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Capogrosso v. Bank of N.Y.

Superior Court of New Jersey, Appellate Division

November 13, 2007, Argued; December 13, 2007, Decided

DOCKET NO. A-1759-06T3

Reporter
2007 N.J. Super. Unpub. LEXIS 1986 *; 2007 WL 4335214

ELEANOR CAPOGROSSO, Plaintiff-Appellant, v. THE BANK OF NEW YORK, Defendant-Respondent.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from Superior Court of New Jersey, Law Division, Hudson County, L-2965-06.

Core Terms

res judicata, cause of action, allegations, entire controversy doctrine, gross negligence, regulations, infliction of emotional distress, consumer fraud, promulgated, thereunder, present case, loan application, defense motion, Credit Protection Act, limitations, asserts, negligent infliction of emotional distress, same cause of action, collateral estoppel, amended complaint, prior action, arbitration

Counsel: Ronald Kurzeja argued the cause for appellant.

James H. Forte argued the cause for respondent (Saiber, Schlesinger, Satz a Goldstein, P.C., attorneys; Mr. Forte, on the brief).

Judges: Before Judges Weissbard and Baxter.

Opinion

PER CURIAM

Plaintiff Eleanor Capogrosso appeals an order of summary judgment dismissing her complaint against defendant the Bank of New York (BNY). We affirm.

On March 28, 2001, plaintiff, a New York attorney, applied for a loan with defendant at its branch in Yonkers, New York, on behalf of her professional corporation, Eleanor Capogrosso, P.C. (the P.C.). On January 15, 2002, plaintiff initiated suit against defendant in the Civil Court of the City of New York, alleging that she was treated in a "grossly negligent" manner by defendant's employees in connection with the loan application. Her complaint asserted causes of action for negligence and intentional infliction of emotional distress. On July 19, 2002, in response to defendant's motion to dismiss, the New York judge, the Honorable Lucy Billings, rendered a written opinion. In her decision, Judge Billings wrote, in part:

> Plaintiff sues for **[*2]** damages caused by defendant's gross negligence and intentional infliction of emotional distress. Plaintiff alleges defendant was grossly negligent in (a) sending statements regarding a loan after it was repaid and she requested defendant to stop sending them and (b) failing to respond to her requests for information

regarding defendant's denial of a subsequent loan application. She alleges defendant intentionally caused her emotional distress in defending the small claims action that she initiated for the gross negligence claims, resulting in her loss of business. Defendant moves to dismiss the complaint on the grounds that plaintiff's claims fail to state a cause of action. *C.P.L.R. § 3211(a)(7)*. Upon oral argument April 4, 2002, for the reasons explained below, the court grants defendants motion and dismisses the action.

I. *NEGLIGENCE*

A. *Factual Allegations*

The following facts are alleged in plaintiff's complaint and affidavit or are alleged by defendant, supported by documentary evidence, and undisputed by plaintiff.

In 1997, plaintiffs corporation, Eleanor Capogrosso, P.C., received a loan from defendant, which was fully repaid as of June 2000. Defendant continued to send monthly statements **[*3]** to the corporation showing a zero balance due on the loan until plaintiff requested defendant to stop in July or early August 2001. Defendant then sent a final statement and nothing further.

On March 28, 2001, the corporation applied for a second loan. Two days later, defendant informed the corporation and plaintiff that defendant denied the application due to the corporation's unacceptable credit rating. Plaintiff requested defendant to provide her further information regarding a judgment against the corporation that appeared on its credit report. Defendant provided plaintiff that information in a letter dated July 19, 2001.

