

PUBLISH

Index No.: 1958-12

**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. DENISE F. MOLIA,
Justice

LUNZ DEVELOPMENT CORP.,

Petitioner,

- against -

MARJORIE E. DUNN,

Respondent.

CASE DISPOSED: YES
MOTION R/D: 3/23/12
SUBMISSION DATE: 3/23/12
MOTION SEQUENCE No.: 002 MD

ATTORNEY FOR PLAINTIFF

Gary Rosen Law Firm PC
1010 Northern Boulevard, Suite 308
Great Neck, New York 11201

ATTORNEYS FOR DEFENDANTS

Jeremy Walsh, Esq.
3360 Camp Mineola Road
Mattituck, New York 11952

Upon the following papers filed and considered relative to this matter:

Notice of Motion dated February 22, 2012; Affidavit dated February 27, 2012; Exhibits A through C annexed thereto; Affirmation in Opposition dated March 16, 2012; Exhibits 1 through 4 annexed thereto; and upon due deliberation; it is

ORDERED, that the motion by defendant, pursuant to CPLR 304 and CPLR 7502(a), for an Order dismissing the plaintiff's prior motion and Verified Petition, is denied.

By Order dated February 21, 2012, this Court granted petitioner's motion to confirm the award of the arbitrator and direct the entry of judgment thereon. The respondent failed to oppose said motion despite the fact that her request to adjourn the original return date was consented to by the petitioner and permitted by the Court. Based on the arbitration award issued in favor of petitioner, a judgment against the respondent in the amount of \$55,396.61 was entered by the Suffolk County Clerk March 8, 2012. The respondent has neither moved to vacate the judgment or reargue this Court's Order confirming the subject arbitration dated February 21, 2012.

The foregoing constitutes the Order of this Court.

Dated: May 22, 2012


HON. DENISE F. MOLIA J.S.C.

PUBLISH

SHORT FORM ORDER

INDEX
NO.: 39445-11

**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 44 SUFFOLK COUNTY**

PRESENT: Honorable Elizabeth H. Emerson

MOTION DATE: 4-6-12
SUBMITTED: 4-12-12
MOTION NO.: 001-MD; CASE DISP

MARJORIE E. DUNN, x

Plaintiffs,

JEREMY WALSH, ESQ.
Attorney for Plaintiff
53 Meadow Street
Garden City, New York 11530

-against-

LUNZ DEVELOPMENT CORP.,

Defendant.
_____ x

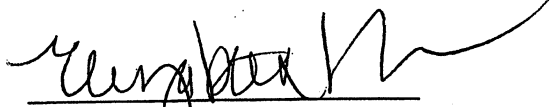
GARY ROSEN LAW FIRM, P.C.
Attorney for Defendant
1010 Northern Boulevard, Suite 322
Great Neck, New York 11201

ORDERED that this petition for an order vacating or modifying an arbitration award dated October 3, 2011, which is in favor of the respondent and against the petitioner in the amount of \$51,130.00, is denied, and the proceeding is dismissed.

The arbitration award dated October 3, 2011, which is the subject of this proceeding, was confirmed by an order of this court (Molia, J) dated February 21, 2012, in a separate proceeding pursuant to CPLR 7510 entitled **Luntz Development Corp. v Dunn** (Index No. 1958-12). Under res judicata, or claim preclusion, a final judgment bars future actions between the same parties on the same cause of action (*see, Matter of Reilly v Reid*, 45 NY2d 24, 27). As a general rule, 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 (*see, O'Brien v City of Syracuse*, 54 NY2d 353, 357; *Matter of Reilly v Reid*, *supra* at 30). The present proceeding is between the same parties, involves the same underlying claim, and arises out of the same arbitration award as the prior proceeding in this court. Accordingly, this proceeding is barred by the doctrine of res judicata.

Dated: July 11, 2012

JUL 11 2012



HON. ELIZABETH HAZLITT EMERSON