UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES J. DECOULOS,

Plaintiff,

v.

TOWN OF AQUINNAH, the AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC., and the COMMONWEALTH OF MASSACHUSETTS,

Defendants.

Civil Action
No. 1:17-cv-11532-ADB

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

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I. INTRODUCTION

In 1997, Plaintiff James J. Decoulos and his wife Maria Kitras filed a state court action seeking declaratory relief granting them easements to various parcels of land in the Town of Aquinnah on Martha's Vineyard. That case was resolved by the Massachusetts Supreme Judicial Court in a 2016 decision denying Decoulos and Kitras relief. During the intervening two decades, Decoulos, either individually or with other related individuals or trusts of which he was the beneficial owner, filed various state and federal claims also seeking easements for various Aquinnah properties, or a finding that denial of such easements constituted an unconstitutional taking of property, including as to the parcel at issue in this case (Lot 557). Decoulos' claims were without merit, and he was denied at each turn. Now, having been rebuffed by the state courts, Decoulos asks this Court to adjudicate the same question he has unsuccessfully pursued in state court for two decades, with an Amended Complaint against the Town of Aquinnah and the Aquinnah/Gay Head Community Association, Inc. ("AGHCA"), that seeks to collaterally attack the decision of the Supreme Judicial Court. This Court lacks subject matter jurisdiction to entertain such an attack under the *Rooker-Feldman* doctrine, and even if it possessed jurisdiction, Decoulos is specifically precluded from pursuing his claims by the doctrine of collateral estoppel, as the Town of Aquinnah explains in its brief. These grounds are more than sufficient to bar Decoulos' claims against the AGHCA as well. But the AGHCA should also not be haled into court by Decoulos' frivolous claims for the additional reason that, as a private, non-profit organization, the AGHCA can neither provide Decoulos his requested easement, nor be held liable for an unconstitutional taking of property or denial of due process. Accordingly, the Amended Complaint should be dismissed with prejudice with costs taxed against Decoulos.[1]

[1] As explained below, this action, which was filed almost contemporaneously with an identical complaint in Massachusetts Land Court (*see* Am. Compl. ¶ 193), is legally frivolous and appears to be nothing more than an

II. BACKGROUND[2]

A. The Parties

Plaintiff James J. Decoulos is a resident of Belmont, Massachusetts and claims ownership of the eastern half of Lot 557 in the Town of Aquinnah in fee simple. *See* Am. Compl. ¶¶ 2, 5, 69. As relevant here, Lot 557 was acquired on July 29, 1998 by the Brutus Realty Trust. At the time of acquisition, Anthony C. Frangos (Decoulos' cousin) was the Trust's sole trustee, and Decoulos was a beneficiary of the trust. *Id.* ¶¶ 158-159. Decoulos was made a co-trustee of Brutus Realty Trust on May 6, 2004 and eventually became the sole trustee in December 2008 after Frangos' death. *Id.* ¶¶ 169, 176. Decoulos acquired personal ownership of Lot 557 on May 11, 2017 when the Brutus Realty Trust (of which Decoulos remains the sole trustee) conveyed the lot to Decoulos in his individual capacity, but Decoulos acknowledges he has held an ownership interest in Lot 557 since 1998. *Id.* ¶ 70.

The AGHCA is, as Decoulos acknowledges, "a non-profit corporation" located in Dukes County, Massachusetts. *Id.* ¶ 3.

B. Decoulos' Prior Litigation

There are four prior actions relevant to this Court's assessment of the AGHCA's motion to dismiss.

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attempt to harass and burden the parties, including the AGHCA. Though acting *pro se*, Mr. Decoulos is a seasoned litigator who has prosecuted cases on this subject for two decades. He has no good faith basis for bringing this suit, and the AGHCA reserves the right to seek sanctions for this frivolous suit under Rule 11, including to recoup its attorneys' fees and costs.