B. *Legal Claim*

Plaintiff contends that the mailing of statements showing a zero balance on a loan for a year after the loan was repaid and the delay in responding to the request for information regarding her credit rating were grossly negligent and caused her injury. Although plaintiff limits her claim to gross negligence, neither party cites any statutory or contractual provision that bars plaintiff's recovery for ordinary negligence. E.g., *Rabushka v. Marks, 229 A.D.2d 899, 900, 646 N.Y.S.2d 392 (3d Dep't 1996)* (statutory); *Parra v. Ardmore Mgt. Co., 258 A.D.2d 267, 269, 685 N.Y.S.2d 36 (1st Dept 1999)* **[*4]** (contractual); *Hanover Ins. Co. v. D a W Cent. Sta. Alarm Co., 164 A.D.2d 112, 115, 560 N.Y.S.2d 293 (1st Dept 1990)* (contractual). Even if plaintiff claimed only ordinary negligence, however, she fails to establish that defendant owed her any duty to stop sending her statements at a particular point or, after promptly notifying her of a loan denial, to respond to requests for further information as to why her corporation's credit was impaired. *Darby v. Connpacinie Nat'l. Air France, 96 N.Y.2d 343, 347, 753 N.E.2d 160, 728 N.Y.S.2d 731 (2001)*; *Strauss v. Belle Realty Co., 65 N.Y.2d 399, 402, 482 N.E.2d 34, 492 N.Y.S.2d 555 (1985)*.

Absent defendant's duty to plaintiff, she cannot establish that defendant acted negligently, much less that defendant recklessly disregarded its duty, to establish gross negligence. *Colnaghi, USA. v. Jewelers Protection Servs., Ltd., 81 N.Y.2d 821, 823-24, 611 N.E.2d 282, 595 N.Y.S.2d 381 (1993)*; *SCP (Bermuda) v. Bermudatel Ltd., 224 A.D.2d 214, 216, 638 N.Y.S.2d 2 (1st Dept 1996)*. Therefore the court grants defendant's motion to dismiss plaintiff's first cause of action insofar as it alleges either gross negligence or ordinary negligence.

II. *INFLICTION OF EMOTIONAL DISTRESS*

A. *Factual Allegations*

Plaintiff's complaint and affidavit further allege that when she brought a small claims action for the **[*5]** gross negligence claims concerning the loans, defendants tactics caused her emotional distress. Plaintiff alleges that defendant refused arbitration and insisted on a trial, threatening repeated adjournments and waiting in court late into the night before the court would reach the action. Plaintiff then did not appear on the trial date, resulting in the action's dismissal. She nonetheless claims that the emotional distress she suffered from the threatened defense tactics caused her to lose business.

B. *Legal Claim*

These allegations, even liberally construed, do not state a cause of action either for intentional or reckless infliction of emotional distress or for negligent infliction of emotional distress. A claim for intentional or reckless infliction of emotional distress requires conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a

civilized community." *Murphy v. American Home Prods. Corp., 58 N.Y.2d 293, 303, 448 N.E.2d 86, 461 N.Y.S.2d 232 (1983)*. *See* *Freihofer v. Hearst Corp., 65 N.Y.2d 135, 143, 480 N.E.2d 349, 490 N.Y.S.2d 735 (1985)*; *Callas v. Eisenberg, 192 A.D.2d 349, 350, 595 N.Y.S.2d 775 (1st Dept 1993)*. The cause of action contemplates "a **[*6]** deliberate and malicious campaign of harassment or intimidation," *Vasarhelyi v. New School for Social Research, 230 A.D.2d 658, 661, 646 N.Y.S.2d 795 (1st Dept 1996)* (citations omitted), which caused plaintiff *severe* emotional distress. *Fischer v. Maloney, 43 N.Y.2d 553, 557, 373 N.E.2d 1215, 402 N.Y.S.2d 991 (1985)*. A claim for negligent infliction of emotional distress requires conduct that "created an unreasonable risk of bodily harm" to plaintiff. *Bovsun v. Sanperi, 61 N.Y.2d 219, 223, 461 N.E.2d 843, 473 N.Y.S.2d 357 (1984)*.

Plaintiff's stress, anxiety, or outrage, allegedly suffered as a result of defendant's insistence on the right to a trial of plaintiff's claim, whatever inconvenience that course of action caused, does not meet the standard for either cause of action. Defendant's conduct, even when viewed in the light most favorable to plaintiff, may not reasonably be construed as so extreme or outrageous as to exceed "all bounds usually tolerated by decent society." *Fischer v. Maloney, 43 N.Y.2d at 557* (citation omitted). She may not recover for "threats, annoyances or petty oppressions or other trivial incidents which must necessarily be expected and are incidental to modern life no matter how upsetting" and no matter if that conduct violated applicable statutes **[*7]** or regulations. *Rothenberg v. Lampert, 160 A.D.2d 986, 987, 554 N.Y.S.2d 1016 (2d Dep't 1990)* (citation omitted).

