DOCKET NO.: KNL-CV22-6059616-S **SUPERIOR COURT**

BARR HOLDINGS, LLC **J.D. OF NEW LONDON**

V. **AT NEW LONDON**

THE BLACK POINT BEACH CLUB ASSOCIATION **JUNE 12, 2024**

MEMORANDUM OF DECISION

On December 22, 2023, the defendant, The Black Point Beach Club Association, filed a motion for summary judgment and memorandum of law. The defendant argues that the present action, also referred to as *Barr Holdings II*, is barred by the doctrine of res judicata. On February 2, 2024, the plaintiffs, Barr Holdings, LLC and John and Donna Skala, filed a memorandum in opposition to the motion for summary judgment. In the opposition, the plaintiffs argue that res judicata does not apply because the court did not rule on the merits of the underlying action, *Barr Holdings LLC v. Black Point Beach Club Association*, Docket No. KNL-CV20-6048857-S, also referred to as *Barr Holdings I.* The plaintiffs also argue that the contract and quasi-contract claims in the present action could not have been brought in *Bar Holdings I.* Oral argument was held on February 26, 2024. The court grants the motion for summary judgment.

Both *Barr Holdings I* and *Barr Holdings II* arise out a dispute over the maintenance of a scour wall. In *Barr Holdings I*, the plaintiffs asserted claims against the defendant for negligence, negligence res ipsa loquitor, temporary nuisance and permanent nuisance. The defendant filed a special defense claiming that the plaintiffs' claims were barred by General

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Statutes § 52-557n and that the defendant was entitled to governmental/sovereign immunity under § 52-557n. The defendant moved for summary judgment on the grounds that it was entitled to immunity. On April 5, 2023, the court granted the motion for summary judgment as to all claims and judgment entered in favor of the defendant. No appeal was taken.

In *Barr Holdings II*, the plaintiffs assert claims for breach of contract, unjust enrichment and implied-in-fact contract against the defendant. The defendant subsequently moved for summary judgment arguing that *Barr Holdings II* is barred by the doctrine of res judicata.

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Rockwell v. Rockwell*, 196 Conn. App. 763, 768, 230 A.3d 889 (2020). "[B]ecause any valid special defense raised by the defendant ultimately would prevent the court from rendering judgment for the plaintiff, a motion for summary judgment should be denied when any [special] defense presents significant fact issues that should be tried." (Internal quotation marks omitted.) *U.S. Bank National Assn.* v. *Eichten*, 184 Conn. App. 727, 745, 196 A.3d 328 (2018). "[S]ummary judgment is an appropriate vehicle for raising a claim of res judicata . . . ." (Citations omitted.) *Joe=s Pizza, Inc.* v. *Aetna Life & Casualty Co.*, 236 Conn. 863, 867 n.8, 675 A.2d 441 (1996). "Because res judicata or collateral estoppel, if raised, may be dispositive of a claim, summary judgment [is] the appropriate method for resolving a claim of res judicata." *Jackson* v. *R. G. Whipple, Inc.*, 225 Conn. 705, 712, 627 A.2d 374 (1993).

"Generally, for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate opportunity to litigate the matter fully; and (4) the same underlying claim must be at issue." *Rockwell v. Rockwell*, 196 Conn. App. 763, 769, 230 A.3d 889 (2020). "Under the doctrine of res judicata, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim. A judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which *might have been offered* for that purpose." (Emphasis in original; internal quotation marks omitted.) *Demilo & Co. v. Commissioner of Motor Vehicles,* 233 Conn. 281, 292, 659 A.2d 162 (1995). "The doctrine of res judicata, therefore, applies not only to claims actually made and litigated . . . but also to claims that a party could have made in the initial action." (Citation omitted.) Id. at 293.

"[T]he appropriate inquiry with respect to [claim] preclusion is whether the party had an adequate opportunity to litigate the matter in the earlier proceeding . . . ." (Internal quotation marks omitted.) *State v. Osuch,* 124 Conn. App. 572, 581, 5 A.3d 976 (2010). "[T]he essential concept of the modern rule of claim preclusion is that a judgment against [the] plaintiff is preclusive not simply when it is on the merits but when the procedure in the first action afforded [the] plaintiff a fair opportunity to get to the merits." (Internal quotation marks omitted). *Close, Jensen & Miller, P.C. v. Fid. Nat. Title Ins. Co.*, 130 Conn. App. 174, 183, 21 A.3d 952 (2011). While "[a] plaintiff [abandons] his opportunities to avoid res judicata [by

failing to take an appeal]"; *Tirozzi v. Shelby Ins. Co.,* 50 Conn. App. 680, 689, 719 A.2d 62, cert. denied, 247 Conn. 945, 723 A.2d 323 (1998); res judicata may also apply even if the unsuccessful party in the prior litigation did not have the opportunity to seek appellate review. *Weiss v. Weiss,* 297 Conn. 446, 472 n. 20, 998 A.2d 766 (2010). "Although the denial of a motion to amend is not a final appealable judgment, it can be raised in an appeal from a subsequent final judgment on the underlying complaint." *Tarzia v. Great Atlantic & Pacific Tea Co.,* 52 Conn. App. 136, 141 n. 5, 727 A.2d 219 (1999).