[2] This brief provides a limited background summary, describing facts relevant to the arguments raised by the AGHCA. A more fulsome description of the historical background of this case is contained in the Town of Aquinnah's memorandum in support of its motion to dismiss, which the AGHCA joins in full. All facts in this brief are taken either from Decoulos' Amended Complaint or public records and judicial decisions. *See United States ex rel. Winkelman v. CVS Caremark Corp.*, 827 F.3d 201, 208 (1st Cir. 2016) ("[A] court may consider matters of public record and facts susceptible to judicial notice . . . within the Rule 12(b)(6) framework[.]").

1. The 1997 State Court Action ("*Kitras*")

In 1997, Decoulos and Kitras filed a declaratory action seeking an easement by necessity for various parcels of land owned in the Town of Aquinnah. After several intermediate state appellate decisions, that litigation finally ended in 2016 when the Massachusetts Supreme Judicial Court held that Decoulos and Kitras were not entitled to easements on their lots because at the time the land was partitioned, "the parties did not intend to create easements." *See Kitras v. Town of Aquinnah*, 474 Mass. 132, 142 *cert. denied sub nom. Kitras v. Town of Aquinnah, Mass.*, 137 S. Ct. 506 (2016); *see also Kitras v. Town of Aquinnah*, 64 Mass. App. Ct. 285, 297 (2005) (describing the history of the litigation).

2. The 2002 Federal Court Action ("*Frangos*")

While *Kitras* worked its way through the state courts, Anthony C. Frangos (in his capacity as trustee of the Brutus Realty Trust) filed a complaint against the Town of Aquinnah in this Court on June 10, 2002. *See Frangos v. Town of Aquinnah*, No. 1:02-cv-11159-MLW, Dkt. 1 (D. Mass., June 10, 2002). The complaint, which included claims as to Lot 557, sought a declaration that an easement by necessity existed over Lot 556 (owned by the Town of Aquinnah) to Lot 557, and further alleged that the denial of such an easement constituted an unconstitutional taking of property. *Id.* And although Decoulos was not a named plaintiff in *Frangos*, he was a beneficiary of the Brutus Realty Trust at that time, which acquired Lot 557 in 1998, as he acknowledges in his Amended Complaint in this case. *See* Am. Compl. ¶ 70 ("Decoulos has held an ownership interest in the Property since 1998."). In other words, the case involved the exact same parcel of land (Lot 557) as this action, identical claims, and an identical party-in-interest prosecuting the claim. Decoulos' Amended Complaint admits as much. *See* Am. Compl. ¶¶ 165-168 (describing how the Trust to which he was a beneficiary, as a predecessor-in-interest, filed a federal complaint seeking an identical easement on the identical

property at issue in this case and raising an identical takings claim). This Court dismissed the *Frangos* action on August 22, 2003 because (1) the Commonwealth was a necessary party to the easement claim, but was barred from suit by sovereign immunity, and (2) the takings claim was not ripe. *See* No. 1:02-cv-11159-MLW, Dkt. 27 (Wolf, J.). The First Circuit dismissed Frangos' appeal after Frangos failed to file an opening brief. *See Frangos v. Town of Aquinnah*, No. 04-1243 (1st Cir.).