Moreover, the distress plaintiff alleges does not rise to the requisite severity. She offers no evidence of psychological or psychiatric treatment. As for a claim of negligent infliction of emotional distress, nowhere does she indicate that her life or health was unreasonably endangered by the protraction of the small claims action or that she reasonably feared for her safety. *Bovsun v. Sanperi, 61 N.Y.2d at 229*; *Lancellotti v. Howard, 155 A.D.2d 588, 589-90, 547 N.Y.S.2d 654 (2d Dep't 1989)*. While physical injury is no longer a necessary element, a cause of action for negligent infliction of emotional distress still must be premised on breach of a duty to plaintiff that "unreasonably endangers" her physical safety. *De Rosa v. Stanley B. Michelman, P.C., 184 A.D.2d 490, 491, 584 N.Y.S.2d 202 (2d Dep't 1992)* (citations omitted). *See* *Kennedy v. McKesson Co., 58 N.Y.2d 500, 506-07, 448 N.E.2d 1332, 462 N.Y.S.2d 421 (1983)*.

In sum, plaintiff's allegations satisfy none of the elements for infliction of emotional distress. Therefore the court grants defendant's motion to dismiss plaintiff's second cause of action insofar as it alleges either intentional or reckless **[*8]** infliction of emotional distress or negligent infliction of emotional distress.

III. *CONCLUSION*

Because plaintiff's allegations fall short of any claim for negligence or infliction of emotional distress, the court dismisses her complaint for failure to state a claim. *C.P.L.R. § 3211(a)(7)*. This decision constitutes the court's order. The court will mail copies to the parties' counsel.

Plaintiff did not appeal.

On June 14, 2006, plaintiff filed the present complaint in Superior Court, Hudson County. Plaintiff amended the complaint on July 27, 2006. In her amended complaint, plaintiff asserted the following facts:

COUNT I

1. Plaintiff was, at all relevant times, a resident of the State of New Jersey.
2. Defendant was, at all relevant times, a foreign corporation doing business in the State of New Jersey.
3. On March 28, 2001, Eleanor Capogrosso, P.C. applied for a loan with Bank of New York.
4. At the same time, March 28, 2001, the plaintiff agreed to act as guarantor of the loan which Eleanor Capogrosso, P.C. applied for with the defendant.

5. Notwithstanding the fact that the loan application was submitted to the defendant on March 28, 2001, neither the plaintiff nor Eleanor Capogrosso, P.C. **[*9]** were notified either orally or in writing that the loan application was denied contrary to the Equal Credit Protection Act, *15 U.S.C.A. 1691, et seq.*, and the regulations promulgated thereunder.
6. Plaintiff and Eleanor Capogrosso, P.C. first received notice of the rejection on or about February 1, 2002.

7. The defendant Bank of New York's failure to

notify the plaintiff and Eleanor Capogrosso, P.C. of the rejection of the loan application in a timely fashion or otherwise contrary to the Equal Credit Protection Act, *15 U.S.C.A. 1691, et seq.*, and the regulations promulgated thereunder was violation of the Equal Credit Protection Act, *15 U.S.C.A. 1691, et seq.*, and the regulations promulgated thereunder and the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1, et seq.*, and the regulations promulgated thereunder.

8. Plaintiff has suffered damages and harm as a result of the failure of the defendant to act either timely or otherwise.

* * *

COUNT II

9. Plaintiff repeats the allegations set forth in paragraphs 1 through 8 of Count I as though set forth fully at length herein.

10. Plaintiff and Eleanor Capogrosso, P.C. never received a notice containing the information required by the Equal Credit **[*10]** Protection Act, *15 U.S.C.A., 1691 et seq.*, and the regulations promulgated thereunder.

11. The defendant Bank of New York's failure to provide the plaintiff and Eleanor Capogrosso, P.C. with a notice containing the information required by the Equal Credit Protection Act, *15 U.S.C.A. 1691, et seq.*, and the regulations promulgated thereunder was violation of the Equal Credit Protection Act, *15 U.S.C.A. 1691, et seq.*, and the regulations promulgated thereunder and the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1, et seq.*, and the regulations promulgated thereunder.

