UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DISTRICT

No. 1:17-cv-11532-ADB

JAMES J. DECOULOS)
)
Plaintiff)
vs.)
)
TOWN of AQUINNAH, the)
AQUINNAH/GAY HEAD COMMUNITY)
ASSOCIATION, INC. and the)
COMMONWEALTH OF MASSACHUSETTS)
)
Defendants)

**PLAINTIFF'S OPPOSITION TO MOTIONS TO DISMISS
FILED BY THE TOWN OF AQUINNAH
AND THE AQUINNAH/GAY HEAD COMMUNITY ASSOCIATION, INC.**

NOW COMES the plaintiff, James J. Decoulos, who hereby opposes the town of Aquinnah and the Aquinnah/Gay Head Community Association, Inc.'s motions to dismiss dated October 3, 2017 pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) for an order dismissing the action under the *Rooker-Feldman* doctrine and on *res judicata* grounds. The primary basis of the opposition is that there is no merit to defendants' allegations that plaintiff is seeking to reverse or modify a state court judgment for the property related to this case. Additionally, all three elements of claim preclusion are not present in this matter and the merits of plaintiff's claims and requests for relief have never been reached in any court.

In support of this opposition, the plaintiff relies on the facts and arguments set forth below, together with an affidavit and supporting exhibits dated October 17, 2017.

I. BACKGROUND

The parcel of land subject to this dispute lies along the Atlantic Ocean, south of a public way known as Moshup Trail, in the town of Aquinnah (the "Town") on the island of Martha's Vineyard in Dukes County, Massachusetts.

In 1870, the Commonwealth of Massachusetts conveyed approximately 1,900 acres of unclaimed common land in fee simple absolute to the newly incorporated town of Gay Head.[1] Most of the residents of the town were descendants of the Wampanoag Tribe. The record included an 1870 census which showed that, "In 1860, the number at Gay Head was 54 families - 237 natives, 16 foreigners. Total 253. (*Earle's Report.*) In 1870, as will be seen by the census in the Appendix, the whole number is 227; families, 55; natives of Gay Head, 188; foreigners, or those not born there, 39." Page 27 of the Report of Commissioner Richard L. Pease. [2]

The Commonwealth conveyed the common land to the Town with the condition that the selectmen, or any ten residents of the town, could petition the Dukes County Probate Court to partition (or divide) the common land and grant the divided land to the residents. Seventeen residents petitioned the probate court and by 1878 the Probate Court carved the common land into 563 lots, which it granted to the residents – *who were not all members of the Wampanoag Tribe*. The court left title to the clay cliffs, cranberry bogs and herring creek with the Town.[3]

Plaintiff's lot is identified from the 1878 partition as the easterly half of Set-Off Lot 557 (the "Property") as shown on a map entitled "Plan of Gay Head showing the Partition of the Common Lands as made by Joseph T. Pease and Richard L. Pease, Commissioners appointed by

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[1] In 1997, the town of Gay Head changed its name to the town of Aquinnah, the historic Native American name of the area. Aquinnah is one of six towns located on the Vineyard.
[2] The *Report of the Commissioner Appointed to Complete the Examination and Determination of All Questions of Title to Land and of All Boundary Lines Between the Individual Owners at Gay Head on the Island of Martha's Vineyard, under a Resolve of the Legislature of 1866, Chapter 67*, Richard L. Pease, 1871.
[3] The maps which show the common land conveyed to the Town and the 1878 partition of the common land were provided with the complaint as Figures 1 and 2.

the Judge of the Probate under Section 6 of Chapter 213 of the Acts of 1870, by John H. Mullin, Scale: 200 feet to an inch" (the "Partition Plan").[4]

There was one public way that existed in town at the time of the 1878 grant. Of the 563 lots created from the partition of the common lands, only 60 of the lots had frontage along the public way now known as State Road - the rest were landlocked. Additionally, the newly created lots severed access to most of the pre-existing lots owned by the residents, who were previously able to access State Road by traveling over the common land.

The deeds conveying the 563 new lots to the residents were silent on how the new or pre-existing landlocked lots would be accessed. There was no language in the deeds, no public records, or any other documentary evidence to indicate that the parties intended to deprive the properties of access.

As the years passed, new roads and express easements were created, the lots were conveyed to new parties, and new homes were built on the vacant lots.

In 1955, Dukes County Commissioners took land by eminent domain along the southerly portion of the Town and laid out a new public way called Moshope (or Moshup) Trail. The purpose of the taking was that "public necessity or common convenience or necessity require that said County Commissioners and Associate Commissioners should layout, alter, locate or relocate a highway known as 'Moshope Trail'" [5].