3. The 2004 Federal Action ("*Decoulos I*")

On August 25, 2003, two days after dismissal of *Frangos*, Decoulos and Kitras, in their capacities as trustees of trusts owning various Aquinnah properties, filed a new federal action against, *inter alia*, the Town of Aquinnah. *See Decoulos, et al. v. Town of Aquinnah, et al.*, No. 1:03-cv-11590-NMG, Dkt. 1 (D. Mass, August 25, 2003). Although the complaint did not include Lot 557, it raised essentially identical claims to those presented here: First, a claim for an unconstitutional taking due to the town's refusal to grant an easement by necessity, and second, a "deprivation of rights" related to the denial of their right to "reasonable use of their property." *Id.*[3] The complaint was dismissed on September 30, 2004. *See* 1:03-cv-11590-NMG, Dkt. 55 (Gorton, J.). Significantly, while the Court dismissed Decoulos' claims on the merits, it also observed that the *Rooker-Feldman* doctrine barred a federal court from invalidating state court judgments from the parallel *Kitras* proceedings. *Id.* at 7 ("Counts I and II seek federal court review of the actions of the Massachusetts Land Court [the 1997 *Kitras* case]. This Court simply does not have jurisdiction to invalidate civil state court judgments."). Decoulos and Kitras' appealed was dismissed when Decoulos and Kitras ignored repeated court orders to obtain independent counsel for the trusts (which Decoulos and Kitras, both nonlawyers, had been

[3] The complaint also included a claim for "Conspiracy to Interfere with Civil Rights" under 42 U.S.C. § 1985.

purporting to represent *pro se*). *See Decoulos, et al. v. Town of Aquinnah, et al.*, No. 05-2282 (1st Cir.).

4. The 2004 State Action ("*Brutus*")

On June 2, 2004, Decoulos brought a fresh state court action that included Lot 557. *See Frangos & Decoulos, Trustees of the Brutus Realty Trust v. Town of Aquinnah et al.*, Land Court Misc. Case No. 04-299511. The complaint again included identical claims to those here: an easement by necessity through Lot 556 to reach Lot 557 and a claim for unconstitutional taking of property. The case proceeded through the state court system until it was stayed in August 2011, pending the outcome of *Kitras*, the original state court action. *See* August 17, 2011 Order, Land Court Misc. Case No. 04-299511. After the Supreme Judicial Court ruled against Decoulos in *Kitras*, and after the Supreme Court of the United States denied further review of the decision, the Land Court directed Decoulos to retain independent counsel for the Brutus Realty Trust, or face dismissal of the case in 30 days. *See* December 14, 2016 Order, Land Court Misc. Case No. 04-299511. At a January 10, 2017 status conference at which no representative for the Trust appeared, the Court issued a 15 day *nisi* order requiring the Trust to show good cause for failure to appear at the status conference. *See* January 11, 2017 Post-Hearing Order, Land Court Misc. Case No. 04-299511. Decoulos pursued, and lost, a single justice appeal of that order. On January 27, 2017, the Land Court dismissed the *Brutus* case with prejudice. *See* January 27, 2017 Judgment of Dismissal, Land Court Misc. Case No. 04-299511.

III. ARGUMENT

A. Standards of Review Under Rule 12(b)(6) and Rule 12(b)(1)

"To survive a Rule 12(b)(6) motion to dismiss, the complaint must include factual allegations that when taken as true demonstrate a plausible claim to relief[.]" *Lu v. Menino*, 98 F. Supp. 3d 85, 92 (D. Mass. 2015) (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 555–558

(2007)). "In evaluating a Rule 12(b)(6) motion, the court may consider a limited category of documents outside the complaint . . . include[ing] matters of public record, facts susceptible to judicial notice and documents sufficiently referred to in the complaint." *Id.* "Dismissal with prejudice is appropriate where the defect in the claim is irremediable, such as where there is no basis in law for this plaintiff to bring this particular claim against this defendant (even if properly pleaded) . . . and refiling could do nothing to cure the infirmity. In such instances, preclusion of further litigation of the claim through prejudicial dismissal is the proper and most efficient resolution." *In re Fresenius Granuflo/Naturalyte Dialysate Prod. Liab. Litig.*, 76 F. Supp. 3d 279, 288 (D. Mass. 2015).

While a "Rule 12(b)(1) motion is subject to the same standard of review as a motion to dismiss under Rule 12(b)(6)," the "plaintiff has the burden of proving that jurisdiction lies with the court." *Castino v. Town of Great Barrington*, No. 13-cv-30057, 2013 WL 6383020, at *1 (D. Mass. Dec. 4, 2013). "Accordingly, the First Circuit has held that the proponent must clearly indicate the grounds upon which the court may properly exercise jurisdiction." *O'Connell v. I.R.S.*, No. 02-cv-10399, 2004 WL 1006485, at *1 (D. Mass. Mar. 22, 2004) (citing *LP v. Romulus Telecomms., Inc.*, 148 F.3d 32, 35 (1st Cir. 1998)).

