IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR ST. LUCIE COUNTY, FLORIDA

EFTX, LLC,

CASE NO.: 56 2020CA001296

Plaintiff,

vs.

ST. LUCIE COUNTY, a political subdivision of the State of Florida,

Defendant.
_____/

ORDER GRANTING DEFENDANT ST. LUCIE COUNTY'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before the Court on July 30, 2024 at 3:10 pm during a one-hour special set hearing on Defendant St. Lucie County's ("County") Motion for Summary Judgment ("Motion"). The Court reviewed the Motion, the Memorandum in Opposition filed by Plaintiff EFTX, LLC ("EFTX" or "Plaintiff"), and the County's Reply in Further Support of the Motion. The Court also reviewed: (i) the affidavit of Benjamin Balcer filed by the County in support of the Motion – including the voluminous exhibits attached thereto; (ii) EFTX's affidavit in opposition to the Motion; (iii) the Statement of Undisputed Facts submitted by the County; and (iv) the Statement of Disputed and Additional Facts filed by EFTX. For the reasons set forth below, the Motion is **GRANTED**.

I. BACKGROUND

EFTX previously sued the County in the following three separate cases:

(i) *EFTX, LLC v. St. Lucie County*, Case No. 2:18-cv-14282-RLR (S.D. Fla. July 20, 2018), *appeal dismissed*, No. 19-13295-JJ (11th Cir. Feb. 13, 2020) (the "Federal Lawsuit");

(ii) *EFTX, LLC v. Saint Lucie County*, Case No. 20-AP-19 (19th Cir. Ct. App. Div. Aug. 31, 2020), *pet. den.*, No. 4D22-0589 (Fla. 4th DCA Mar. 29, 2022) (the "Code Violation Appeal"); and,

(iii) *EFTX, LLC v. Saint Lucie County*, Case No. 20-AP-26 (19th Cir. Ct. App. Div. Nov. 6, 2020), *pet. den.*, No. 4D23-0735 (Fla. 4th DCA Apr. 11, 2023) (the "Repeat Violation Appeal").

(Collectively referred to as "Prior Proceedings.")

The Federal Lawsuit was fully litigated and resulted in a final judgment in favor of the County and against EFTX. EFTX sought review of the judgment in the United States Eleventh Circuit Court of Appeals, but then dismissed its appeal. The federal court granted summary judgment in favor of the County in an extensive written order that set forth the essential background facts, occurrences, and transactions between the parties (the "Federal Judgment"). These facts were undisputed then and remain undisputed now. In Section I(A) of the federal court's Order, the court highlights the undisputed central facts of this dispute as determined in the

Federal Lawsuit. In Section I(B), the court summarizes the Prior Proceedings between the parties that are relevant to the preclusive doctrines at issue in the County's affirmative defenses.

A. A Brief History of Parking on the Vacant Lot

At the center of this dispute is an unpaved and undeveloped parcel of land owned by EFTX (the "Property" or the "Vacant Lot") located within unincorporated St. Lucie County. The Vacant Lot sits across the street from a second property – also owned by EFTX – that is currently occupied by Kyle G's Prime Seafood & Steaks (the "Restaurant Property" or the "Beachfront Property").

Beginning in 1989, the Vacant Lot was subject to an administrative site plan (the "1989 Site Plan") which – according to the County – only permitted "temporary employee" parking. The 1989 Site Plan was subsequently amended by Planning & Development Services ("PDS") Order 15-034, dated November 6, 2015 (the "PDS Order"), to permit the use of the stabilized parking area on the Vacant Lot solely as a parking area for the employees of the restaurant operating on the Restaurant Property. It is undisputed by the parties that they voluntarily entered into the PDS Order to settle a dispute between them regarding a 2015 code violation issued to EFTX for parking cars on the Vacant Lot without County approval.

It is undisputed that EFTX valet parks customer cars from Kyle G's Restaurant on the Vacant Lot. The County maintains that EFTX cannot lawfully valet park restaurant patron cars on the Vacant Lot without first obtaining County approval of a site plan and improving the Vacant Lot with all-weather and impervious materials – such as "concrete, asphalt, brick pavers, stamped concrete, or paving block." As explained below, the County has cited EFTX for violating the County Code and EFTX contested those violations.

