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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

BARBARA PEDOTE, NELSON HESS, DARLENE FUNK, MARCY RAPPAPORT, DALE EBERSBERGER, CATHERINE SNYDER, LISA CARAMICO, JACQUELINE NARGI, DEBBI ST. CLAIR, NANCY DRASSER, ALEXANDRA KOSTOS, PHILLIP SCHMIDT, EDWARD KESSLER, ELIZABETH MCCAULEY, JEANETTE JAROSLAWSKI, ANNA SESSA, CONNIE SESSA, ROSE RENATE-KARSCH, RANDI PORTNOY, THERESA WALCH, WILLIAM STONESTREET, SUSAN STONESTREET, JOSEPHINE BLANCUZZI, ROSEANN MCCANN, DIANE JOHNSON, ANDREW FROMIA,

Plaintiffs,

-against-

STP ASSOCIATES, LLC,

Defendant.

TRIAL/IAS, PART 41
NASSAU COUNTY
INDEX NO.: 12-004729
XXX

MOTION SUBMISSION
DATE: 6-29-12

MOTION SEQUENCE
NOS. 1 and 2

The following papers read on this motion:

Notice of Motion and Affidavit of Jeffrey A. Miller	1
Affidavit in Opposition of William V. Rapp	2
Reply Affidavit of Jeffrey A. Miller	3
Order to Show Cause to Consolidate	4
Affidavit of Barbara S. Pedote	5
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Defendant STP Associates, LLC (hereinafter STP) has owned the Syosset Trailer Park located at 80 West Jericho Turnpike, Syosset, New York, since 2007.

Plaintiffs are owners of mobile homes and tenants of Syosset Trailer Park.

This is, to the Court's knowledge, the third action or proceeding brought by tenants of the Syosset Trailer Park against STP in this Court (Additionally, an entity known as Hope Assoc. of Syosset, LLC commenced a subsequent action against STP and others in this Court under Index No. 4940-12).

Procedural History

The history of the prior litigations are succinctly set forth in the decision and order of Justice Thomas P. Phelan dated December 10, 2010 dismissing the action entitled *Drasser, et al. v. STP Associates, LLC*, under Index No. 15465-09:

> Defendant, STP Associates, LLC ("STP"), purchased the Syosset Trailer Park located at 80 West Jericho Turnpike, Syosset, New York, in 2007. Plaintiffs are the remaining tenants at the trailer park. Real Property Law §233(e) requires each manufactured home park owner to offer each tenant the opportunity to enter into a lease with a term of not less than one year. On June 1, 2007, STP sent each tenant of the park a written lease in which it offered a one-year rental agreement. None of the plaintiffs executed the lease agreement. Therefore, as of September 1, 2007, they became month-to-month tenants of the park. In September 2007, STP terminated plaintiffs' tenancies.
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> In November 2007, it commenced eviction proceedings against each of the individual plaintiffs in the Nassau County District Court, First District, Landlord/Tenant Part. In response to those proceedings, plaintiffs commenced a lawsuit in Nassau County Supreme Court, entitled *Amatuzio v. STP*, index number 021154/07 (the prior action). The first cause of action sought to void the sale of the park from Hormi Holding to STP based on an alleged violation of RPL §233(b)(6). The second cause of action sought a court order directing STP to provide a six-month notice of change of use pursuant to RPL §233 prior to commencing eviction proceedings. The third cause of action sought an order directing STP to modify the proposed written lease to include terms and conditions favorable to and desired by plaintiffs. The fourth cause of action alleged that the proposed rent increase by STP violated RPL §233(g)(3) and sought an order directing compliance with that requirement.

Simultaneously with the filing of the prior action, plaintiffs sought and obtained a temporary restraining order from this court preventing STP from continuing the holdover proceedings and the District Court from considering the proceedings or issuing a judgment of eviction. In denying plaintiffs' request for a preliminary injunction, this court determined that STP offered leases to plaintiffs in accordance with the statute. None were executed, thereby creating a month-to-month tenancy. (Decision of the Hon. Thomas Phelan, dated 3/20/08, *Amatuzio et al.* (2008 NY Slip Op. 30867(U), Sup. Ct. Nassau County) (p. 4) (the prior decision). On April 29, 2008, plaintiffs filed for, and were granted, a further stay of the summary proceedings by the Appellate Division, Second Department.

