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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GWENDOLYN WILSON,

Plaintiff,

v.

HILLSBOROUGH TOWNSHIP CONSTRUCTION/BUILDING DEPARTMENT, HILLSBOROUGH TOWNSHIP TAX ASSESSOR, and HILLSBOROUGH TOWNSHIP,

Defendants.

Civ. Action No. 19-18598 (FLW)

ORDER

THIS MATTER having been opened to the Court on the motion of defendants, Hillsborough Township, Hillsborough Township Construction/Building Department, and the Hillsborough Township Tax Assessor (collectively, "Defendants"), to dismiss with prejudice the first five counts of the Amended Complaint of *pro se* plaintiff, Gwendolyn Wilson ("Plaintiff"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Motion to Dismiss") [*see* ECF No. 17]; it appearing that Plaintiff opposes Defendants' Motion to Dismiss [*see* ECF No. 21]; the Court, having considered the parties' submissions, pursuant to Rule 78 of the Federal Rules of Civil Procedure, makes the following findings:

Background and Procedural History

The Prior Action

1. On January 14, 2017, Plaintiff filed a previous action against Defendants by filing an original Complaint in the District of New Jersey under the following docket: *Gwendolyn Wilson v. Hillsborough Township Construction Department, et al.*, Civil Action No. 17-00995 (the "Prior Action"). Although the Honorable Peter G. Sheridan, U.S.D.J.,

originally presided over the Prior Action, before whom various proceedings occurred, ultimately, he recused himself and the matter was subsequently assigned to this Court. [*See* Civil Action No. 17-00995, ECF Nos. 110, 111.] On November 7, 2017, prior to his recusal, Judge Sheridan entered an Order in the Prior Action, dismissing certain of Plaintiff's claims that "ar[ose] before 2015" as time-barred by the applicable statute of limitations and granting Plaintiff leave to amend her original Complaint to the extent any of her claims were "relat[ed] to events arising from 2015.". [*See* Civil Action No. 17-00995, ECF No. 59.]

2. On February 20, 2018, Plaintiff filed a First Amended Complaint in the Prior Action (the "Prior Complaint"), wherein Plaintiff sought to hold Defendants vicariously liable for alleged discriminatory conduct in violation of 42 U.S.C. § 1983, on the part of certain unnamed municipal employees. [*See* Civil Action No. 17-00995, ECF No. 78.] In the Prior Complaint, Plaintiff asserted four "cause[s] of action" against Defendants, arising from their alleged discriminatory conduct towards, and targeting of, Plaintiff on the basis of her race. In the First Cause of Action, Plaintiff alleged that Defendants acted in violation of the Fourteenth Amendment and conspired against Plaintiff, without providing further details. [*Id.*, First Cause of Action.] In the Second Cause of Action, Plaintiff alleged violations of the Civil Rights Act of 1866, and asserted that Defendants engaged in retaliatory conduct, through the "illegal use of the Building Permit and Tax Assessment Process[.]" [*Id.*, Second Cause of Action.] In the Third Cause of Action, Plaintiff alleged violations of the Fair Housing Act, based on Defendants' alleged deprivation "of the safeguards and protection of [Plaintiff's] building permits," including: (a) "refusing to inspect"; (b) "approving inspections without adhering to the required standards of law";

and (c) "issuing approvals without inspections[.]" [*Id.*, Third Cause of Action.] Finally, in the Fourth Cause of Action, Plaintiff alleged violations of the Fourth Amendment, as a result of defendant Hillsborough Township's illegal inspection of Plaintiff's home. [*Id.*, Fourth Cause of Action.]