The plaintiffs do not dispute that the second element is met and that the parties are the same in both actions. The plaintiffs contend that the prior judgment in *Barr Holdings I* was not rendered on the merits; that it did not have an adequate opportunity to litigate its contract claims in the first action; and that the underlying claims are not the same.

"A judgment on the merits is one which is based on legal rights as distinguished from mere matters of practice, procedure, jurisdiction or form. . . . A decision with respect to the rights and liabilities of the parties is on the merits where it is based on the ultimate fact or state of facts disclosed by the pleadings or evidence, or both, and on which the right of recovery depends." (Citations omitted; internal quotation marks omitted). *Rosenfield v. Cymbala,* 43 Conn. App. 83, 91–92, 681 A.2d 999 (1996). "Judgments based on the following reasons are not rendered on the merits: want of jurisdiction; pre-maturity; failure to prosecute; unavailable or inappropriate relief or remedy; lack of standing." (Internal quotation marks omitted.) *Legassey v. Shulansky,* 28 Conn. App. 653, 658, 611 A.2d 930 (1992). A judgment "obtained through the grant of summary judgment against a plaintiff constitutes a judgment on the merits

for purposes of res judicata." (Internal quotation marks omitted). *Boone v. William W. Backus Hosp.*, 102 Conn. App. 305, 311, 925 A.2d 432 (2007).

The plaintiffs concede that "ordinarily, judgment obtained through summary judgment constitutes a final judgment on the merits." Objection to Motion for Summary Judgment, p. 7. The plaintiffs, however, argue that since the court ruled that the defendant was entitled to summary judgment on the grounds of immunity, that the court did not address the merits of the plaintiffs' claims. The plaintiffs offer no case on point for this issue and when pressed on this issue at oral argument had no legal support to offer. This court's decision in *Barr Holdings I*, was not a mere matter of practice, procedure, jurisdiction or form. This court analyzed the parties' duties pursuant to General Statutes § 52-557n and made a determination about the plaintiff's negligence and nuisance claims that were in front of this court at the time. This court found that said claims were barred by governmental immunity and entered judgment in favor of the defendant. The granting of judgment to the defendant in *Barr Holdings I* constitutes a final judgment on the merits, satisfying the first element of res judicata.

The plaintiffs argue that the third element of the doctrine of res judicata is not met because they were prevented from amending their complaint in *Barr Holdings I* to add a breach of contract claim. The defendant argues that the plaintiffs had an adequate opportunity to litigate their contract claim in *Barr Holdings I* and that res judicata applies. The defendant argues that res judicata applies to claims that were made or might have been made, which, the defendant argues is precisely the case here.

The court addressed whether res judicata bars a claim that a party sought to include within an amended complaint of a prior action against the same defendant, but which was subsequently denied by the trial court in *Steedley v. Metropolitan Property & Casualty Insurance Company*, Superior Court, judicial district of Fairfield, Docket No. CV11-6016675-S (November 15, 2011, *Bellis, J.*). After a careful and well-reasoned analysis, the court in *Steedley* found that res judicata barred "the CUPTA/CUIPA claim in *Steedley II* even though the plaintiff sought to include these allegations within her amended complaint against the defendant in *Steedley I but* was subsequently denied by the trial court. Based on that premise, the fact that the plaintiff was unsuccessful with respect to the amended complaint does not mean that the plaintiff did not have an adequate opportunity in *Steedley I* to litigate her CUTPA/CUIPA claim." Id. This court adopts the well-reasoned decision in *Steedley v. Metropolitan Property & Casualty Insurance Company*, Superior Court, judicial district of Fairfield, Docket No. CV11-6016675-S (November 15, 2011, *Bellis, J.*) and finds that the plaintiffs had the opportunity in the first action to fairly and fully litigate the claims they raise now in *Barr Holdings II*. The court finds that the third element of the doctrine of res judicata is met.