One of the major contentions of plaintiffs in the prior action was that they were entitled to a six-month change-of-use notice before the commencement of a holdover proceeding against residents of a manufactured home park. In the context of the prior action, on May 30, 2008, the parties agreed in a written stipulation to the following: 1) Defendant STP retroactively withdrew all previous Notices to Terminate served on plaintiffs as if the same had never been served and retroactively restored the tenancies. The pending Holdover Summary Proceedings were withdrawn. 2) In accordance with Real Property Law §233(b)(6), STP agreed to serve six (6) months Change of Use notices on each plaintiff herein prior to commencing a Summary Holdover Proceeding based on a month-to-month termination. 3) The second cause of action in plaintiff's Amended Complaint was withdrawn. 4) Plaintiffs withdrew their appeal to the Appellate Division Second Department.

In June 2008, plaintiff served a Six Month Change of Use Notice, pursuant to Real Property Law §233(b)(6) advising defendants that the owner proposed a change in the use of the park and that their month-to-month tenancies were terminated as of December 31, 2008. Pending the expiration of the notices of termination, defendant filed Non-Payment Summary Proceedings, which were concluded by stipulation. Plaintiffs settled the non-payment proceedings by paying approximately 19 months rent of the 23 claimed due.

On August 6, 2008, the prior action was discontinued with prejudice by stipulation. Three homeowners residing at the park (Giner Bonner, Marcy Rappaport and Lisa Caramico) were not

provided with the Notice of Termination when the other plaintiffs were served. Defendant was prohibited by federal bankruptcy law from giving notice to those three homeowners (United States Bankruptcy Code, 11 U.S.C. §362). The bankruptcy stay relative to these three residents was lifted by the United States Bankruptcy Court, Eastern District of New York, on March 9, 2010 (Orders of the Hon. Robert E. Grossman, dated March 9, 2010). These homeowners were served Notices of Change in Use on March 17, 2010, with a termination date of September 30, 2010. The court notes that on January 26, 2010, defendant also served Notices of Termination on each plaintiff advising that each of their tenancies would terminate on March 31, 2010.

In the action now before the court, plaintiffs again seek a preliminary injunction pursuant to CPLR 6311 enjoining STP from commencing any eviction proceedings against plaintiffs in reliance on its service on plaintiffs of the Notice to Quit dated September 15, 2009, that stated "Six Month Notice of Proposed Change in Use of the Land Comprising Syosset Trailer's Park." Plaintiffs also seek an order directing summary judgment pursuant to CPLR 3212 on the first cause of action, declaring and setting forth the rights of the parties, specifying that plaintiffs are in good standing and were entitled to a written lease for a term of at least twelve months on or before October 1, 2009, containing terms and conditions, including provisions for rent and other charges, consistent with all rules and regulations promulgated by the manufactured home park owner/operator prior to the date of the offer, with rent charges identical to the rents currently paid by plaintiff; on the second and third causes of action, declaring and setting forth the rights of the parties, specifying that the Notices to Quit are null and void and of no effect; on the fourth cause of action, permanently enjoining STP from serving any further notices pursuant to RPL §233, without leave of the court, on any of plaintiffs or until such time as the court may determine that STP is in compliance with the requirements of RPL §233(b)(6)(i); and declaring that pursuant to RPL §233(b)(6), STP may only move forward to evictions based on an actual change in use, not a proposed change in use.

Justice Phelan dismissed the *Drasser* complaint, holding that STP's September, 2009 Change of Use Notices complied with RPL §233 as a predicate to commence holdover proceedings, that plaintiffs were not entitled to further lease offerings, that the

stipulation discontinuing the first action was valid and enforceable, and that plaintiffs were not entitled to injunctive relief.

The Appellate Division, Second Department, affirmed the order dismissing the complaint by order dated December 13, 2011. *Drasser v. STP Associates, LLC*, 90 AD3d 701. Plaintiffs sought unsuccessfully to stay Justice Phelan's order during the pendency of that appeal.