B. The Amended Complaint Fails to State a Claim Against the AGHCA

The Amended Complaint raises three claims: (1) a claim for declaratory relief concerning a purported "cloud" of title over Lot 557; (2) a claim for an unconstitutional taking of private property under the Fifth and Fourteenth Amendments; and (3) a claim for a declaration that Decoulos' due process rights under the Fifth and Fourteenth Amendments have been violated. Each of these claims against the AGHCA should be dismissed with prejudice.

1. No declaratory action can be sustained against the AGHCA because the AGHCA cannot grant Decoulos any of the relief he requests

Decoulos' first claim is for a declaratory judgment removing the "cloud" of title over Lot 557 resulting from the Supreme Judicial Court's decision in *Kitras*. *See* Am. Compl. ¶¶ 194-197. Decoulos further requests a grant to himself and any successor in title "the power to alienate land and own property in fee simple absolute." *Id.* The Amended Complaint contains absolutely no allegations explaining how the AGHCA—a private non-profit organization—could possibly be responsible for the supposed cloud of title over Lot 557 or what relief Decoulos could obtain from a judgment against the AGHCA with respect to clearing the title of Lot 557. Indeed, the only allegations actually discussing the AGHCA concern testimony its former President provided to Congress in 1986 in support of the Massachusetts Indian Land Claims Settlement Act of 1987, *see* Am. Compl. ¶¶ 89-90, 97-104, and the fact that the AGHCA filed an *amicus* brief with the Supreme Judicial Court in *Kitras*, *id.* ¶¶ 141-147.[4] There are no allegations whatsoever describing how the AGHCA has supposedly clouded Decoulos' title. In fact, despite his theory that the cloud to title stems from the Supreme Judicial Court's decision in *Kitras*, Decoulos actually admits that the AGHCA "has never been a party to litigation in either state court or federal court concerning" the land in question. *Id.* ¶ 157. Such deficient pleadings alone warrant dismissal. *See Abolhassani v. Advanced Polymers, Inc.*, No. 09-cv-10519, 2009 WL 3246117, at *4 (D. Mass. Oct. 2, 2009) ("Plaintiff fails to identify any specific facts in support of these claims . . . Plaintiff's pleading is simply too conclusory to survive a motion to dismiss." (citing *Twombly*, 550 U.S. at 555)).

[4] Decoulos' Amended Complaint baselessly alleges that the AGHCA and other *amici curiae* failed to properly disclose their interests to the Supreme Judicial Court in *Kitras*, a claim that is flatly incorrect. Am. Compl. ¶ 147; *see Kitras, et al. v. Town of Aquinnah, et al.*, SJC-11885, Dkt. 17, at 1-3 (describing interest of AGHCA as *amicus curiae*).