12. Plaintiff has suffered damages and harm as a result of the failure of the defendant to provide the information required.

Defendant moved to dismiss the amended complaint on the grounds of res judicata, collateral estoppel, the entire controversy doctrine, and the statute of limitations. Plaintiff cross-moved to file a second amended complaint in order to add a third count alleging that she sustained an ascertainable loss as a result of defendant's actions.

In an oral opinion on November 3, 2006, Judge Edward T. O'Connor, Jr. granted defendant's motion on the basis of res judicata, collateral estoppel and the entire controversy **[*11]** doctrine. He did not rule on defendant's statute of limitations argument. Plaintiff has appealed, raising the following issues:

POINT I: THE TRIAL COURT SHOULD HAVE DENIED DEFENDANTS MOTION FOR SUMMARY JUDGMENT.

POINT II: DEFENDANT DID NOT COMPLY WITH THE EQUAL CREDIT OPPORTUNITY ACT.

POINT III: THE NEW YORK JUDGMENT MUST BE REVIEWED BY APPLYING NEW YORK LAW.

POINT IV: THE PRESENT CAUSE OF ACTION IS NOT BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL.

POINT V: THE PRESENT CAUSE OF ACTION IS NOT BARRED BY THE DOCTRINE OF RES JUDICATA.

POINT VI: THE ENTIRE CONTROVERSY DOCTRINE CANNOT BE USED TO DENY PLAINTIFF HER RIGHTS UNDER THE NEW JERSEY CONSUMER FRAUD ACT.

POINT VII: THE NEW JERSEY CONSUMER FRAUD ACT SHOULD BE LIBERALLY CONSTRUED IN FAVOR OF THE CONSUMER.

POINT VIII: THE FAILURE TO NOTIFY THE PLAINTIFF OF THE LOAN REJECTION AS SET FORTH IN THE EQUAL CREDIT OPPORTUNITY ACT IS A PER SE VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT.

POINT IX: THE STATUTE OF LIMITATIONS UNDER THE NEW JERSEY CONSUMER FRAUD ACT IS SIX YEARS.

POINT X: THE COURT SHOULD HAVE GRANTED PLAINTIFF'S CROSS-MOTION TO FILE AND SERVE THE SECOND AMENDED COMPLAINT AND JURY DEMAND.

POINT XI: THE ROOKER-FELDMAN DOCTRINE SHOULD BE **[*12]** EXPANDED TO STATE COURT ACTIONS IN SEPARATE STATES TO BAR THE APPLICABILITY OF COLLATERAL ESTOPPEL, RES JUDICATA, AND THE ENTIRE CONTROVERSY DOCTRINE.

At the outset, we must determine whether New York or New Jersey law applies to defendant's claim of res judicata. Plaintiff contends that New York law is applicable in that regard. We agree. The *Full Faith and Credit Clause, U.S. Const. Art. IV, § 1*, requires that we "give to a foreign judgment at least the res judicata

effect which the judgment would be accorded in the State which rendered it." Durfee v. Duke, 375 U.S. 106, 109, 84 S. Ct. 242, 244, 11 L. Ed. 2d 186, 190 (1963); *See also* Kram v. Kram, 98 N.J. Super. 274, 278, 237 A.2d 271 (App. Div. 1968), *aff'd*, 52 N.J. 545, 247 A.2d 316 (1968). Nevertheless, we also agree with defendant that our choice of law is of no moment because New Jersey law is the same.

