said, the Court is constrained to find that the commencement and continued prosecution of the action that is *sub judice*, is frivolous as contemplated by 22 NYCRR § 130-1.1. Plaintiffs have simply re-worded and merely recast the very claims upon which both this Court and the Appellate Division have passed judgment on more than one occasion. Indeed, upon all of the many proceedings brought by Plaintiffs against Defendants, it is clear to this Court that they are engaged in waging warfare, a vendetta if you will, and this behavior, as amply and repeatedly observed personally by the Court, cannot be countenanced, *Jones v. Camar Realty Corp. 167 AD 2d 285 (1st Dept. 1990)*. Certainly, this conduct falls within the ambit of Sub-Part (c) of the statute, the very conduct that it was designed to deter, *22 NYCRR § 130-1.1(c)*.

Accordingly, the Court finds it appropriate to impose sanctions upon both Plaintiffs for their continuing frivolous conduct.

As to the claim for reimbursement of attorney's fees and costs, Defendants are entitled to the recovery of same, the amount of which shall be determined at inquest.

It is, therefore

ORDERED that the motion herein is granted to the extent hereinafter set forth; and it is further

ORDERED that Plaintiffs' complaint shall be and is hereby dismissed with prejudice; and it is further

ORDERED that sanctions in the sum of $ 10,000.00 (Ten Thousand Dollars) are hereby imposed upon Plaintiff LOUIS PAAR, to be deposited with the Clerk of the Court not later than thirty (30) days following the date of service of a copy of this Order with Notice of Entry, for subsequent transmittal to the Commissioner of Taxation & Finance in accordance with 22 NYCRR § 130-1.3; and it is further

ORDERED that sanctions in the sum of $ 10,000.00 (Ten Thousand Dollars) are hereby imposed upon Plaintiff SUZANNE DeLISI, to be deposited with the Clerk of the Court not later than thirty (30) days following the date of service of a copy of this Order with Notice of Entry, for subsequent transmittal to the Commissioner of Taxation & Finance in accordance with 22 NYCRR § 130-1.3; and it is further

ORDERED that an inquest as to the amount of attorney's fees and costs to be awarded shall be held on March 26, 2014 at 2:30 p.m. in Courtroom A-260 of the Supreme Court, 1 Court Street, Riverhead, New York 11901, which shall not be adjourned except with leave of Court; and it is further

ORDERED that the sanctions above-stated shall be entered as a judgment of this Court; and it is further

ORDERED that any relief not specifically granted shall be and the same is hereby denied.

This shall constitute the decision, judgment and order of this Court.

Dated: February 6, 2014
Riverhead, New York

JEFFREY ARLEN SPINNER, J.S.C.

To:

Louis Paar
Plaintiff *Pro Se*
42 Bay Crest
Huntington, New York 11743

Louis Paar
Plaintiff *Pro Se*
707 21st Avenue South
Naples, Florida 34102

Suzanne DeLisi
Plaintiff *Pro Se*
56 Bay Crest
Huntington, New York 11743

Suzanne DeLisi
Plaintiff *Pro Se*
5203 Starfish Avenue
Naples, Florida 34103

Pezold Smith Hirschmann & Selvaggio LLC
Defendant *Pro Se* and Attorneys for Defendant GEORGE PEZOLD
120 Main Street
Huntington, New York 11743

Hamburger Maxson Yafffe Knauer & McNally LLP
Defendant *Pro Se* and Attorneys for Defendant RICHARD HAMBURGER
225 Broadhollow Road
Melville, New York 11747

__X__Final Disposition _____ Non-Final Disposition
___X_ Scan _____ Do Not Scan