EFTX maintains that under the PDS Order it may use the Vacant Lot for valet parking and that no further approval by the County is necessary. It argues that it is unconstitutional for the County to enforce the PDS Order or otherwise limit EFTX's ability to park on the Vacant Lot. EFTX further argues that the County's actions in this case are motivated by several complaints filed by a residential neighbor – Mrs. Long – who has complained extensively about the use of the Vacant Lot for customer parking.

B. A Brief History of the Extensive Prior Litigation Between the Identical Parties.

The extensive litigation history between the identical parties now before the Court is directly relevant to the County's affirmative defenses of res judicata and collateral estoppel. At the outset, the Court notes that all

three of the Prior Proceedings concluded with finality in favor of the County and against EFTX.[1]

1. The Federal Lawsuit

Plaintiff EFTX filed a federal lawsuit on July 20, 2018 in the Federal District Court for the Southern District of Florida. In the Federal Lawsuit, EFTX sought declaratory relief "*under the Constitution and the Laws of Florida*" declaring unconstitutional:

- PDS Order 15-034;
- Section 11.02.00, Designation of Minor, Major Planned Development Site Plan, County LDC; and
- Restrictions and/or prohibitions on valet parking on the Vacant Lot.

(Fed. Compl. ¶¶ 64, 66) (emphasis added). As for relief, EFTX sought injunctive relief enjoining the County from:

- Issuing violations and fines for valet parking on the Vacant Lot; and
- Prohibiting valet parking of customer cars on the Vacant Lot.

[1] The County filed the affidavit of Benjamin Balcer in support of its Motion. Mr. Balcer is the County's Director of Planning and Development Services. Mr. Balcer's affidavit comprises 542 pages. It authenticates – without objection – the relevant pleadings, transcripts, orders, briefs, and judgments filed during the Prior Proceedings. While not relevant to the legal issues presented here, it merits mention that according to Mr. Balcer's affidavit the County has attempted to counsel EFTX into compliance with the County Code. (*See* Balcer Aff. ¶ 29.) EFTX does not dispute this fact.

(Fed. Compl. ¶ 71 & "Wherefore" ¶ (b).)

EFXT argued in the Federal Lawsuit that it was allowed to valet park customer cars on the vacant lot under the PDS Order and without further site plan approval by the County. EFTX also argued in the Federal Lawsuit that the County's code enforcement actions were prompted by the complaints filed by a residential neighbor – Mrs. Long. The federal court rejected EFTX's arguments, granted the County's motion for summary judgment and entered final judgment in favor of the County and against EFTX.

2. The Code Violation Appeal

The County's code enforcement proceedings operate in a two-part process. First, a quasi-judicial hearing is held before the County's Code Enforcement Board ("CEB") to determine whether a violation occurred. Upon finding a violation, a second quasi-judicial hearing is held to impose sanctions in the form a fine and set a fine amount. (*See* Balcer Aff. ¶¶ 21-28.)

On October 24, 2017, the County issued a Notice of Violation to EFTX for the unlawful parking of customer cars on the Vacant Lot (the "2017 NOV"). On December 6, 2017, the CEB conducted a duly noticed public hearing to determine the existence of a violation. (Balcer Aff. ¶ 22, Ex. 5.)

EFTX's principal – Mr. Robert Eustace – appeared during the CEB violation hearing and testified before the CEB. (Balcer Aff. ¶ 22, Ex. 5 at pp. 6-13.)

The PDS Order and the parking of restaurant customer cars on the Vacant Lot were both at issue in the violation hearing. Both are explicitly addressed on the face of the written violation order rendered by the CEB that contained both findings of fact and conclusions of law (the "Violation Order"). (Balcer Aff. Ex. 6.) The Violation Order became final when EFTX failed to timely appeal it.[2] (Balcer Aff. ¶ 25.)