Further, no actual case or controversy exists between the AGHCA and Decoulos as to his claim for declaratory relief because the lot over which Decoulos seeks an easement, Lot 556, is owned by the Town of Aquinnah, not the AGHCA. *See* Am. Compl. ¶¶ 160-161, 167; *see also Brutus*, Land Court Misc. Case No. 04-299511, Complaint (alleging that easement by necessary over Lot 556 is necessary to reach Lot 557 from the Moshup Trail); *Frangos*, No. 1:02-cv-11159-MLW (D. Mass.), Dkt. 1 ¶ 43 (alleging that Lot 556 was "re-acquired by the [Town of Aquinnah] with state funds through the Massachusetts Division of Conservation Services and the legal documentation is recorded at the Registry in Book 672, Page 436."); Dkt. 27 (Memorandum and Order holding that the "[t]he Commonwealth is a necessary party because" it has a "substantial interest in the preservation of the Town Lot [*i.e.*, Lot 556] in its natural state free from an easement"). The Amended Complaint does not (and cannot) allege that the AGHCA has any ownership interest in Lot 556. And it goes without saying that the AGHCA "cannot grant to others that which [it] has no right to exercise [it]self." *Maritimes & Ne. Pipeline, L.L.C. v. 16.66 Acres of Land, More or Less, in the City of Brewer & Towns of Eddington & Bradley, Cty. of Penobscot, State of Me.*, 190 F.R.D. 15 (D. Me. 1999); *see also Commercial Wharf E. Condo. Ass'n v. Waterfront Parking Corp.*, 407 Mass. 123, 133 (1990) ("An easement is an interest in land which grants to one person the right to use or enjoy land ***owned by another***." (emphasis added)); *see also Wicklow Cluster Homes Ass'n, Inc. v. Salmon*, 1988 WL 39553, at *2 (Tenn. Ct. App. Apr. 27, 1988) ("One who has no ownership interest in the properties involved cannot grant an easement on or for those properties."), *aff'd,* 1989 WL 138917 (Tenn. Nov. 20, 1989); *accord* Restatement (Third) of Property (Servitudes) § 2.1 (2000) (creation of a servitude occurs only "***if the owner of the property to be burdened***" conveys such an interest). Because the AGHCA has no interest in either Lot 556 or Lot 557, a judgment

against it would not provide the remedy Decoulos seeks. Such moot declaratory actions must be dismissed. *See Ferreira v. Dubois*, 963 F. Supp. 1244, 1262 (D. Mass. 1996) ("A declaratory judgment is generally moot where the question presented for decision seeks a judgment upon a matter which, even if the sought judgment were granted, could not have any practical effect upon the parties." (quotation omitted)); *Ross v. Deutsche Bank Nat. Tr. Co.*, 933 F. Supp. 2d 225, 234 (D. Mass. 2013) (same); *Wilmot v. Tracey*, 938 F. Supp. 2d 116, 145 (D. Mass. 2013) (dismissing declaratory action where "even if [the] declaratory judgment claim were resolved in [plaintiff's] favor, it would have no practical effect upon the parties").

2. As a private actor, the AGHCA cannot have effected an unconstitutional "taking" of Decoulos' property or deprived him of due process

Similarly, Decoulos cannot plausibly state a claim against the AGHCA for an unconstitutional taking of property or a denial of due process because the AGHCA is not a state actor. Decoulos' Amended Complaint admits as much. *See* Am. Compl. ¶ 3. It is axiomatic that the Fourteenth and Fifth Amendments bar only state action. *See Philip Morris, Inc. v. Reilly*, 267 F.3d 45, 55 (1st Cir. 2001) (takings result when "***[g]overnment action*** . . . results in the permanent physical occupation of property or . . . denies the owner all economically beneficial use of his property" or when "***government regulation*** goes too far") (emphasis added); *Jarvis v. Vill. Gun Shop, Inc.*, 805 F.3d 1, 8 (1st Cir. 2015), *cert. denied,* 136 S. Ct. 2020, 195 L. Ed. 2d 217 (2016) ("the Fourteenth Amendment applies only to state action"); *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 217 F. Supp. 2d 206, 218 (D.R.I. 2002) ("In a federal Takings Clause analysis, plaintiff must establish that property ***was taken by the government for public use*** without just compensation.") (emphasis added), *aff'd,* 337 F.3d 87 (1st Cir. 2003); *accord Logiodice v. Trustees of Maine Cent. Inst.*, 296 F.3d 22, 26 (1st Cir. 2002) ("Broadly speaking,

the Fourteenth [and Fifth] Amendment[s] protect[] individuals only against government (leaving private conduct to regulation by statutes and common law)").

