

IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

12/17/18

ROBERT LEE MATTINGLY, JR.,
PLAINTIFF

AND

CIVIL ACTION NO. 18-C-2
JUDGE TIMOTHY L. SWEENEY

ROBERT MOSS, aka, BOB MOSS,
DEFENDANT.

ORDER GRANTING SUMMARY JUDGMENT

On the 27th day of August, 2018 came the Defendant, Robert Moss, A/K/A, Bob Moss, by and through his counsel of record, John M. Butler and came the Plaintiff, Robert Lee Mattingly, Jr., by Jennifer N. Taylor and Joseph H. Kozlowski, for a hearing upon the Motion for Summary Judgment previously filed by the Defendant, Robert Moss, on or about the 5th day of April, 2018. The Court did consider the Motion and the parties respective briefs. The parties were given the opportunity to present any additional evidence and authority in support of their respective positions.

The Court has considered the Motion for Summary Judgment and all exhibits, which have been verified by the Defendant. No objection to consideration of those documents nor identification or disputed facts has been made by either party.

Upon consideration of the foregoing, the Court finds that the Motion for Summary Judgment is well taken and shall be granted by the Court. The Court incorporates all the

recitation of facts provided by the parties as the Court's findings of facts with regard to the evidence and determines that there is no factual dispute exists which would prohibit the Court from granting a Motion for Summary Judgment.

Upon those findings the Court does determine that the Motion for Summary Judgment should be granted and shall be granted on the grounds of *res judicata*, and finds as follows;

1. The Plaintiff and Defendant as parties in this case were previously involved in two (2) cases filed in Pleasants County, Magistrate Court as set forth in the factual claims and briefs of the parties. Those two (2) cases were litigated fully in Magistrate Court with an adverse ruling against the Plaintiff, Robert Lee Mattingly, Jr..
2. The Magistrate Court statement with regard to the case number two (2) contending that it was dismissed without prejudice is an erroneous statement, which the Court looks behind such statement and determines that case number two (2) was in fact dismissed with prejudice because the matters had been factually and legally argued before the Magistrate in the companion case number one (1). The Magistrate was required to rule against Robert Mattingly for Robert Moss in case number two (2) as well as in case number one (1).
3. Robert Lee Mattingly Jr., representing himself, fully tried case number one (1) and case number two (2) in Magistrate Court and received an adverse ruling

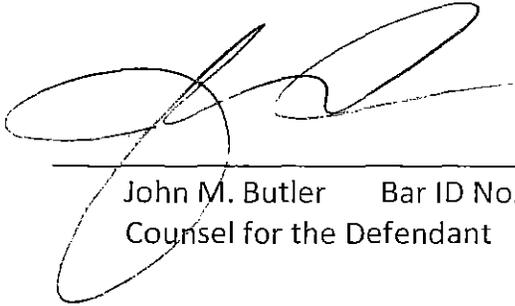
from which he did not appeal, and the matter is conclusive. The judgment of the Magistrate Court is therefore conclusive.

4. The Civil Action in this case is an attempt to retry and relitigate the fundamental claims between the parties. The mere fact that the claims are more exhaustive in their presentation in the pleadings than they were in Magistrate Court is of no consequence. The Court looks at the substantive claim of the parties and whether the parties were given full and fair opportunity to bring all their claims forward against each other in a Court with jurisdiction and venue. Even so, if a party chooses to file their claims in one jurisdiction and venue and as a result precludes themselves from filing alternative or additional action based upon the same facts in another jurisdiction or venue, their choice shall amount to *res judicata*. The Court relies upon the case of Dan Ryan Builders Inc., vs Crystal Ridge Development Inc., 803 S.E.2d 519 (West Virginia 2017).

The Court concluded that the Defendant is entitled to summary judgment on all claims in 18-C-2 as a matter of the law and these claims are dismissed with prejudice.

The Court directs the Clerk of the Court upon entry of this order to provide a true copy to counsel of record and remove the case from the active docket of the Court.

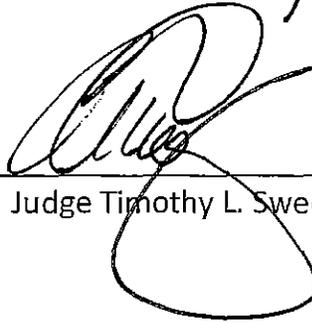
Prepared by:



John M. Butler Bar ID No. 568
Counsel for the Defendant

Entered:

12/6/18



Judge Timothy L. Sweeney

I hereby certify that the annexed
document is a true and correct copy
of the original on file in my office.
Attest: Rose Ellen Cox
County of West Virginia
Filed On 12/17/2018
J. Cleveland Sweeney
Circuit Clerk