In 1974, members of the Wampanoag Tribe sued the Town in U.S. District Court claiming that the common land was improperly conveyed to the Town and that the 1870 transfer violated the 1790 Non-Intercourse Act. Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head, 74-5826-G (D. Mass.) The Commonwealth and the Aquinnah/Gay Head

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[4] All of the lots cited refer to lot numbers designated on the Partition Plan.
[5] Dukes County Registry of Deeds, Book 227, Pages 564 to 566.

Community Association, Inc. (the "Association"), formerly known as the Gay Head Taxpayers' Association intervened. In their motion to intervene, the Commonwealth argued that, "[O]ne defense to this action is that chapter 213 of the Acts of 1870 validly conveyed the lands at issue to the Town of Gay Head. Massachusetts should be permitted to defend the validity of its laws."

In 1983, the Town, the Commonwealth, the Association, and the Wampanoag Tribal Council of Gay Head, Inc., entered into a settlement agreement. To implement the settlement agreement, the Massachusetts Legislature enacted c. 277 of the Acts of 1985 and Congress enacted the Massachusetts Indian Claims Settlement Act of 1987, 25 U.S.C. §§ 1771-1771i. See exhibits 16 and 17 of the affidavit of James J. Decoulos dated June 9, 2017 (the "June 9th Aff."), attached as Exhibit I to the affidavit of James J. Decoulos dated October 17, 2017 (the "October 17th Aff."). Plaintiff relies on these two affidavits and the amended complaint dated September 20, 2017 (the "Amended Complaint") for a complete background of facts relevant to this opposition.

In 1987, before Congress passed the implementing statute, the Department of the Interior officially recognized the Wampanoag Tribe of Gay Head (Aquinnah) [the "Tribe"] as a federally recognized Indian tribe.

As part of the settlement, the Town conveyed the clay cliffs, cranberry bogs and herring creek (the remaining common land from 1878, also known as the "public settlement lands" and "Cook lands" in the legislation) to the Tribe; and, the Commonwealth and United States purchased land for the Tribe (the "private settlement lands"). Altogether, the Tribe received approximately 485 acres of land, which is now held in trust by the United States.[6]

In exchange for the newly created trust land, Congress extinguished aboriginal title on all other lands in town "as of the date of such transfer". 25 U.S.C. § 1771b(b).

[6] The lands held in trust by the United States are shown in Figure 2 provided with the amended complaint.

Plaintiff's predecessor in title, Anthony C. Frangos, as he was the trustee of the Brutus Realty Trust (the "Trust"), purchased the Property in 1998. Together with several individual Wampanoag families and other parties, their lands remain completely landlocked and they are unable to use any part of their property.

The Trust requested access from the Town to cross Lot 556 on September 10, 2001. The Town promptly denied access. See ¶¶ 160-163 of the Amended Complaint.

On June 10, 2002, the Trust filed a complaint in U.S. District Court seeking a determination that an easement by necessity existed to access the Property from Moshup Trail. 1:02-cv-11159-MLW (the "Frangos Case".) On March 4, 2003, the Town admitted in their first answers to interrogatories that there was no evidence that there was an intent to landlock the Set-Off Lots. Additionally, the Town admitted that the Commonwealth held no property interest in Lot 556. See ¶¶ 166-167 of the Amended Complaint.

On August 23, 2003, Judge Mark L. Wolf dismissed the Frangos Case and remanded it to the Land Court because the Commonwealth could not be joined in the action. Judge Wolf alleged that the Commonwealth held property interests in Lot 556 and was necessary to adjudicate the action. See also ¶¶ 24-30 of the October 17th Aff.

Plaintiff was appointed a co-trustee of the Trust on May 6, 2004.

On June 2, 2004, the Trust filed a complaint in the Massachusetts Land Court. *Miscellaneous Case No. 299511* (the "Brutus Case".)

On March 6, 2007, the Trust filed a motion to consolidate the claims with another case in the Land Court, Maria A. Kitras et al. v. Town of Aquinnah et al, Misc. Case No. 238738. On March 22, 2007, the Town opposed the Trust's motion to consolidate on the grounds that the Trust's land was in a different location from Kitras; that the uses would be different; that the type

of access being sought was different; and, that there were different parties between the two cases. On March 28, 2007, the Commonwealth opposed the Trust's motion to consolidate on the grounds that the consolidation of the cases in the Land Court would complicate litigation of the cases; that the Trust's land was in a different location from Kitras; that the uses would be different; that the type of access being sought was different; and, that there were different parties between the two cases.