Only "[u]nder limited circumstances [may] conduct by nominally private actors [] be characterized as governmental action for constitutional purposes." *Gonzalez-Maldonado v. MMM Healthcare, Inc.*, 693 F.3d 244, 247 (1st Cir. 2012) (further recognizing that "[m]ost constitutional protections of rights and liberties are aimed at governmental action and not private conduct"). Private conduct may rise to state action only where (1) a private entity exercises powers traditionally reserved to the state; (2) there is a sufficiently close nexus between the challenged activity and government regulation such that the government is responsible for the challenged conduct; and (3) government actors possess such influence over a private entity that there is public entwinement with the private entity. *Id.* at 247-248 (citing *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974); *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *Brentwood Academy v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 297 (2001)). The Amended Complaint contains nothing even approaching an allegation that could meet the high bar required to plead that the AGHCA could be a state actor under these circumstances. *See Jarvis*, 805 F.3d at 8 ("The bar for such a showing is set quite high, and we have cautioned that it is only in rare circumstances that private parties can be viewed as state actors'" (quoting *Estades-Negroni v. CPC Hosp. San Juan Capestrano*, 412 F.3d 1, 4 (1st Cir. 2005) (internal quotations omitted)). Accordingly, Decoulos' Amended Complaint fails to state a takings or due process claim against the AGHCA. *See, e.g.*, *Souza v. Pina*, 53 F.3d 423, 425 (1st Cir. 1995) (where "no state action led to the [alleged due process] deprivation," the plaintiff's "due process claim fails."); *Pina v. Rivera*, No. 11-cv-2217, 2017 WL 2889660, at *6 (D.P.R. Feb. 15, 2017) ("Because Pina is not a government actor, there is no state action and therefore Feliciano's Takings Clause argument

lacks merit."); *Pascoag Reservoir & Dam, LLC*, F. Supp. 2d at 224 (concluding "no takings claim could have been alleged" where "there was no state action"); *Greene v. WCI Holdings Corp.*, 956 F. Supp. 509, 516 (S.D.N.Y. 1997) ("[P]laintiff's claims based on alleged Takings and Due Process Clause violations fail because plaintiff has alleged no state action."), *aff'd,* 136 F.3d 313 (2d Cir. 1998).

C. The AGHCA Adopts the Arguments Raised By The Town of Aquinnah

The AGHCA joins and expressly incorporates herein each of the arguments raised by the Town of Aquinnah in support of its motion to dismiss. Two of those arguments warrant brief discussion here.

First, as the Town's memorandum in support of its motion to dismiss explains, Decoulos' Amended Complaint is barred by the *Rooker-Feldman* doctrine, which "precludes federal jurisdiction over a challenge to a state court judgment to which the challenger was a party." *Miller v. Nichols*, 586 F.3d 53, 59 (1st Cir. 2009). As the Amended Complaint makes abundantly clear, each of Decoulos' claims turns entirely on the supposed "cloud" to title and taking of his property caused by the Supreme Judicial Court's decision in *Kitras*. To the extent there was ever any ambiguity that Decoulos' suit is anything other than a direct attack on the state courts' adjudication of his claims, the amendments to his initial complaint all but confirm it. The amendments add no new material allegations, but do expressly allege that the Supreme Judicial Court's decision in *Kitras* is the source of *each* of his three claims. *See* Am. Compl. ¶¶ 195-196, 200-201, 204. Moreover, Decoulos has added further allegations detailing his personal disagreement with the Court's decision. *Id.* ¶¶ 138-156. Accordingly, providing relief on either of his claims would require this Court to invalidate or overrule the decision of a state court of last resort. But as Judge Gorton already explained, when Decoulos first attempted to collaterally

attack the state court litigation, "[t]his Court simply does not have jurisdiction to invalidate civil state court judgments." *See Decoulos I*, 1:03-cv-11590-NMG, Dkt. 55.