New York courts apply the transactional approach to res judicata issues. O'Brien v. Syracuse, 54 N.Y.2d 353, 429 N.E.2d 1158, 1159, 445 N.Y.S.2d 687 (N.Y. 1981). This means that

> once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.
>
> [*Ibid.*]

Res **[*13]** judicata prevents a party from predicating a claim on the same incidents that were raised in an earlier suit "as the basis for litigation" when the earlier suit reached a final conclusion. *Ibid.* Even if two actions involved materially different elements of proof, the second action should be barred. Id. at 1160. *O'Brien* also noted the following:

> When alternative theories are available to recover what is essentially the same relief for harm arising out of the same or related facts such as would constitute a single "factual grouping" . . . , the circumstance that the theories involve materially different elements of proof will not justify presenting the claim by two different actions.
>
> [*Ibid.*]

Additionally, *O'Brien* articulated a second category of allegations that would not be barred by res judicata because those allegations concerned acts occurring after the original suit. *Ibid.*

Generally, a foreign court must give res judicata effect to the judgment of the forum state. If, however,

> the judgment was not on the merits and settled only some incidental issue, such as that plaintiff's suit was barred by a local statute of limitations or that the court lacked jurisdiction over the defendant, the **[*14]** judgment will be held conclusive in other States only as to the issue decided and the plaintiff will remain free to maintain an action on the original claim.
>
> [Restatement (Second) of Conflicts of Laws § 95 comment c (1989).]

While acknowledging this exception, defendant correctly asserts that under New York law, when "a motion to dismiss for failure to state a cause of action is granted for reasons other than a technical pleading defect . . . the order is 'on the merits' and entitled to *res judicata* effect." New York courts have addressed this issue numerous times. *See* Barrett v. Kasco Constr. Co., Inc., 56 N.Y.2d 830, 438 N.E.2d 99, 452 N.Y.S.2d 566 (N.Y. 1982); Lampert v. Ambassador Factors Corp., 266 A.D.2d 124, 698 N.Y.S.2d 234, 235 (App. Div. 1999); Bluebird Partners, L.P. v. First Fidelity Bank, 259 A.D.2d 273, 686 N.Y.S.2d 5, 6 (App. Div. 1999); Slavin v. Fischer, 160 A.D.2d 934, 554 N.Y.S.2d 659, 660 (App. Div. 1990); Feigen v. Advance Capital Mgmt. Corp., 146 A.D.2d 556, 536 N.Y.S.2d 786, 788 (App. Div. 1989); and Palmer v. Fox, 28 A.D.2d 968, 283 N.Y.S.2d 216, 217 (App. Div. 1967).

The present case was dismissed on the merits. As the New York court opinion explained, plaintiff did not demonstrate that defendant owed her any duty nor did she satisfy a single element of her emotional distress **[*15]** claim. Thus, the New York court did not dismiss plaintiffs complaint due to a technical defect. According to New York law, plaintiff's complaint was dismissed on the merits. As a result, res judicata bars plaintiff from bringing additional claims arising from the same transaction.

Plaintiff cites Richards v. Estate of Kaskel, 169 A.D.2d 111, 570 N.Y.S.2d 509 (App. Div. 1991), *appeal dismissed in part*, *78 N.Y.2d 1042, 582 N.E.2d 593, 576 N.Y.S.2d 210 (1991)*, and asserts without explanation, that "in order to apply . . . res judicata, the second action must involve the same cause of action [as the] prior litigation." However, in Richards, supra, 570 N.Y.S.2d at 514, the court did not apply res judicata to defendant's subsequent action because the "action [was] not . . . based on the same claim at issue in the [first] action; nor is it an attempt to advance the same claim under a different theory of law." *Richards* borrowed the language of the New York Court of Appeals to reach its conclusion: "[O]nce a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy." *Ibid.* (quoting O'Brien, supra, 54 N.Y.2d at 357 **[*16]** ("When alternative theories are available to recover what is essentially the same relief for harm arising out of the same or related facts . . . the

circumstance that the theories involve . . . different elements" does not justify two separate actions)). Here, plaintiff's New Jersey action arises from the identical series of transactions questioned in New York. Like the New York action, the New Jersey action concerns plaintiff's March 2001 loan application and whether BNY provided her with timely and appropriate documentation of its decision to deny her application. The only difference in the New Jersey action is the new theories advanced by plaintiff. As Richards and O'Brien made clear, attempts to advance the same claim under different theories are barred by res judicata.

