

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ST. LAWRENCE

FREDERICK E. BIGGS,

Index No. 119962

Plaintiff,

DECISION

- against -

**&
ORDER**

JAMES A. O'NEILL,

IAS #44-1-2005-0770

Defendant.

Appearances: Plaintiff, *pro se*; David P. Antonucci, Esq., attorney for Defendant.

DEMAREST, J.

Defendant, James A. O'Neill ("O'Neill"),

moves for summary judgment, pursuant to New York Civil Practice Law & Rules Rule 3212, dismissing this lawsuit. Plaintiff Frederick E. Biggs ("Biggs") appears *pro se*, opposing the relief sought.

By Summons with Notice and Verified Complaint, dated July 26, 2005, Biggs commenced an action against O'Neill. Thereafter, O'Neill served his Answer with numerous Affirmative Defenses. On this motion, O'Neill claims the Complaint should be dismissed on the basis of: 1) *res judicata*; 2) collateral estoppel; and, 3) statute of limitations. O'Neill points to previous litigation between the parties which was commenced by Summons and Complaint filed June 2, 1999, in the matter of Frederick E. Biggs and Patricia M. Biggs v. James A. O'Neill, individually and d/b/a Construction Management Services and the subsequent proceedings in that action which were ultimately resolved by settlement of the parties and discontinued by Stipulation of Discontinuance dated March 16, 2006. The Stipulation of Discontinuance recites the action between Frederick and

Patricia Biggs and James A. O'Neill, individually and d/b/a Construction Management Services, was "compromised and settled...for breach of contract..." and further states "...All other claims, counterclaims and causes of action of each party against the other in this action are dismissed with prejudice..." Both lawsuits arise out of a transaction between the parties involving a contract for construction of a single family residence in Canton, New York, in 1997 and 1998.

Biggs claims his *pro se* Complaint raises "multiple issues of fact." He also claims the doctrines of *res judicata* and collateral estoppel do not apply to this action. He alleges his causes of action in this Complaint are different claims arising out of a similar set of facts.

The Court of Appeals, in Hodes v. Axelrod, 70 NY2d 364 (1987), addresses the *res judicata* doctrine, stating:

"Simply stated, where there is a valid final judgment the doctrine of *res judicata*, or claim preclusion, bars future litigation between those parties on the same cause of action. The doctrine rests not on constitutional underpinnings but on sound public policy considerations. Putting an end to a matter for all time is fair to the party who has endured the cost and travail of a litigation, fair to the party whose claim has once been heard, and in the interest of the judicial system generally...The fact that causes of action may be separately stated or statable, or invoke different legal theories, will not permit relitigation of claims. In this State, we have adopted a "transaction" test for resolving such questions: a judgment extinguishes "all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." [citations omitted].

Application of the collateral estoppel doctrine, also commonly referred to as issue preclusion, has the same effect. The doctrine prohibits relitigation of

issues where the identical issues were decided in the prior action and the parties had a full and fair opportunity to contest the issues in the prior action. The burden is on Biggs to defeat O'Neill's claim that collateral estoppel applies to his second Complaint, by establishing the issues are not identical and that he did not have a full and fair opportunity to litigate. See D'Arata v. New York Central Mutual Fire Insurance Co., 76 N.Y.2d 659 (1990). Biggs has not done so. The prior lawsuit included a cause of action for fraud and/or misrepresentation which was not proved at trial. [See Transcript p. 714, lines 2-22].

Contrary to the position taken by Biggs, the Complaint filed July 26, 2005 must be dismissed. The Stipulation of Discontinuance dated March 16, 2006, clearly covered "All other claims, counterclaims and causes of action of each party against the other in this action," and dismissed them with prejudice. The claims and issues in both Complaints arose out the same transaction and were resolved and dismissed with prejudice. Relitigation of the claims and issues is precluded.

SO ORDERED

DATED: June 29, 2006,

Judge Demarest was informed by our (shoddy construction case) attorney, Henry Leader, that we would not settle the shoddy construction suit if it meant settling the fraud issue as well. That was understood by Judge Demarest, and his words on the record in the settlement prove it. We consider this decision a stab in the back, and anything but "honorable".


DAVID DEMAREST, J.S.C.

ENTER:

{Decision & Order, and moving papers filed}