

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

JERMC LTD.,

Appellant,

vs.

Ref. No.: 15-000043AP-88B

UCN: 522015AP000043XXXXCI

TOWN OF REDINGTON
SHORES CODE ENFORCEMENT
SPECIAL MASTER.

Appellee.

ORDER AND OPINION

Appellant challenges the Town of Redington Shores Code Enforcement Board's Order Finding Non-compliance with Special Master's Order Dated June 2, 2014 and Imposing Penalty/Lien. Appellant asserts that the Town failed to observe the essential requirements of law, the order was not supported by competent substantial evidence, and the vague code enforcement notices deprived it of meaningful due process. For the reasons set forth below, the order is reversed and the case is remanded back to the Special Master.

Facts and Procedural History

Appellant is owner of the Redington Long Pier. On March 28, 2014, Appellant was sent a Code Enforcement Notice of Violation indicating that violations existed at the pier and allowing thirty days to complete the repairs, which required licensed contractors and permits. When no permits were pulled, the Town scheduled a Special Master Hearing on May 27 ("first hearing"). Appellant received notice but did not attend the first hearing. On June 2, the Special Master entered an order finding that the pier continued to have violations ("first order"). The first order gave Appellant until June 26 to bring the pier into compliance before fines would be imposed. Appellant appealed to this Court. On July 8, the Special Master held a hearing ("second hearing") and determined that the pier was not in compliance as of June 24 ("second order"). On the same day, this Court granted a stay in the matter. On May 11, 2015, this Court affirmed the first order.

The Town was unsure about the validity of the second order, given that the stay was entered the same day, so the Town decided to have another hearing ("third hearing") to reaffirm the second

order and impose sanctions. On June 24, 2015, the Special Master concluded that the pier was not in compliance (“third order”), and JERMC again appealed to this Court.

Appellee filed a motion to dismiss this appeal based on res judicata. The Court denied that motion without prejudice to consideration of any res judicata issues raised in the Appellee’s Answer Brief. Appellant asserts that res judicata does not apply because several of the arguments were not decided on the merits. In this Court’s first order (affirming the Special Master’s first order), all but one of Appellant’s arguments were deemed waived because they were not raised at the hearing below. In its affirmance, this Court did review Appellant’s argument asserting vague notice and found no violation of due process.

Discussion

In the instant appeal, Appellant raises six arguments; four issues that were previously raised in the first appeal and two issues that were raised for the first time in this appeal. The four repeat issues are: Issue (1) the Town failed to observe the essential requirements of law because the International Property Maintenance Code (“IPMC”) is not part of the Town code, so the Town has no authority to use it; Issue (2) the Town failed to observe the essential requirements of law because the Town has no authority to enforce ordinances seaward of Coastal Construction Control Line (“CCCL”); Issue (3) the Town failed to observe the essential requirements of law because the Town has no authority to require permits for ordinary minor repairs; and Issue (4) the Town’s notices were vague, depriving Appellant of meaningful due process. The two new issues are: Issue (5) whether competent substantial evidence supported the Special Master’s finding of noncompliance in the third order and Issue (6) whether the Special Master failed to observe the essential requirements of law by dismissing Appellant’s jurisdiction arguments as waived.

In the Answer, Appellee suggests that Appellant’s issues are barred by the alternative doctrines of res judicata, collateral estoppel, and law of the case. While each of these doctrines is aimed at preventing repetitious litigation, each has different requirements. Under res judicata, a judgment on the merits in a former suit bars “a subsequent action between the same parties on the same cause of action.” *See Florida Dep’t of Transp. v. Juliano*, 801 So. 2d 101, 105-06 (Fla. 2001). Importantly, it applies “not only to the claims actually litigated in the first suit, but also to ‘every other matter which the parties might have litigated and had determined.’” *Livingston v. Frank*, 150 So. 3d 239, 243-44 (Fla. 2d DCA 2014) (citations omitted). Therefore, at first glance it appears that all of the arguments that Appellant raised in the first appeal would be barred by res judicata. However, res judicata cannot apply “where the claims in the two cases concern different periods of