3. On May 3, 2018, Defendants moved to dismiss the Prior Complaint, arguing, *inter alia*, that Plaintiff could not maintain a cause of action against Hillsborough Township for the alleged conduct of its unnamed employees through a theory of *respondent superior*, pursuant to the Supreme Court's decision in *Monell v. Department of Social Services of the City of New*. [*See* Civil Action No. 17-00995, ECF No. 97.] Defendants additionally contended that the claims asserted against both Hillsborough Township Construction/Building Department and Hillsborough Township Tax Assessor could not stand, because those defendants are not separate legal entities against which Plaintiff could file suit. [*Id.*]

4. On December 4, 2018, after the Prior Action was reassigned, this Court entered an Order granting Defendants' motion to dismiss the Prior Complaint (the "December 4, 2018 Order"). [*See* Civil Action No. 17-00995, ECF No. 134.] More specifically, the Court dismissed certain of Plaintiff's claims in the Prior Complaint, with prejudice, and granted Plaintiff leave to amend some of the other claims. [*Id.*]

5. Rather than filing an amended pleading, Plaintiff appealed the December 4, 2018 Order. On August 1, 2019, the United States Court of Appeals for the Third Circuit summarily affirmed this Court's December 4, 2018 Order. [*See* Civil Action No. 17-00995, ECF Nos. 146, 147.]

6. On December 5, 2019, Plaintiff filed a motion to vacate the December 4, 2018 Order. [*See* Civil Action No. 17-00995, ECF No. 149.]

7. On December 6, 2019, the Court entered an Order denying Plaintiff's motion to vacate the December 4, 2018 Order, finding that the motion "lack[ed] any basis." [*See* Civil Action No. 17-00995, ECF No. 150.]

The Instant Action

8. On July 25, 2019, Plaintiff commenced the instant action in the United States District Court for the District of Columbia (the "Instant Action"). [*See* Compl., ECF No. 1.]

9. On August 30, 2019, the Instant Action was transferred to the District of New Jersey pursuant to 28 U.S.C. § 1406. [See Transfer Order, ECF No. 4.]

10. On October 10, 2019, Plaintiff filed the operative Amended Complaint in the Instant Action (the "Operative Complaint"), wherein Plaintiff again seeks to hold Defendants liable for alleged discriminatory conduct in violation of 42 U.S.C. § 1983. [*See* Am. Compl., ECF No. 9.] In the Operative Complaint, Plaintiff asserts five "cause[s] of action" against Defendants. As with the Prior Complaint, each of those five causes of action in the Operative Complaint appear to arise from Defendant's alleged discriminatory conduct towards, and targeting of, Plaintiff on the basis of her race. Indeed, the first four causes of action of the Operative Complaint—which assert claims for violations of Fourteenth Amendment, the Civil Rights Act of 1866, the Fair Housing Act, and the Fourth Amendment—all appear to be identical to the four causes of action that were asserted by Plaintiff in the Prior Complaint. [*See id.*, First Cause of Action, Second Cause of Action, Third Cause of Action, and Fourth Cause of Action.] The fifth cause of action of the Operative Complaint, which is new, alleges that Defendants maintained discriminatory

policies and practices that led to Plaintiff not having her premises inspected. [*See id.*, Fifth Cause of Action.]

11. On December 6, 2019, Defendants filed the present Motion to Dismiss, arguing, *inter alia*, that Plaintiff's claims against Defendants in the Operative Complaint are barred by the doctrine of res judicata. [*See* Mot. to Dismiss, ECF No. 17.]

Discussion

12. The doctrine of res judicata "bars a party from initiating a second suit against the same adversary based on the same 'cause of action' as the first suit." *Duhaney v. Attorney Gen. of U.S.*, 621 F.3d 340, 347 (3d Cir. 2010) (citation omitted)); *see also Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979) (noting that res judicata "protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and . . . promot[es] judicial economy by preventing needless litigation."). For the doctrine to apply, the following three prongs must be met: "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." *Lubrizol Corp. v. Exxon Corp.*, 929 F.2d 960, 963 (3d Cir. 1991).