As a result, STP commenced summary holdover proceedings to evict the plaintiffs in the District Court of Nassau County. Plaintiffs engaged in motion practice in that court challenging the Change of Use Notices. By order dated December 15, 2011, the District Court (Fairgrieve, J.) rejected plaintiff's challenges and held the Notices to be proper. *STP Associates, LLC v. Drasser, et. al.,* 2011 NY Slip Op 52243(U).

Current Litigation

Plaintiffs, at least twenty (20) of whom were also plaintiffs in the *Drasser* action, subsequently commenced this action seeking declaratory judgment and other relief. The first claim is that the Change of Use Notices are invalid due to STP's filing of Tax Reduction Applications. The second claim is that STP is seeking to evade or circumvent state and local environmental laws and regulations. The final claim is that the Change of Use Notices are invalid under RPL §233(b)(6)(ii).

Defendant moves to dismiss the complaint pursuant to CPLR 3211(a)(5) and (7), for sanctions and for other relief. Defendants allege that each of these claims is barred as a matter of law by res judicata and collateral estoppel.

Plaintiffs contend that dismissal is inappropriate as a motion to reargue the *Drasser* dismissal is pending before the Second Department. Counsel for plaintiffs also argues that the causes of action are unrelated to the theory of the *Drasser* case, despite the fact both complaints concern STP's Change of Use Notices.

Plaintiffs additionally have moved by Order to Show Cause to remove and consolidate two pending summary proceedings with this case pursuant to CPLR 602(b). Defendant STP opposes said relief for several reasons. First, as set forth above, STP contends that this action is barred by res judicata and collateral estoppel as a matter of law pursuant to CPLR 3211(a)(5) and therefore is without merit. Second, such relief would severely prejudice defendant STP as the summary proceedings are ready for disposition and this action is at a "markedly different procedural stage". *Abrams v. Port Auth. Trans-Hudson Corp.,* 1 AD3d 118, 119 (1st Dept. 2003). Defendant has made a pre-answer motion to dismiss herein, while the landlord-tenant summary proceedings, commenced well over a year ago, are now ready for trial. *See, Cohen v. Goldfein,* 100 AD2d 795, 797 (1st Dept. 1984).

Motion to Dismiss

Res Judicata is invoked when parties attempt to relitigate entire causes of action between them, and precludes issues that were actually litigated and those that could have been litigated in the prior action. *See Nottenberg v. Walber 985 Co.*, 160 A.D.2d 574, 575 (1st Dept. 1990) (citing *Boorman v. Deutsch*, 152 A.D.2d 48, 53). "Under New York's transactional analysis approach to res judicata, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions

are barred, even if based upon different theories or if seeking a different remedy.'" *83-17 Broadway Corp. v. Debcon Fin. Servs., Inc.*, 39 A.D.3d 583, 584 (2nd Dept. 2007) (quoting *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357 (1981); *See also New Horizons Invs. v. Marine Midland Bank*, 248 A.D.2d 449 (2nd Dept. 1998). Thus, all relevant issues which *could have* been litigated in a previous action are barred from being litigated in all future actions. *Buechel v. Bain*, 275 A.D.2d 65, 72 (1st Dept. 2000) *aff'd*, 97 N.Y.2d 295 (2001).

Collateral estoppel is invoked when an issue, which was actually and necessarily decided in a previous action, is raised in a subsequent case, and serves as a determination for all future actions. *DaimlerChrysler Corp. v. Spitzer*, 782 N.Y.S.2d 610, 615 (Sup. Ct. 2004) *aff'd.* 26 A.D.3d 88 (2005) *aff'd.* 7 N.Y.3d 653 (2006). It is restricted to issues that were actually determined and does not apply to issues which "could have been" litigated. *Id.* To invoke the doctrine of collateral estoppel two elements must be found: first, the party seeking to estop the re-litigation of an issue must prove that the identical issue was actually decided and applies to the current action; and second, the party being precluded from raising the issue must have had a full and fair opportunity to contest the prior determination. *Id.* "[T]he burden rests on the proponent of collateral estoppel to demonstrate the identicality and decisiveness of the issue," (*Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 501 [1984]; *Capital Telephone Co., Inc. v. Pattersonville Telephone Co., Inc.*, 56 N.Y.2d 11,18 [1982]; *Schwarz v.*