time.” *M.C.G. v. Hillsborough Cnty. Sch. Bd.*, 927 So. 2d 224, 227 (Fla. 2d DCA 2006) (citations omitted); see also *Florida Transp. Serv., Inc. v. Miami-Dade Cnty.*, 757 F. Supp. 2d 1260, 1272 (S.D. Fla. 2010) *aff’d sub nom. Florida Transp. Servs., Inc. v. Miami-Dade Cnty.*, 703 F.3d 1230 (11th Cir. 2012) (holding that res judicata did not apply to the denial of a permit application in a subsequent year because “each denial gave rise to a new and distinct cause of action”). Because the first hearing was to determine if violations existed as of May 27, 2014, and the third hearing was to determine if violations existed as of June 26, 2014, they are of actions in separate time periods to which res judicata cannot apply.

Collateral estoppel, however, “bars relitigation of the same issues between the same parties in connection with a different cause of action.” *Cook v. State*, 921 So. 2d 631, 634 (Fla. 2d DCA 2005) (quoting *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004)). However, it only applies to issues that were “actually litigated.” *Id.* (citations omitted). Law of the case concerns successive appeals taken in the same case and issues remanded back to the trial court. See *Juliano*, 801 So. 2d at 105-06. It “requires that questions of law actually decided on appeal must govern the case in the same court and the trial court, through all subsequent stages of the proceedings.” *Id.* A lower tribunal “is bound to follow prior rulings of the appellate court as long as the facts on which [the appellate] decision are based continue to be the facts of the case.” *Id.* Therefore, law of the case bars Issue (4), Appellant’s claim of vague notice, because this Court actually considered it in the first appeal. Issues (1), (2), and (3), which the Court deemed waived in the first appeal, are not barred because they were not actually litigated or decided on appeal.

In Issue (5), Appellant asserts that competent substantial evidence does not exist for finding a violation at the third hearing because the building officials did not inspect the pier for one year prior to that hearing. This argument has no merit. The third hearing and order determined compliance only as of June 26, 2014, thirty days after the first hearing. The building inspectors visited the pier before the second hearing in July 2014 and determined that the pier was not in compliance within the required thirty days. Even if the third hearing and order concerned compliance as of its date (June 24, 2015), the building officials did not need to revisit the pier because the Notice of Violation required Appellant to hire contractors and pull building permits and neither of these things was done.

Appellant raised Issue (6) at the third hearing, where Appellant claimed that the Town and the Special Master did not have jurisdiction because the IPMC was not properly approved, so the Town cannot use it, and the Town cannot enforce its building code seaward of the CCCL. The Special Master stated that “those arguments weren’t made before when you had the opportunity to do

that, so I think you've waived those arguments." However, the third hearing was a separate action, so Appellant was entitled to raise the issues.

Because the third hearing concerned a different time period, the case must be remanded to give both sides an opportunity to present evidence. Accordingly, Issue (4) regarding vague notice is barred, but Issues (1), (2), and (3) have not been "actually decided" and are remanded back to the Special Master.

ORDERED AND ADJUDGED that:

1. Appellant's Motion for Costs and Attorney's Fees is DENIED. Florida Rule of Appellate Procedure 9.400 requires that costs "be taxed by *the lower tribunal* on a motion served no later than 45 days after rendition of the [appellate] court's order."
2. Appellee's Renewed Motion to Dismiss Based upon Mootness is DENIED.
3. The Order Finding Non-compliance with Special Master's Order Dated June 2, 2014 and Imposing Penalty/Lien is REVERSED and REMANDED for further proceedings.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this

6^a day of January 2016

Original Order entered on January 6, 2016, by Circuit Judges Jack Day, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

JACQUELINE S. ANTONIOUS, ESQUIRE
62-26 MYRTLE AVENUE, SUITE 105
GLENDALE, NY 11385

JAMES W. DENHARDT, ESQUIRE
2700 1ST AVENUE NORTH
ST. PETERSBURG, FL 33713-8724

MARY F. PALMER, TOWN CLERK
TOWN OF REDINGTON SHORES
17425 GULF BLVD.
REDINGTON SHORES, FL 33708-1348