13. In this case, all three prongs of the doctrine are satisfied. As to the first prong, the Court's December 4, 2018 Order dismissing certain of Plaintiff's claims in the Prior Complaint with prejudice constituted a "final judgment" on the merits as to those claims. *See Gambocz v. Yelencsics*, 468 F.2d 837, 840 (3d Cir. 1972) (holding that a dismissal with prejudice constitutes an adjudication on the merits "as fully and completely as if the order had been entered after trial"); *see also Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 327 (1955) (noting that "it is of course true" that a judgment "dismissing the previous suit 'with prejudice' bars a later suit on the same cause of action"); *Adufemi v. City of*

Philadelphia, 445 Fed. App'x 610, 610 (3d Cir. 2011) (unpublished) (noting that the granting of a motion to dismiss "easily satisfie[s]" the final judgment on the merits prong). Furthermore, while Plaintiff was granted leave to amend some of her claims in the Prior Complaint, once she elected to forgo amendment by immediately appealing the December 4, 2018 Order, the dismissal of those remaining claims also became a final judgment. *See Berke v. Bloch*, 242 F.3d 131, 135 (3d Cir. 2001) (noting that "[i]t is a 'well-settled principle' in [the Third] [C]ircuit that an order dismissing a complaint without prejudice is not a final and appealable order unless, for example, . . . the plaintiff has elected to stand on their pleadings."); *Shapiro v. UJB Fin. Corp.*, 964 F.2d 272, 278 (3d Cir. 1992) (stating "that a plaintiff can convert a dismissal with leave to amend into a final order by electing to stand upon the original complaint.") As to the second prong, Plaintiff and Defendants were parties both to the Prior Action and to the Instant Action. Finally, with respect to the third prong, Plaintiff asserts claims in the Instant Action against Defendants that are nearly identical to the claims that she asserted—or could have asserted—against Defendants in the Prior Action. While Plaintiff's fifth cause of action in the Operative Complaint did not appear in the Prior Complaint, that claim arises from the same underlying events that gave rise to Plaintiff's other claims in the Prior Action (*i.e.*, the alleged failure by Defendants to perform various inspections of Plaintiff's premises) and, therefore, it satisfies the third prong. *See Davis v. U.S. Steel Supply, Div. of U.S. Steel Corp.*, 688 F.2d 166, 171 (3d Cir. 1982) (stating that "res judicata generally is thought to turn on the essential similarity of the underlying events giving rise to the various legal claims"); *see also Duhaney*, 621 F.3d at 347 ("The doctrine of res judicata bars not only claims that were brought in a previous action, but also claims that could have been brought.") (quoting *In re Mullarkey*, 536 F.3d

215, 225 (3d Cir. 2008)). Because all three prongs are satisfied, res judicata bars Plaintiff's claims against Defendants in the Instant Action.[1]

Accordingly, for the reasons set forth herein, and for good cause shown,

IT IS on this 15th day of July, 2020,

ORDERED that Defendants' Motion to Dismiss [ECF No. 17] is **granted**; and

FURTHER ORDERED that Plaintiff's Amended Complaint [ECF No. 9] is **dismissed with prejudice**.

/s/ Freda L. Wolfson
Hon. Freda L. Wolfson
U.S. Chief District Judge

[1] In addition to the five causes of action against Defendants in the Operative Complaint, Plaintiff also asserts a sixth cause of action, which is directed against the Court. [*See id.*, Sixth Cause of Action.] More specifically, Plaintiff asserts in the sixth cause of action that the various Orders entered by Judge Sheridan and the undersigned judge in the Prior Action should be voided pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. [*Id.*] Plaintiff's claim for relief under Rule 60(b) cannot be sustained for several reasons. As an initial matter, Rule 60(b) does not provide for a separate cause of action that can be raised in a subsequent lawsuit to collaterally attack a final judgment. Rather, the rule permits a party to file a "motion" in the same action in which a final judgment was entered. In this case, while Plaintiff did file a Rule 60(b) motion in the Prior Action, the Court denied that motion. [*See* Civil Action No. 17-00995, ECF No. 150.] Plaintiff has offered no compelling reasons to persuade this Court that it should reconsider that decision. Furthermore, while the Court has the authority to entertain an "independent action" to relieve a party from a final judgment or order, the Supreme Court has emphasized that such authority should be exercised "only to prevent a grave miscarriage of justice." *United States v. Beggerly*, 524 U.S. 38, 38 (1998). In this case, Plaintiff does not come close to approaching this demanding standard with her allegations in the Operative Complaint. Accordingly, the Court, on its own initiative, finds that dismissal of the Sixth Count of the Operative Complaint is also warranted.

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2490

GWENDOLYN WILSON,
Appellant

v.

