

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 26, 2012

514247

DAVID WASSON et al.,
Respondents,

v

MEMORANDUM AND ORDER

RUTH BOND et al.,
Appellants.

Calendar Date: May 21, 2012

Before: Rose, J.P., Spain, Malone Jr., Kavanagh and
Egan Jr., JJ.

Kernan & Kernan, PC, Utica (Leighton R. Burns of counsel),
for appellants.

Cohen & Cohen, Utica (Daniel S. Cohen of counsel), for
respondents.

Malone Jr., J.

Appeal from an order of the Supreme Court (Coccoma, J.),
entered September 26, 2011 in Otsego County, which granted
plaintiffs' motion to dismiss defendants' counterclaims.

In March 2011, plaintiffs commenced this action against
defendants alleging various trespasses that purportedly caused
damage to plaintiffs' property. In July 2011, defendants
answered and alleged in a counterclaim that defendant Ruth Bond
acquired title to plaintiffs' property in June 2011 by virtue of
a deed executed by Southern New York Railway Inc. (hereinafter
the railway). Plaintiffs moved to dismiss the counterclaim on
the basis that, during the course of prior litigation, it had
been determined that plaintiffs' predecessors in interest held

valid title to the disputed property (see Wasson v Bond, 80 AD3d 1114 [2011]).¹ Supreme Court granted plaintiffs' motion and defendants appeal.

Supreme Court properly dismissed defendants' counterclaim as barred by res judicata and collateral estoppel inasmuch as the issue of the ownership of the disputed property was previously raised, fully litigated and adjudicated by Supreme Court adversely to Bond (see generally Buechel v Bain, 97 NY2d 295, 303 [2001], cert denied 535 US 1096 [2002]; See Why Gerard, LLC v Gramro Entertainment Corp., 94 AD3d 1205 [2012]). Although defendants now assert that Bond had obtained title to plaintiffs' property by virtue of a deed executed by the railway in June 2011, that deed essentially mirrors the deeds executed by the railway in 2005 and 2006 that purported to convey the railway's alleged interest in the property to Bond, and those deeds were previously determined to be "ineffectual to vest in Bond any title or interest in the [property]." Indeed, it was decided by the court in the prior litigation that the railway's chain of title includes only a right-of-way over the disputed parcel, and the railway never held a fee title interest in it. Thus, no deed executed by the railway can be effective to convey fee title to Bond. Contrary to defendants' contention, the fact that the railway was not a party to the prior action does not mandate a different result inasmuch as the court previously determined that the claim of ownership asserted by plaintiffs' predecessors in interest defeated any possible claim of ownership by the railway, as was asserted by Bond in the prior litigation, and it cannot be said that the railway's interests were not adequately represented by Bond in the prior action (see Green v Santa Fe Indus., 70 NY2d 244, 253 [1987]; Israel v Wood Dolson Co., 1 NY2d 116, 118-120 [1956]).

To the extent not specifically addressed, defendants' remaining contentions have been considered and found to be

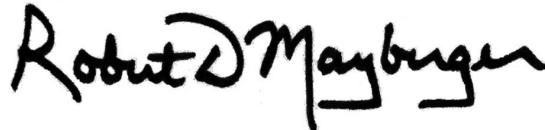
¹ At the time of the prior litigation, plaintiffs' parents, William Wasson and Jacqueline Wasson, owned the property at issue. Plaintiffs acquired title to the property from their parents in June 2010.

without merit.

Rose, J.P., Spain, Kavanagh and Egan Jr., JJ., concur.

ORDERED that the order is affirmed, with costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court