This case is a quintessential application of the *Rooker-Feldman* doctrine: "[C]ases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). "[T]he state provided a judicial remedy, [the plaintiff] invoked it, and he lost." *Maymo-Melendez v. Alvarez-Ramirez*, 364 F.3d 27, 33 (1st Cir. 2004) (applying *Rooker-Feldman* to bar collateral attack on Puerto Rico court judgment). The *Rooker-Feldman* doctrine swiftly and completely disposes of Decoulos' claims as to all parties, because his Amended Complaint is nothing more than an attempt to appeal a state court judgment in federal court. *See id.* ("[F]ederal courts regularly use *Rooker–Feldman* to rebuff collateral attacks on prior state court judgments without purporting to apply the technical preclusion rules of res judicata.").

Second, Decoulos' claims are plainly barred by *res judicata*.[5] "Under the federal law of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating claims that were raised or could have been raised in that action." *Apparel Art Int'l, Inc. v. Amertex Enterprises Ltd.*, 48 F.3d 576, 583 (1st Cir. 1995). Decoulos has fully litigated his current claims on Lot 557 in multiple settings. For instance, his 2004 action in the Massachusetts Land Court pursued essentially identical claims on Lot 557 as to those pursued here. *See Frangos & Decoulos, Trustees of the Brutus Realty Trust v. Town of Aquinnah et al.*, Land Court Misc. Case No. 04-299511. Similarly, the federal *Frangos* case, on behalf of the Brutus Realty Trust (of which Decoulos was a beneficiary and trustee), brought identical claims

[5] *Res judicata* is a broad term, which collectively refers to both claim preclusion and issue preclusion. *See Taylor v. Sturgell*, 553 U.S. 880, 892 & n.5 (2008) (observing that *res judicata* refers to the "preclusive effect of a judgment," including as to both claim and issue preclusion, and has "replaced a more confusing lexicon").

with respect to Lot 557. *See Frangos v. Town of Aquinnah*, No. 1:02-cv-11159-MLW, Dkt. 1 (D. Mass., June 10, 2002); *see also* Am. Compl. ¶ 159. Further, he could have raised the instant claims with respect to Lot 557 when he filed essentially identical claims in *Decoulos I*. *See Decoulos, et al. v. Town of Aquinnah, et al.*, No. 1:03-cv-11590-NMG, Dkt. 1 (D. Mass, August 25, 2003). Decoulos has no excuse for failing to raise such claims at that time, as he admits that he has "held an ownership interest in the Property since 1998." Am. Compl. ¶ 70.[6] And to the extent Decoulos argues that his current claims were not ripe until after the Supreme Judicial Court's decision in *Kitras*, that only reconfirms that this action turns entirely on the validity of the state court judgment controlling this dispute. Such an argument only further emphasizes why the *Rooker-Feldman* doctrine bars Decoulos' action in this court.

While the AGHCA was a non-party to the prior litigation, and therefore may not fall squarely within the protection of claim preclusion, at a minimum the related doctrine of issue preclusion bars Decoulos' first claim against the AGHCA for an easement over Lot 556. Decoulos raised the same issue of right to an easement in *Kitras*, actually litigated the issue in that case, and the determination of the issue was necessary to a valid and binding judgment. *See Manganella v. Evanston Ins. Co.*, 700 F.3d 585, 591 (1st Cir. 2012) (describing the traditional requirements of issue preclusion). But for various defaults and deficiencies in his prior takings claims, Decoulos' takings and due process claims would otherwise be similarly barred. *See Frangos*, No. 1:02-cv-11159-MLW, Dkt. 27 (Wolf, J.) (dismissing takings claim as not yet ripe); *Brutus*, January 27, 2017 Judgment of Dismissal, Land Court Misc. Case No. 04-299511

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[6] To the extent the instant claims were not actually litigated in these prior cases (which the AGHCA believes they were), they plainly *should have been raised* in, at minimum, the state (*Brutus*) and federal (*Decoulos I*) actions that Decoulos raised with respect to Lot 557. *See Town of Norwood, Mass. v. F.E.R.C.*, 476 F.3d 18, 25 (1st Cir. 2007) ("Res judicata does not merely prevent re-litigation of issues actually decided but also the presentation of new grounds that could and should have been raised when the same transaction was the subject of earlier, different attacks."). Decoulos may not perpetuate this dispute *ad infinitum* by deliberately raising his claims in a piecemeal fashion.