HILLSBOROUGH TOWNSHIP CONSTRUCTION/BUILDING DEPARTMENT;
HILLSBOROUGH TOWNSHIP TAX ASSESSOR; TOWNSHIP OF HILLSBOROUGH

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 3-19-cv-18598)
District Judge: Honorable Freda L. Wolfson

Submitted Pursuant to Third Circuit LAR 34.1(a)
July 16, 2021

Before: MCKEE, SHWARTZ and RESTREPO, Circuit Judges

(Opinion filed: August 18, 2021)

OPINION*

PER CURIAM

Pro se appellant Gwendolyn Wilson, proceeding in forma pauperis, appeals from

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

the District Court's dismissal of claims she filed pursuant to 42 U.S.C. § 1983 and the Fair Housing Act ("FHA") against the Hillsborough Township Construction/Building Department, the Hillsborough Township Tax Assessor, and Hillsborough Township itself. For the reasons that follow, we will affirm the District Court's judgment that Wilson's claims are barred by res judicata.

I.

The history of this case is set forth in our prior decision. See Wilson v. Hillsborough Twp. Constr. Dep't, 779 F. App'x 969, 971 (3d Cir. 2019). Accordingly, we will only recite the facts necessary for our discussion.

In 2017, Wilson brought claims pursuant to section 1983 and the FHA against defendants, alleging they did not perform building inspections when necessary, did not provide her notice when they did perform the inspections, and artificially inflated the value of her property relative to her neighbors. See D.N.J. Case No. 3-17-cv-00995. Wilson filed an amended complaint on February 20, 2018 (the "Prior Complaint"). On defendants' motion, the District Court dismissed Wilson's amended complaint for failure to state a claim, granting Wilson express leave to amend her complaint within 30 days to state a valid claim for municipal liability based on a discriminatory policy or custom. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690–92 (1978). Rather than do so, Wilson appealed, electing to stand on her complaint, thereby converting the District Court's order to a final, appealable order. See Wilson, 779 F. App'x at 971 n.3 (citing Borelli v. City of Reading, 532 F.2d 950, 951 (3d Cir. 1976) (per curiam)). We summarily affirmed the

District Court's judgment.

While her appeal was pending, Wilson filed this action in the U.S. District Court for the District of Columbia, which transferred the action to the District of New Jersey. Wilson then filed the operative amended complaint. Defendants moved to dismiss on the grounds that Wilson's claims are barred by res judicata. The District Court granted the motion and dismissed the complaint with prejudice. Wilson now appeals.

II.

The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the application of res judicata. See Elkadrawy v. Vanguard Grp., 584 F.3d 169, 172 (3d Cir. 2009). "Res judicata, also known as claim preclusion, bars a party from initiating a second suit against the same adversary based on the same 'cause of action' as the first suit." Duhaney v. Attorney Gen. of U.S., 621 F.3d 340, 347 (3d Cir. 2010). A party seeking to invoke res judicata must establish three elements: "(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 963 (3d Cir. 1991). "The doctrine of res judicata bars not only claims that were brought in a previous action, but also claims that could have been brought." In re Mullarkey, 536 F.3d 215, 225 (3d Cir. 2008). In determining whether the same cause of action is involved, the courts look to the "*essential similarity* of the underlying events giving rise

to the various legal claims." Sheridan v. NGK Metals Corp., 609 F.3d 239, 260 (3d Cir. 2010) (citations omitted).

III.

We agree with the District Court that Wilson's claims are precluded, as all three prongs are met here. (1) First, there was a final judgment on the merits in her prior case, as the dismissal with leave to amend converted into a final judgment when Wilson elected to stand on her complaint. See Hoffman v. Nordic Nats., Inc., 837 F.3d 272, 279 (3d Cir. 2016). (2) Second, Wilson filed the instant suit against the same municipal entities as the prior suit, naming Hillsborough Township and two of its departments.

(3) Third, Wilson's claims against the municipal defendants either were brought or could have been brought in the prior action. Wilson divided her amended complaint in the instant case into six "causes of action," and, as the District Court noted in its order, "the first four causes of action . . . all appear to be identical to the four causes of action that were asserted by [Wilson] in the Prior Complaint." Order 4, ECF No. 22.[1] As to the first, second, and fourth, we agree that they are identical and unquestionably precluded.