The CEB conducted a fine hearing on August 5, 2020.[3] EFTX was represented by counsel during the fine hearing. Witnesses testified, documentary and photographic evidence was presented, and cross-examination was allowed. (Balcer Aff. ¶ 27, Ex. 7.) Once again, customer parking on the Vacant Lot and the PDS Order were at issue. (*See* Balcer Aff. Ex. 7.) Following deliberations and a robust discussion, the CEB set a fine in the amount of one hundred dollars ($100) per day that the violation

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[2] By statute, review of final code enforcement action is via appeal to the appellate division of the circuit court – not certiorari. *See* § 162.11, Fla. Stat.

[3] EFTX filed the Federal Lawsuit after the violation hearing but before the fine hearing. The delay between the fine hearing and the violation hearing is explained by the Federal Lawsuit that was litigated to conclusion between the two hearings.

continued, not to exceed seventy-six thousand nine hundred dollars ($76,900.00).[4] The CEB rendered a written Fine Order on August 5, 2020 (the "Fine Order"). (Balcer Aff. Ex. 8.)

In the Code Violation Appeal, EFTX appealed the Violation Order and the Fine Order to the appellate division of the circuit court. The circuit court, sitting in its appellate capacity, affirmed the Fine Order but ruled EFTX's appeal of the Violation Order was untimely. (Balcer Aff. Ex. 19.) Thereafter, EFTX unsuccessfully sought subsequent review in the Fourth District Court of Appeal. (Balcer Aff. Ex. 20.)

3. The Repeat Violation Appeal

Notwithstanding entry of the Federal Judgment against it and, despite its unsuccessful attempts at appellate review, EFTX nevertheless continued parking customer cars on the Vacant Lot without County approval.[5] As a result, the County issued a Notice of Repeat Violation. (Balcer Aff. Ex. 9.)

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[4] Review of the CEB transcript demonstrates the CEB's unbiased efforts to arrive at an appropriate fine. The CEB considered several possible alternative fine amounts within the permissible range and ultimately landed on a $100 fine per day – less than half of the $250 maximum per day permitted by the County Code. (Balcer Aff. Ex. 7 at pp. 36-55 (Fine Hr'g Tr.).)

[5] The intervening COVID-19 pandemic caused a temporary closure of the restaurant for a period of time during which customer cars were not parked on the Vacant Lot for the simple fact that the restaurant was closed and there were no customers.

The CEB conducted a repeat violation hearing on October 7, 2020. Once again, EFTX appeared through counsel, witnesses were presented, evidence was presented, and cross-examination was allowed. (Balcer Aff. ¶¶ 34, 35, Ex. 10.) Following the conclusion of the repeat violation hearing, the CEB rendered a written order finding a repeat violation (the "Repeat Violation Order"). (Balcer Aff. Ex. 11.) The Repeat Violation Order expressly addresses the parking of restaurant customer cars on the Vacant Lot and the PDS Order. The CEB set a repeat violation fine in the amount of five hundred dollars ($500) per day with no cap.

EFTX sought appellate review of the Repeat Violation Order by the appellate division of the circuit court. The circuit court, again in its appellate capacity, denied the appeal – affirming the Repeat Violation Order – and EFTX, once again, sought further review in the Fourth District Court of Appeal. Again, the Fourth District denied review. (Balcer Aff. Exs. 24, 25.) Particularly relevant here is that EFTX challenged the Repeat Violation Order on constitutional grounds arguing *inter alia* that:

- EFTX's constitutional rights were violated by the Repeat Violation Order;
- The CEB violated Article I, Section 18 of the Florida Constitution; and,
- EFTX's rights to liberty and property were infringed by the Repeat Violation Order.

(Cnty. SUF ¶¶ 35-37, 41.)[6]

II. SUMMARY JUDGMENT STANDARD

The Florida Supreme Court recently amended Florida Rule of Civil Procedure 1.510 to "align Florida's summary judgment standard with that of the federal courts." *In Re: Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d 72, 73 (Fla. 2021) (internal quotations omitted) (adopting the federal summary judgment standard as articulated in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), to promote "the just, speedy, and inexpensive determination of every action," among other things). The adopted amendment largely replaced the text of the existing Rule 1.510 with the text of Federal Rule of Civil Procedure 56. Rule 1.510 now states that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ P. 1.510(a). In applying the newly amended rule, the correct test for the