Relying on *Buffalo Retired Teachers 91-94 Alliance v. Bd. of Educ. for City School Dist. of City of Buffalo, 261 A.D.2d 824, 689 N.Y.S.2d 562 (1999)*, *reargument granted and appeal denied*, *697 N.Y.S.2d 455 (1999)*, plaintiff contends that the preclusive effect of a judgment applies only when two suits involve the same claim, demand, and cause of action. In *Buffalo*, the court found that res judicata did not prevent plaintiff from asserting **[*17]** a breach of contract action when its previous action alleged a failure to negotiate in good faith. Id. at 826. As defendant points out, however, the breach of contract claim did not accrue until *after* the earlier action; therefore, it was impossible for plaintiff to bring a breach of contract claim in the prior action. *Ibid.* (emphasis added). The facts of the present case are distinguishable because plaintiffs alleged wrong occurred prior to her first action, making it possible for her to present the claims in her first suit. Thus, Buffalo does not lend support to plaintiff's argument.

Likewise, other cases cited by plaintiff do not support her argument because the second cause of action in those cases had not accrued at the time of the first action. *See EnerRycrescent, Inc. v. Creative Modules Enterprises, Inc., 183 A.D.2d 804, 584 N.Y.S.2d 118 (App. Div. 1992)*; Van Dussen-Storto Motor Inn, Inc. v. Rochester Tel. Corp., 63 A.D.2d 244, 407 N.Y.S.2d 287, 291 (App. Div. 1978); Purcell v. Regan, 126 A.D.2d 849, 510 N.Y.S.2d 772, 774 (App. Div. 1987). For the same reason that *Buffalo* is inapposite, those cases are clearly distinguishable from the present case.

The only remaining case cited by plaintiff that could support her claim is **[*18]** Welch v. Shiffman, 80 A.D.2d 683, 436 N.Y.S.2d 430 (App. Div. 1981). *Welch* did indeed state that "[i]n order to apply [res judicata], the second action must involve the same cause of action advanced in the prior litigation." Id. at 431. However, *Welch* incorrectly relied on In re Reilly v. Reid, 45 N.Y.2d 24, 379 N.E.2d 172, 174-76, 407 N.Y.S.2d 645 (N.Y. 1978). Indeed, *In re Reilly* stated that two suits must involve the same cause of action for res judicata to apply; however, the court elaborated on what it meant by the term "cause of action." In doing so, the Court of Appeals found that "same cause of action" encompasses "separately stated or statable causes of action." Id. at 175. The court, while concluding that plaintiff's second action was precluded by res judicata, stated the following: "Nor will differences in legal theory generally avail to permit relitigation of claims based on the same gravamen." *Ibid.* Therefore, Welch mischaracterized the term "same cause of action" when reaching its conclusion. Consequently, its holding will not be applied in place of the contrary authorities cited above.

Similar to New York, New Jersey applies res judicata using a transactional approach. The Court articulated that res judicata applies **[*19]** when:

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
>
> [McNeil v. Legislative Apportionment Connnn'n, 177 N.J. 364, 395, 828 A.2d 840 (2003) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412, 591 A.2d 592 (1991) (citations omitted)).]

"If, under various theories, a litigant seeks to remedy a single wrong, then that litigant should present all theories in the first action. Otherwise, theories not raised will be precluded in a later action." Watkins, supra, 124 N.J. at 413; C.R. v. J.G., 306 N.J. Super. 214, 230, 703 A.2d 385 (App. Div. 1997) (Res judicata bars parties "from relitigating claims that were, or could have been, raised in a prior action").

Thus, whether judged under New York or New Jersey law, Judge O'Connor was correct in his conclusion that plaintiff's action was barred by res judicata. As a result, we need not address whether collateral estoppel is applicable under the circumstances presented.

We also conclude that the entire controversy doctrine **[*20]** was properly applied to bar plaintiff's New Jersey action. *Rule 4:30A* provides that: "[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine . . . .

