

**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.

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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