Public Admin., 24 N.Y.2d 65, 73 [1969]), while the opponent bears the burden to show an absence of a full and fair opportunity to litigate the prior determination. *Id.*

In the present action, Plaintiffs allege that newly found Tax Reduction Applications, which attempted to categorize Defendant's property as vacant land to lower the tax burden on the property, nullify the previous judgments against them. Plaintiffs allege that these applications not only invalidate Defendant's proffered reason for the change of use, but also are evidence that Defendant is attempting to circumvent state and municipal environmental regulations related to rezoning property. Further, Plaintiffs allege that Defendant's applications for tax reductions constituted a certification that the land would continue to be used as a manufactured home park and thus invoke RPL § 233(b)(6)(ii) (which precludes evictions based on change of use for sixty (60) months after the sale of the property when the buyer certifies the existing use).

Contrary to Plaintiffs' contentions, the allegations set forth in Plaintiffs' verified complaint are barred by collateral estoppel and res judicata. Plaintiffs pleaded and litigated the exact same cause of action pertaining to the Change of Use Notices before Justice Thomas P. Phelan. Further, the issue regarding the validity of all the Change of Use Notices was again raised before Judge Fairgrieve, in the Nassau County District Court.

Plaintiffs contend that the present action is exempt from res judicata and collateral estoppel because the present action seeks different relief from the previous cases. This is simply not the law.

Plaintiffs and Defendant were parties to the prior actions where the claims at issue herein were litigated. The transaction upon which this action is based was the subject of prior claims brought by, and dismissed against the Plaintiff. Claims may arise out of the same transaction "even if there are variations in the facts alleged, or different relief is sought" and even when "several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief." *Elias v. Rothschild*, 29 A.D.3d 448 (1st Dept. 2006). Therefore, since this Court, the District Court, and the Appellate Division, Second Department have all previously concluded that Defendant's Change of Use Notices complied with RPL § 233(b), Plaintiffs are precluded by res judicata from repleading and litigating the same claims against Defendant.

Further, identical issues pertaining to Defendant's compliance with RPL §233(b) were decided in the previous actions. The submissions clearly indicate that Plaintiffs had a full and fair opportunity to litigate the issues pertaining to the Change of Use Notices in the previous actions. Therefore, Plaintiffs' allegations pertaining to the validity of the Change of Use Notices are barred by collateral estoppel.

Plaintiffs' final contention, that dismissal at this stage is improper because an appeal to reargue the *Drasser* case is still pending before the Appellate Division Second Department, is immaterial. Even a successful outcome on the motion to reargue would not by itself permit this different action to go forward. Accordingly, the motion by Defendant to dismiss the Complaint is granted on the grounds of res judicata and collateral estoppel.

Motion for Sanctions

Turning to the Defendant's motion for sanctions, 22 NYCRR 130-1.1(c) allows the Court to sanction a party or attorney for frivolous conduct 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 factual statements that are false. In determining whether sanctions are appropriate the Court must look to the complete pattern of conduct by the offending party or attorney. *Levy v. Carol Mgmt. Corp.*, 260 A.D.2d 27, 33 (1st Dept. 1999) (citing *William Stockler & Co. v. Heller*, 189 A.D.2d 601 *lv. denied.* 81 N.Y.2d 963.

Although Defendant's arguments are barred by res judicata and collateral estoppel, they are not so devoid of merit as to be considered "frivolous" within the meaning of 22 NYCRR 130-1.1(c)(2). Further, the Court does not find that the current action was undertaken primarily to "delay or prolong the resolution of the litigation" or to harass or injure the Defendant. Accordingly, Defendant's motion for sanctions is denied.

Motion to Consolidate

Plaintiff's motion to consolidate this action with two pending summary proceedings pursuant to CPLR 602(b) is denied. For the reasons set forth above the current action is dismissed and therefore Plaintiff's application to consolidate two District Court cases with this action is moot.

Based on the foregoing, it is hereby

ORDERED that Defendant's motion to dismiss the Complaint is granted, Defendant's motion for sanctions is denied; and it is further

ORDERED that Plaintiff's motion to consolidate pursuant to CPLR 602(b) is denied.

This constitutes the Decision and Order of the Court.

Dated: July 23, 2012

STEVEN M. JAEGER, A.J.S.C.