The purpose of the doctrine is "to encourage comprehensive and conclusive litigation determinations, to avoid fragmentation of litigation, and to promote party fairness and judicial economy and efficiency . . ." Pressler, *Current N.J. Court Rules*, comment 1 on *R.* 4:30A. In order for the doctrine to apply, the claims must "arise from related facts or the same transaction or series of transactions." *Ditrolio v. Antiles, 142 N.J. 253, 267, 662 A.2d 494 (1995)*. The "core set of facts" is the link between distinct claims requiring that they be determined in a single proceeding. *Id. at 267-68*. "The entire controversy doctrine does not require commonality of legal issues." *Id. at 271*. As a result, "[a] plaintiff bringing an action based on two distinct legal theories is required to bring those claims together in one proceeding." *Ibid.*

Further, the entire controversy doctrine applies to multi-forum litigation. In *Giudice v. Drew Chem. Corp., 210 N.J. Super. 32, 41, 509 A.2d 200 (App. Div. 1986)*, **[*21]** *certif. granted in part and remanded*, *104 N.J. 465, 517 A.2d 448 (1986)*, plaintiff who elected not to raise a claim in a prior New York litigation could not bring that claim in a subsequent proceeding. Specifically, we found that "[e]ven though [plaintiff's] claims for defamation in New York and wrongful discharge in the present case may be separate and independent causes of actions capable of separate adjudication, those are insufficient reasons to preclude operation of the doctrine." *Ibid.*

Similarly, in *Mortgageling Corp. v. Commonwealth Land Title Ins. Co., 142 N.J. 336, 343-45, 662 A.2d 536 (1995)*, the Court applied the entire controversy doctrine against a plaintiff that withheld a claim in a prior action filed in a Pennsylvania federal court. In reaching its conclusion, the Court noted that "our joinder rules have been understood to apply when claims have been omitted from proceedings in another jurisdiction." *Id. at 343*.

The facts of the present case are nearly identical to the facts of *Giudice, supra*, and *Mortgageling, supra.* Like the plaintiffs in those cases, plaintiff initiated an action in a foreign jurisdiction and now asserts different claims in New Jersey. The current action is based on an identical **[*22]** set of facts as the New York case; therefore, the entire controversy applies to preclude her subsequent claims. The court below correctly recognized that "plaintiff could have raised [the present] causes of action as part of the New York action and did not."

Plaintiff, relying on *Blatterfein v. Larken Associates, 323 N.J. Super. 167, 732 A.2d 555 (App. Div. 1999)*, asserts that "New Jersey Courts have carved out an exception to the entire controversy doctrine pertaining to the equality of the forum." In *Blatterfein, supra*, the issue was whether a homeowner was precluded from bringing a consumer fraud action against a builder after the homeowner already received an award in arbitration. *Id. at 174*. We did not apply the entire controversy doctrine because "plaintiffs had no opportunity in the arbitration to litigate all claims they might have against any of the defendants. . . ." *Ibid.* "[T]he entire controversy doctrine . . . cannot bar causes of action, such as for consumer fraud, which plaintiffs had no right or opportunity to litigate in the arbitration proceeding." *Id. at 175*.

The facts of *Blatterfein* are entirely dissimilar from the facts of the present case. Unlike the *Blatterfein* plaintiffs, plaintiff **[*23]** had the right and opportunity to litigate her ECOA and CFA claims in the New York action. There was no procedural bar, such as an agreement to arbitrate, preventing plaintiff from asserting her claims in New York. As a result, *Blatterfein* is inapplicable to the present case.

As a result of our disposition we have no need to address defendant's statute of limitations claim, which was never resolved by the motion judge. Plaintiff's argument respecting her effort to file a second amended complaint is moot since nothing in that proposed pleading would affect the applicability of res judicata or entire controversy as discussed above.

Plaintiff's argument based on the so-called *Rooker-Feldman* [1] doctrine, see *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 1522, 161 L. Ed. 2d 454, 461 (2005)*; *Desi's Pizza, Inc. v. City of Wilkes-Barre, 321 F.3d 411, 419 (3rd Cir. 2003)*, was never advanced in the motion court; therefore, it is deemed waived. *Nieder v. Royal Indemn. Ins. Co., 62 N.J. 229, 234, 300 A.2d 142 (1973)* (quoting *Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548, 156 A.2d 737 (App. Div. 1959))*, *certif. denied*, *31 N.J. 554, 158 A.2d 453 (1960)*. In any event, we have considered the **[*24]** argument and found it entirely without merit. *R. 2:11-3(e)(1)(A)*.

Affirmed.

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[1] *Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923)*; *Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L Ed. 2d 206 (1983)*.

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