On April 2, 2007, the Land Court denied the Trust's motion to consolidate, accepting the rationale of the Town and Commonwealth and clearly separating the Kitras action from the Brutus Case.

The Land Court dismissed the Brutus Case because it concluded that plaintiff, who was the trustee of the Trust, was not appearing personally, but rather, representing the Trust and that the Trust was required to retain counsel. After an order of the Land Court dated December 14, 2016, the Trust timely sought an interlocutory appeal with the Massachusetts Appeals Court. See October 17th Aff. ¶¶ 56-60.

The Appeals Court did not notify the Trust of its decision until after the Land Court issued a Judgment of Dismissal. While still waiting for a decision from the Appeals Court, the Trust sought relief from the Land Court pursuant to Mass. R. Civ. P. 60(b)(1). Additionally, the Trust offered to cure the representation issue by conveying the property to Decoulos individually. The Land Court denied relief.

Shortly thereafter, the Appeals Court recognized that it had failed to notify the Trust of the denial of its petition pursuant to G.L. c. 231, § 118. A notice was finally sent to the Trust, who once again sought relief from judgment pursuant to Mass. R. Civ. P. 60(b)(1). The Land Court again denied relief and the Trust appealed. See October 17th Aff. ¶ 66.

Plaintiff acquired the Property from the Trust on May 5, 2017. At the direction of the Appeals Court, the Trust filed a motion to substitute parties with the Land Court. The Land Court denied the motion.

II. ARGUMENT

A. THERE IS NO STATE COURT JUDGMENT TO REVERSE OR MODIFY APPLICABLE TO THE PROPERTY

The defendants attempt to drag the Kitras case into this action and claim that the *Rooker-Feldman* doctrine should govern. As the Town and Commonwealth argued in March of 2007, the Property subject to the Brutus Case was in a different location from Kitras; the uses were different; the type of access being sought was different; and, there were different parties between the two cases. There is simply no basis for application of the *Rooker-Feldman* doctrine to the history of actions in Kitras. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). See also Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 283-84 (2005).

As to the Brutus Case, the Land Court recognized in its December 14, 2016 Order that Kitras was not determinative of the relief requested by the Trust and that the Trust had valid takings claims under both the Massachusetts and United States Constitutions.

Even if this Court were to find that there was some state court judgment to reverse or modify, plaintiff has produced evidence to demonstrate that a fraud exception could apply. In re Sun Valley Foods Co., 801 F.2d 186 (6th Cir. 1986). *Rooker-Feldman* does not prevent a court from reviewing judgments that were procured through fraud. Throughout the history of Kitras, Frangos and the Brutus Case, the Town and the Association have alleged fraudulent consequences outside the record, interfered with the integrity of the appellate process and blatantly twisted facts. See October 17th Aff. ¶¶ 45-54.

B. PLAINTIFF WAS DENIED AN OPPORTUNITY TO LITIGATE THE MERITS

As the defendants noted in their motions to dismiss, *res judicata* includes both claim preclusion and issue preclusion. It is founded on the notion "that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit" quoting Heacock v. Heacock, 402 Mass. 21, 24 (1988). It does not apply "where the party lacked incentive or opportunity to bring the claim in the prior suit." quoting Baby Furniture Warehouse Store, Inc. v. Meubles D& Ltee, 75 Mass. App. Ct. 27, 33 (2009).

Plaintiff was denied the opportunity to litigate the issues in the Brutus Case. The Land Court not only DIRECTED him to obtain counsel, but it also refused to allow the substitution of parties after Decoulos acquired title.

The opportunity to litigate a prior action is a core principal of collateral estoppel. In a bankruptcy proceeding, a judgment debtor may be precluded from relitigating an issue that was actually litigated and decided in an earlier proceeding. Combs v. Richardson, 838 F.2d 112, 113 (4th Cir. 1988). However, the "determination that an issue was actually litigated and necessary to the judgment must be made with particular care." Id.

The Eighth Circuit requires that four criteria must be met before the doctrine of collateral estoppel applies: "(1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) that issue must have been actually litigated; (3) it must have been determined by a valid and final judgment; and (4) the determination must have been essential to the judgment." Lovell v. Mixon, 719 F.2d 1373, 1376 (8th Cir.1983) (citing In re Piper Aircraft Distribution System Antitrust Litigation, 551 F.2d 213 (8th Cir. 1977)).

