

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL IAS/ PART 2
NASSAU COUNTY

BRIANNE MOONEY,

Plaintiff,

-against-

MOTION #001,002
INDEX#601313/17
MOTION DATE:
May 12th, 2017

MANHATTAN OCCUPATIONAL, PHYSICAL
and SPEECH THERAPIES, PLLC,

Defendants.

The following papers have been read on this motion:

Notice of Motion.....	1
Notice of Cross-Motion.....	1
Affirmation in Opposition.....	1
Reply Affirmation.....	1
Briefs.....	
Defendant's Memorandum of Law in Opposition.....	1
Defendant's Memorandum of Law.....	1

Upon the foregoing papers, it is ordered that the defendant's motion to dismiss pursuant to CPLR 3211 (a)(5) and (1) and the plaintiff's cross-motion to vacate a Stipulation of Discontinuance; permit the filing of another stipulation of discontinuance; directing the defendant to answer and for costs and sanctions are determined as hereinafter set forth.

The plaintiff commenced this action alleging that she was terminated from her employment with the defendant in retaliation for reporting suspected child abuse.

In support of the motion, it is asserted that the complaint is barred by the doctrine of *res judicata* and documentary evidence. It is alleged that the plaintiff commenced a prior action premised upon the same facts and circumstances and discontinued the action with prejudice pursuant to a Stipulation of Discontinuance with prejudice dated January 9th, 2017.

In support of the cross-motion, it is asserted that the Stipulation of Discontinuance dated January 9th, 2017 was issued in error and was only intended to discontinue the action against Happy Hour 4 Kids. It is requested that the Court vacate the mistaken Stipulation of Discontinuance, allow for the substitution of the Stipulation of Discontinuance and direct the

defendant to answer.

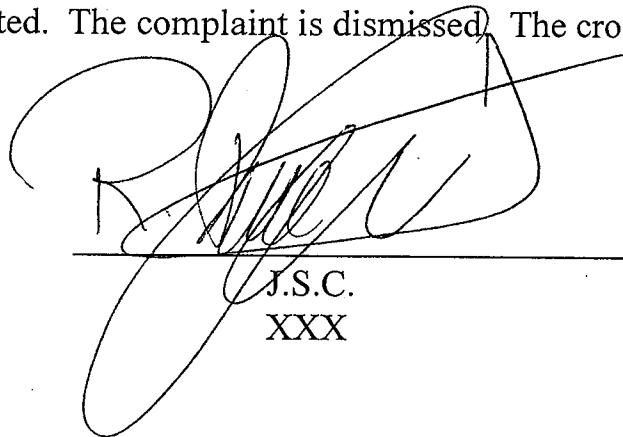
"The doctrine of res judicata 'operates to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same factual grouping or transaction and which should have or could have been resolved in the prior proceeding' (*Koether v Generalow*, 213 AD2d 379, 380, 623 NYS2d 328). The party seeking to invoke the doctrine of res judicata must demonstrate that the critical issue in the instant action was decided in the prior action and that the party against whom estoppel is sought was afforded a full and fair opportunity to contest such issue (see *Matter of New York Site Dev. Corp. v New York State Dept. of Env'tl. Conservation*, 217 AD2d 699, 700, 630 NYS2d 335). Under the doctrine of collateral estoppel, a party is precluded from relitigating an issue which has been previously decided against him in a prior proceeding where he had a full and fair opportunity to litigate such issue (see *D'Arata v New York Cent. Mut. Fire Ins., Co.*, 76 NY2d 659, 563 NYS2d 24, 564 NE2d 634; *Kaufman v Lilly & Co.*, 65 NY2d 449, 455, 492 NYS2d 584, 482 NE2d 63; *Schwartz v Public Administrator of County of Bronx*, 24 NY2d 65, 69, 298 NYS2d 955, 246 NE2d 725). The two elements that must be satisfied to invoke the doctrine of collateral estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue (see *Kaufman v Lilly & Co.*, *supra* at 455, 492 NYS2d 584, 482 NE2d 63; *Schwartz v Public Administrator of County of Bronx*, *supra* at 71, 298 NYS2d 955, 246 NE2d 725). *Luscher Ex Rel Luscher v Arrua*, 21 AD3d 1005, 801 NYS2d 379, 381 [2nd Dept., 2005].

In the instant matter, the Court finds that the issues raised in this action are the same issues raised in the prior action.

As such, the defendant's motion is granted. The complaint is dismissed. The cross-motion is denied.

Dated:

OCT 03 2017



J.S.C.
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