With regard to the fourth element of the doctrine of res judicata, the plaintiffs concede that the claims underlying both *Barr Holdings I* and *Barr Holdings II* arise out of the same obligations and failures of the defendant maintain the sour wall. Objection to Motion for Summary Judgment, p. 14. The plaintiffs argue, however, that the claims in *Barr Holdings I* sound in tort while the claims in the present action sound in contract and quasi-contract. The

plaintiffs argue that these different legal claims mean that the fourth element is not met. The court disagrees.

"To determine whether claims are the same for res judicata purposes, [our Supreme Court] has adopted the transactional test . . . Under the transactional test, res judicata extinguishes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose . . . What factual grouping constitutes a transaction, and what groupings constitute a series, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage . . . [E]ven though a single group of facts may give rise to rights for several different kinds of relief, it is still a single cause of action . . . In applying the transactional test, we compare the complaint in the [present] action with the pleadings and the judgment in the earlier action." (Citations omitted; internal quotation marks omitted.) *Wheeler v. Beachcroft, LLC,* 320 Conn. 146, 159-60, 129 A.3d 677 (2016). "A reviewing court has the authority to determine whether the transactional test is satisfied by comparing the factual underpinnings of the claims to determine if they are sufficiently similar." *Girolametti v. Michael Horton Associates, Inc.,* 173 Conn. App. 630, 651, 164 A.3d 731 (2017), aff'd, 332 Conn. 67, 208 A.3d 1223 (2019).

In *Labieniec v. Nichols*, 18 Conn. App. 117, 117, 556 A.2d 635, 635 (1989), our Appellate Court was faced with the same issue as this court is now faced with, which is

"whether a litigant, after a final judgment on the merits of a claim sounding in tort against a defendant, is barred by the principles of res judicata from thereafter pursuing a second cause of action, sounding in contract, stemming from the same set of facts, against the same defendant." Id. The Appellate Court determined that the breach of contract claim arose out the same transaction as the tort claim. Thus, the Appellate Court determined that the plaintiff could have raised the breach of contract claim in the earlier lawsuit, and the subsequent lawsuit was barred by the doctrine of res judicata.

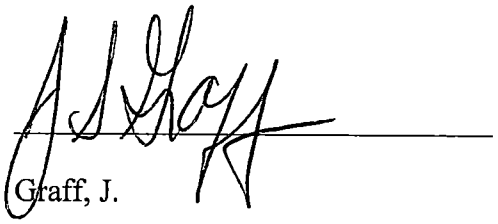
As noted above, the plaintiffs concede that the claims in both *Barr Holdings I* and *Barr Holdings II* arise out of the same acts or omissions by the defendant. Indeed, the plaintiffs tried to bring the breach of contract claims in *Barr Holdings I* through a request to amend the complaint. See Docket No. KNL-CV20-6048857-S, Docket Entry. 141. In the request to amend, the plaintiffs stated: "There would be no unfairness or injustice to Defendant from the amendment, in particular because the new cause of action – the claim for breach of contract – *is simply a facet of the same core allegation* – that Defendant had, but breached, a duty to Plaintiffs to maintain its property in a manner that does not cause Plaintiffs any injury or damage – that underlies the complaint as a whole and of which Defendant clearly already has notice." (Emphasis added). The plaintiffs' concessions and prior statements demonstrate that the breach of contract claim and quasi-contract claim arise out of the same factual underpinnings as the tort claims that were brought in *Barr Holdings I.*

Moreover, in *Barr Holdings I*, both parties relied on the deed and covenant in their motion for summary judgment and objection to motion for summary judgment in making their

respective arguments to the court. The plaintiffs now bring a breach of contract claim for violation of the deed and covenant that was at issue at the summary judgment proceeding in *Barr Holdings I*. The plaintiffs are not in a situation where new facts have arisen making the breach of contract/quasi-contract claims ripe or where new facts are now known to them. Based on this record, the court finds that the transactional test is met.

Finally, the court addresses the policy considerations supporting the doctrine of res judicata, which is to promote "judicial economy, minimizing repetitive litigation, preventing inconsistent judgments and providing repose to parties" as "balanced against 'the competing interest of the plaintiff in the vindication of a just claim.' " (Internal quotation marks omitted). *DAB Three, LLC v. Fitzpatrick*, 215 Conn. App. 835, 854, 283 A.3d 1048 (2022), *cert. denied*, 345 Conn. 971, 286 A.3d 907 (2023). The plaintiffs have had an opportunity to litigate their claims. It is not in the interest of judicial economy to allow for repetitive litigation or to permit the present action to go forward.

The motion for summary judgment is granted.



Graff, J.