

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW
YORK, FOURTH DEPARTMENT**

Fraccola v. 1st Choice Realty, Inc.

124 A.D.3d 1360 (4th Dep't 2015) · Decided January 2, 2015

SUMMARY

The Appellate Division, Fourth Department held that the plaintiff's challenge to the validity of a prior order for lack of subject matter jurisdiction was barred by collateral estoppel and res judicata. The court nevertheless vacated sanctions for costs and attorney's fees because Supreme Court had not complied with 22 NYCRR 130-1.2, and remitted the matter for further proceedings.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Fourth Department
WRITING FOR THE COURT	Centra, J.P.; Fahey, J.; Valentino, J.; Whalen, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	January 2, 2015
DISPOSITION	remanded
PROCEDURAL POSTURE	Plaintiff appealed from an order and judgment denying his motion under CPLR 5015(a)(4) to vacate a prior order and imposing sanctions in the form of costs and attorney's fees.
STANDARD OF REVIEW	Review of the order and judgment for error as a matter of law.
PRECEDENTIAL VALUE	published
PARTIES	Fraccola v. 1st Choice Realty, Inc.

TOPICS

sanctions

subject matter jurisdiction

res judicata

appellate procedure

civil procedure

PRACTICE AREAS

civil procedure

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sanctions

real estate

QUESTIONS PRESENTED

1. Whether plaintiff's challenge to the prior order based on alleged lack of subject matter jurisdiction was barred by collateral estoppel and res judicata.
2. Whether Supreme Court properly imposed costs and attorney's fees as sanctions without complying with the written-decision requirements of 22 NYCRR 130-1.2.

HOLDINGS

1. Plaintiff's challenge to the validity of the prior order on the ground that Supreme Court lacked subject matter jurisdiction was barred by collateral estoppel and res judicata because the issue had previously been fully litigated and determined to be without merit.
2. Supreme Court erred by imposing costs and attorney's fees without setting forth in a written decision the conduct supporting sanctions, the reasons the conduct was frivolous, and the reasons the amount imposed was appropriate.

KEY QUOTATIONS

"We conclude that plaintiffs challenge to the validity of the prior order on the ground that Supreme Court lacked subject matter jurisdiction is barred by the doctrines of collateral estoppel and res judicata because that issue has previously been fully litigated and determined to be without merit" (124 A.D.3d at 1360)

"the court erred in failing to comply with 22 NYCRR 130-1.2 inasmuch as it failed to set forth in a written decision "the conduct on which . . . the imposition [of sanctions] is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount . . . imposed to be appropriate"" (124 A.D.3d at 1360-1361)

FACTUAL BACKGROUND

Plaintiff sought to vacate a prior order on the ground that Supreme Court lacked subject matter jurisdiction. That jurisdictional issue had previously been fully litigated and determined to be without merit. Supreme Court also imposed costs and attorney's fees as sanctions for frivolous conduct but did not issue the written findings required by 22 NYCRR 130-1.2.

PROCEDURAL HISTORY

Supreme Court, Oneida County, entered an order and judgment on February 25, 2014 denying plaintiff's motion to vacate a July 28, 2005 order and sanctioning plaintiff for frivolous conduct. The Appellate Division affirmed the denial of vacatur, modified the judgment by vacating the sanctions-related ordering paragraphs, and remitted the matter for compliance with the sanctions rule.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Supreme Court, Oneida County, must conduct further proceedings in compliance with 22 NYCRR 130-1.2, including setting forth in a written decision the conduct supporting sanctions, the reasons the conduct was frivolous, and the reasons the amount imposed is appropriate. The denial of plaintiff's motion to vacate was affirmed, while the second, third, and fourth ordering paragraphs imposing costs and attorney's fees were vacated.

CASES CITED

- Zayatz v. Collins, 48 A.D.3d 1287, 1289-1290 (4th Dep't 2008)
- Tuper v. Tuper, 34 A.D.3d 1280, 1282 (4th Dep't 2006)
- Ikeda v. Tedesco, 70 A.D.3d 1498, 1499 (4th Dep't 2010)

OPINION

PER CURIAM.

Appeal from an order and judgment (denominated order) of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered February 25, 2014. The order and judgment denied the motion of plaintiff to vacate an order dated July 28, 2005, and sanctioned plaintiff for frivolous conduct. It is hereby ordered that the order and judgment so appealed from is unanimously modified on the law by vacating the second, third and fourth ordering paragraphs, and as modified the order and judgment is affirmed without costs, and the matter is remitted to Supreme Court, Oneida County, for further proceedings in accordance with the following memorandum: Plaintiff appeals from an order and judgment that, inter alia, denied his motion pursuant to CPLR 5015 (a) (4) to vacate a prior order and imposed sanctions in the form of costs and attorney's fees.

We conclude that plaintiffs challenge to the validity of the prior order on the ground that Supreme Court lacked subject matter jurisdiction is barred by the doctrines of collateral estoppel and res judicata because that issue has previously been fully litigated and determined to be without merit (see generally *Zayatz v Collins*, 48 AD3d 1287, 1289-1290 [2008]; *Tuper v Tuper*, 34 AD3d 1280, 1282 [2006]).

We further conclude, however, that the court erred in failing to comply with 22 NYCRR 130-1.2 inasmuch as it failed to set forth in a written decision "the conduct on which... the imposition [of sanctions] is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount... imposed to be appropriate" (see *Ikeda v Tedesco*, 70 AD3d 1498, 1499 [2010]).

We therefore modify the order and judgment by vacating the award of costs and attorney's fees, and we remit the matter to Supreme Court for compliance with 22 NYCRR 130-1.2. Present — Centra, J.P, Fahey, Valentino, Whalen and DeJoseph, JJ.

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