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[6] Counsel for EFTX argued the same rule of construction during the Code Violation Appeal and the Repeat Violation Appeal that he argued before this Court in opposition to summary judgment, i.e., that pursuant to *Rinker Materials Corp. v. City of North Miami*, 286 So. 2d 552 (Fla. 1973) land development regulations and the PDS Order should be construed in favor of EFTX as the property owner. (Balcer Aff. Exs. 16 at pp. 5, 17, 23, 25, 29 (EFTX Init. Br., *Code Violation Appeal*), 18 at pp. 11-12 (EFTX Reply Br., *Code Violation Appeal*), 21 at pp. 4, 12 (EFTX Init. Br., *Repeat Violation Appeal*), 23 at pp. 5, 15 (EFTX Reply Br., *Repeat Violation Appeal*).)

existence of a genuine dispute is whether "the evidence is such that a reasonable jury could not return a verdict for the nonmoving party." *Romero v. Midland Funding, LLC*, 358 So. 3d 806, 808 (Fla. 3d DCA 2023) (quoting *In re Amends. to Fla. R. Civ. P. 1.510*, 317 So. 3d at 75). "Under the new rule, '[i]f the evidence [presented by the nonmovant] is merely colorable, or is not significantly probative, summary judgment may be granted.'" *Romero*, 358 So. 3d at 808-09 (quoting *In re Amends. to Fla. R. Civ. P. 1.510*, 309 So. 3d 192, 193 (Fla. 2020)).

III. DISCUSSION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

"The doctrine of res judicata bars relitigation in a subsequent cause of action not only of claims raised, *but also claims that could have been raised*." *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004) (emphasis added). "The idea underlying res judicata is that if a matter has already been decided, the petitioner has already had his or her day in court, and for purposes of judicial economy, that matter generally will not be reexamined again in *any* court (except, of course, for appeals by right)." *Id*. "Res judicata applies when four identities are present: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of persons for or against whom the claim is made." *Id*.

"The doctrine of collateral estoppel (or issue preclusion), also referred to as estoppel by judgment, is a related but different concept. In Florida, the doctrine of collateral estoppel bars relitigation of the same issues between the same parties in connection with a different cause of action." *Id*. "The doctrine is intended to prevent repetitious litigation of what is essentially the same dispute." *Provident Life & Accident Ins. Co. v. Genovese*, 138 So. 3d 474, 477 (Fla. 4th DCA 2014) (internal citations omitted). "For the doctrine to apply, the following elements must be met: (1) an identical issue must be presented in a prior proceeding; (2) the issue must have been a critical and necessary part of the prior determination; (3) there must have been a full and fair opportunity to litigate the issue; (4) the parties in the two proceedings must be identical; and (5) the issues must have been actually litigated." *Id*.

A. The County is Entitled to Summary Judgment on its Affirmative Defense of Res Judicata

The Court finds that res judicata bars the instant suit because: the same parties here once again seek to litigate the same claim about the same Vacant Lot under the same PDS Order and the same section of the County Code that they previously litigated in the Federal Lawsuit. There, just like here, EFTX seeks a declaration of its rights to use the Vacant Lot for customer parking without further approval by the County of a site plan under the same section of the County Code (Section 11.02.00, Designation of

Minor, Major & Planned Development Site Plan, County LDC). There, just like here, EFTX argues that the County's actions are unconstitutional. (*Compare* Fed. Compl. ¶¶ 64, 66, 70 & "Wherefore" ¶ (a) (Balcer Aff. Ex. 12), *with* Compl. at p. 12 ("Wherefore" ¶¶ (a)-(d)).) There, just like here, EFTX argues that the County's actions are motivated by Mrs. Long's complaints. (*Compare* Fed. Compl. ¶¶ 24-25, 29 (Balcer Aff. Ex. 12), *with* Compl. ¶¶ 24-33, 48, 75.) And there, just like here, EFTX seeks the identical injunctive relief against the County enjoining it from:

- Issuing violations and fines for valet parking on the Vacant Lot; and,
- Prohibiting valet parking of customer cars on the Vacant Lot.