There is one minor variation in the third cause of action—a variation upon which Wilson relies on appeal. In that claim, Wilson asserted that defendants violated the FHA by inflating her property's value relative to her white neighbors by assuming without inspection that she had an updated kitchen and finished basement. She asserts in her reply

[1] Wilson's "sixth cause of action" was directed at the District Court itself, improperly relying on Fed. R. Civ. P. 60(b) to seek reconsideration and invalidation of orders entered in the prior action. The District Court dismissed that claim and, finding no error in its determination, we will affirm.

brief on appeal that: "There exist no claims in Plaintiffs February 20, 2018 First Amended Complaint about an updated kitchen or a finished basement." Appellant's Reply Br. 2, CA3 ECF No. 26. This assertion is flatly contradicted by a comparison of the filings. In the Prior Complaint, Wilson claimed that: "The Defendant, Hillsborough Township [Tax Assessor] retaliated against Plaintiff by increasing her property tax assessments for 'UPGRADED KITCHEN' and 'FINISHED BASEMENT.'" Prior Compl. at 12 (brackets in original). In the operative amended complaint in this action, she again claims: "The Defendant, Hillsborough Township [Tax Assessor] retaliated against Plaintiff by increasing her property tax assessments for 'UPGRADED KITCHEN' and 'FINISHED BASEMENT' (See TA 1, TA 2, TA 3)." Am. Compl. 14, ECF No. 9 (brackets in original). The minor variation is the citation to exhibits she attached to the amended complaint in this action. Those exhibits show that she received notice of a tax assessment increasing the estimated value of her home dated February 13, 2018, one week before she filed the Prior Complaint. See ECF No. 9-1 at 30.

Because plaintiffs have no duty to amend or supplement their pleadings, normally "res judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint." Morgan v. Covington Twp., 648 F.3d 172, 178 (3d Cir. 2011). The alleged retaliation does postdate the filing of Wilson's initial complaint in the prior action in 2017. As such, she had no duty to amend to include that claim in the Prior Complaint. As the above comparison shows, though, Wilson did in fact amend and include this claim. Simply presenting new allegations or new evidence in support of old allegations is not sufficient to overcome the preclusive effect of a prior suit on the same cause of action

if the "thrust of the two complaints remain[s] practically identical." Churchill v. Star Enters., 183 F.3d 184, 195 (3d Cir. 1999). Moreover, in the prior action, both the District Court and this Court specifically rejected her allegation that "the Hillsborough Township Tax Assessor somehow over-valued her property in its tax assessments and under-valued the property improvements of her neighbors." Wilson, 779 F. App'x at 971. Wilson has not presented a new claim; she merely appended documentary evidence to support a claim identical to one she pursued in the prior action. Therefore, the claim is barred.

As to the fifth cause of action Wilson asserts here, it does not suffer the same infirmity of being completely reproduced from the Prior Complaint. However, the claim repeats a slew of allegations contained in the other claims, about inspections, permitting, and tax assessments, and again frames them as both discriminatory and retaliatory. Even if it could be said that Wilson articulates a new legal theory or attempts to allege the policy or custom for which she was granted leave to amend the Prior Complaint, she cannot overcome the preclusive effect of having brought a prior action based on the same underlying events. See Hoffman, 837 F.3d at 280; Sheridan, 609 F.3d at 261; Elkadrawy, 584 F.3d at 173.

Accordingly, we will affirm the judgment of the District Court.

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 20-2490

GWENDOLYN WILSON,
Appellant

v.

HILLSBOROUGH TOWNSHIP CONSTRUCTION BUILDING DEPARTMENT;
HILLSBOROUGH TOWNSHIP TAX ASSESSOR; TOWNSHIP OF HILLSBOROUGH

No. 3-19-cv-18598

SUR PETITION FOR REHEARING

Before: CHAGARES, *Chief Judge*, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo
Circuit Judge

Dated: May 3, 2022
JK/cc: Gwendolyn Wilson
Richard J. Guss, Esq.