The " 'central inquiry' becomes whether the defendant had a 'full and fair opportunity to litigate the issue in the first action.' Pierce v. Morrison Mahoney LLP, 452 Mass. at 730, quoting Matter of Goldstone, 445 Mass. 551, 559 (2005)." Bellermann et al. v. Fitchburg Gas and Electric Light Company, 470 Mass. 43, 60 (2014). *See also* Fidler v. E. M.. Parker Co., 394 Mass. 534, 541 (1985); Restatement (Second) of Judgments § 29 (1982); and Alves v. Massachusetts State Police et al, 90 Mass. App. Ct. 822, 827 (2017). Put simply, there was never a "full and fair opportunity" for plaintiff to litigate the merits of the case alleged in the Brutus Case.

"Where a party seeks in the State court and is there 'given opportunity, to litigate the rights claimed by' him, he cannot 'complain that the guarantees of the Constitution of the United States were denied because the litigation did not result successfully.' Remington Paper Co. v. Watson, 173 U. S. 443, 451" quoting Duane v. Merchants Legal Stamp Company et al., 231 Mass. 113, 126 (1918).

Plaintiff has never had an opportunity to litigate property rights that the U.S. Constitution guarantees. Defendants attempt to distort the real parties by claiming that plaintiff is the same party as the Trust.

C. THE MERITS OF THE CASE WERE NEVER REACHED IN THE PRIOR JUDGMENT

A core requirement of *res judicata* is that the final judgment of the prior action must be reached on the merits. The only issue that the Land Court reached in the Brutus Case was that the trustee could not appear *pro se* and that the Trust required counsel. Plaintiff tried repeatedly to defend the title as trustee and the courts denied him that opportunity.

The final judgment that required the Trust to obtain counsel ran contrary to longstanding law established by the U.S. Supreme Court. Navarro Savs. Assoc. v. Lee, 446 U.S. 458, 465

(1980); McNutt v. Bland, 43 U.S. 9, 13-14 (1844). In Bank of United States v. Deveaux, 9 U.S. 61, 91 (1809), Chief Justice John Marshall stated that:

> When [persons suing by a corporate name] are said to be substantially the parties to the controversy, the court does not mean to liken it to the case of a trustee. A trustee is a real person capable of being a citizen or an alien, who has the whole legal estate in himself. At law, he is the real proprietor, and he represents himself, and sues in his own right.

"In relation to trust property, it is the duty of the trustee, whether it be real estate or personal estate, to defend the title at law," II Story, Equity Jurisprudence, § 1275 (3rd ed. 1843); See also G. Bogert & G. Bogert, *Law of Trusts and Trustees* § 553 (rev. 2d ed. 1980); and, 1 *Scott on Trusts* §§ 2.6 and 2.7 (4th ed. 1987).[7] Actions by real trustees are brought personally, as they hold the full legal estate of property. Kerrison v. Stewart, 93 U.S. 155, 160-161 (1876) ("…it appears that [the trustee] was not only invested with the legal title to the property, but that all parties relied upon his judgment and discretion for the protection of their respective interests.")[8]

The questions of whether an easement by necessity existed or whether a property taking had occurred in the Brutus Case were simply never reached and plaintiff was continuously denied an opportunity to defend his title, protect the legal estate, be substituted as a party and argue his case with a full set of facts that he was uniquely qualified to present. He was handcuffed from reaching the merits of the case and the prior judgment has no bearing in this matter.

[7] For a thorough history of the origins of the trust from early English jurisprudence, see generally, 1 *Scott on Trusts* § 1. As Scott recites from Professor Maitland, there would be "civil war and utter anarchy" if the beneficiaries of a trust were considered the legal owners. 8 Maitland, Equity 17 (1936).

[8] It is hard to imagine how the privity of the parties can be considered comparable when the courts refused to acknowledge that Decoulos held any rights to defend title as trustee.

III. CONCLUSION

"The doctrine of res judicata, therefore, applies where the issues have in fact been fully tried and in cases where the plaintiff has had ample opportunity to state his cause of action completely and correctly so as to have the issues tried but has refused to embrace that opportunity." Elfman v. Glaser, 313 Mass. 370 (1943).

For the foregoing reasons, plaintiff prays that the defendants' motions to dismiss dated October 3, 2017 for an order dismissing the action under the *Rooker-Feldman* doctrine and *res judicata* grounds be denied.

Plaintiff further requests oral argument under Local Rule 7.1(d).

Dated: October 17, 2017

/s/ James J. Decoulos, *pro se*
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CERTIFICATE OF SERVICE

In accordance with Local Rule 5.2(b), I hereby certify that this document filed through the ECF system on October 17, 2017, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: October 17, 2017

/s/ James J. Decoulos
James J. Decoulos