(*Compare* Fed. Compl. ¶ 71 & "Wherefore" ¶ (b) (Balcer Aff. Ex. 12), *with* Compl. at p. 14 ("Wherefore" ¶¶ (a)-(d)).) Res judicata clearly applies based on the foregoing redundancies and similarities between the Federal Lawsuit and this case. *See Jenkins v. Lennar Corp.,* 972 So. 2d 1064, 1065-66 (Fla. 3d DCA 2008) ("For res judicata purposes, identity of the thing sued for and identity of the cause of action are present because the relief requested and the theories of action in each of Jenkins lawsuits are indistinguishable."). Notably, the Court finds that all the issues raised in this case *could have been* raised in the Federal Lawsuit thereby reaffirming the propriety of res

judicata. *See Topps,* 865 So. 2d at 1255; *State v. McBride*, 848 So. 2d 287, 290 (Fla. 2003) and *Gaberlavage v. Miami-Dade Cnty.*, 160 So. 3d 477, 479 (Fla. 3d DCA 2015).

B. The County is Entitled to Summary Judgment on its Affirmative Defense of Collateral Estoppel

The Court finds that collateral estoppel bars the instant suit. The constitutionality of the County's actions was placed at issue in the Federal Lawsuit and again placed at issue in the Repeat Violation Appeal. When it rejected EFTX's constitutional challenge, the federal district court expressly concluded that the County possesses a "rational basis to enforce its Code requirements against" EFTX. (Fed. J. at p. 14 (Balcer Aff. Ex. 13).) In the Federal Lawsuit, just like here, the identical parties litigated the identical issues concerning the identical use of the identical Vacant Lot under the identical provisions of the County Code. Again, the parties litigated the legal effect – if any – of Mrs. Long's complaints to the County. The parties also litigated the meaning and enforceability of the PDS Order in all of the Prior Proceedings: the Federal Lawsuit, the Code Violation Appeal, and the Repeat Violation Appeal. In short, EFTX asks this Court to reach a conclusion on the same issues between the same parties that differs from the conclusion reached by the federal district court, the Appellate Division of the Circuit Court (twice), and the Fourth District Court of Appeal (twice).

Stated differently, through this action EFTX seeks to collaterally attack all of the prior determinations in the Prior Proceedings. The doctrine of collateral estoppel exists to stop precisely this. *See, Provident Life,* 138 So. 3d at 477 ("The doctrine is intended to prevent repetitious litigation of what is essentially the same dispute.").

C. The Balance of EFTX's Arguments is Without Merit

EFTX argues that abstention barred the federal court from considering the issues presented in this case. The argument is without merit. The County argued for abstention in the Federal Lawsuit and the federal district court expressly "decline[d] to abstain from deciding this case based on the abstention doctrines outlined by the [County]." (Fed. J. at p. 15 (Balcer Aff. Ex. 13).)

IV. CONCLUSION

The Court finds that there are no genuine issues of material fact between the parties that would prohibit summary judgment. EFTX identified no material factual dispute between the parties, the affidavit it filed identified none, and the "Statement of Disputed and Additional Facts" filed by EFTX does not identify a dispute about a material fact sufficient to overcome the County's Motion. The Court notes that no depositions were taken in this case by EFTX. The Court further notes that the depositions that EFTX did file in

opposition to summary judgment were all taken years ago during the Federal Lawsuit. Having concluded that the Plaintiff's claims are barred by the defenses of res judicata and collateral estoppel, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion for Summary Judgment is hereby **GRANTED**.

2. All pending motions are **DENIED AS MOOT**.

3. The Court reserves jurisdiction to award costs as permitted by statute or rule and attorney fees if permitted by statute or rule.

4. The County is **ORDERED** to file and email to the Court a proposed Final Judgment Order within five (5) business days of rendition of this Order, copying opposing counsel.

DONE AND ORDERED in Chambers at Fort Pierce, St. Lucie County, Florida, on this 15th day of August, 2024.

eSigned by WARONICKI, BRETT M in 2020CA001296
on 08/15/2024 15:48:27 3SEinFrJ

BRETT M. WARONICKI
CIRCUIT JUDGE

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