(dismissing takings claim with prejudice for failure to appoint counsel for trust). And while ***all*** the claims against the AGHCA are plainly barred by *Rooker-Feldman*, in addition to being legally deficient in ways that cannot be mended by repleading, the fact that *res judicata* bars virtually all of his Amended Complaint reinforces the frivolous and harassing nature of this suit.

D. The Amended Complaint Is Frivolous and Should Be Dismissed with Prejudice

Decoulos' Amended Complaint is a frivolous attempt to undermine the decision of the Massachusetts Supreme Judicial Court in *Kitras*.[7] Decoulos, a seasoned litigator who has prosecuted these claims for two decades, can have no good faith basis for filing this action. *See Hughes v. McMenamon*, 379 F. Supp. 2d 75, 80 (D. Mass. 2005) ("[I]t does not require sophistication or legal training to realize that the filing of this case [by *pro se* litigant] was frivolous" when clearly "barred by *res judicata*."); *see also Burgess v. Bd. of Tr.*, No. 94-cv-338-JD, 1995 WL 136930, at *10 n.7 (D.N.H. March 28, 1995) ("where a *pro se* litigant attempts to re-hash claims that have already been litigated in prior actions, Rule 11 sanctions are appropriate, and indeed are required if the pleading is frivolous." (citation and internal quotation marks omitted)). This newest action is little more than a vindictive attempt to further burden parties who prevailed against him in *Kitras*, and has no place in federal court. Accordingly, the case should be dismissed with prejudice, and the AGHCA reserves the right to separately seek attorneys' fees and costs pursuant to Rule 11. *See Picciotto v. Schreiber*, 260 B.R. 242, 244 (D. Mass. 2001) (dismissing with prejudice, and awarding fees and costs, where litigants attempted to "bring almost identical claims before" federal court that were already being litigated in state court); *Kersey v. Becton Dickinson & Co.*, 2016 WL 4492867, at *1 (D. Mass. Aug. 25, 2016)

[7] In a further act of harassment and delay, Decoulos attempted to serve his Amended Complaint on the AGHCA by email after business hours on the day before the AGHCA's Rule 12(b) motions were due. Rather than prolong the matter by disputing Decoulos' ineffective attempt at service, the AGHCA agreed to accept service of the Amended Complaint in order to more promptly bring this matter to final resolution.

(dismissing with prejudice, and granting fees and costs, on a case "that is barred by res judicata principles and thus is for the improper purpose of harassing" the prevailing party in the prior action).[8]

CONCLUSION

For the foregoing reasons, this Court should dismiss the Amended Complaint with prejudice.

AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.

By its attorneys,

/s/ Felicia H. Ellsworth

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[8] While this case was brought without a good faith basis, and is categorically barred by at minimum the *Rooker-Feldman* doctrine, the Amended Complaint should be dismissed with prejudice for the additional reason that neither of the claims against the AGHCA can be cured by be repleading because Decoulos cannot plausibly allege either that (1) the AGHCA has any interest in Lot 556 or Lot 557 or (2) that the AGHCA has taken state action. *See U.S. ex rel. Poteet v. Bahler Med., Inc.*, 619 F.3d 104, 115 (1st Cir. 2010) (affirming dismissal with prejudice where pleadings were incurably deficient).

CERTIFICATE OF SERVICE

In accordance with Local Rule 5.2(b), I hereby certify that this document filed through the ECF system on October 3, 2017, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Felicia H. Ellsworth
Felicia H. Ellsworth