



*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

## **ENTRY ORDER**

FEBRUARY TERM, 2022

Johnathan Billewicz et al.* v. Town of Fair Haven	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	CASE NO. 21-CV-01098
	}	Trial Judge: Helen M. Toor

In the above-entitled cause, the Clerk will enter:

Plaintiffs appeal from the trial court's summary judgment decision concluding that plaintiffs' claims were barred by claim preclusion. We affirm.

The factual background to this case is provided in this Court's prior decision involving these parties. Billewicz v. Town of Fair Haven, 2021 VT 20 [hereinafter Billewicz I]. Plaintiffs are former owners of four parcels of land in the Town of Fair Haven. Based on delinquent taxes from 2011 to 2013, the Town commenced tax-sale procedures in February 2014. Plaintiffs did not pay the delinquent taxes and the Town purchased the properties at a tax sale in March 2014. Plaintiffs did not exercise their right of redemption and on April 1, 2015, the Town's tax collector executed deeds transferring the properties to the Town. The deeds were recorded in the Town's land records, but the reports of sale were not recorded until November 2017.

Plaintiffs filed suit in March 2018 against the Town, arguing that the tax deeds were void because the tax collector did not record the reports of sale as provided by statute. See 32 V.S.A. § 5255 (requiring report of sale to be filed within thirty days after sale). In that suit, plaintiffs asserted claims of quiet title, trespass to real property and chattel, invasion of privacy, and conversion. The trial court concluded that the claims were barred by the one-year statute of limitations in 32 V.S.A. § 5294(4), which pertains to taxpayer suits questioning the validity of acts of the tax collector, and granted the Town summary judgment. On appeal, this Court affirmed, rejecting plaintiffs' argument that their claims were actions against a grantee and subject to the three-year statute of limitations in 32 V.S.A. § 5263 and instead holding that the one-year statute of limitations in 32 V.S.A. § 5294 applied and had run before plaintiffs filed their action. Billewicz I, 2021 VT 20, ¶ 30. Plaintiffs filed a motion to reargue and this Court denied the motion in May 2021.

Shortly thereafter, plaintiffs filed this suit against the Town, again alleging that the Town failed to record the report of sale as required by 32 V.S.A. § 5255, and asserting claims for

negligence, trespass to real property and chattel, invasion of privacy, and conversion. The Town moved for summary judgment, asserting that plaintiffs' claims were barred by claim preclusion and issue preclusion. Plaintiffs countered that the new lawsuit was distinguishable because it alleged that the town clerk failed to record the deeds of the tax sale within the statutory time, whereas they had previously argued the town tax collector had failed to do this duty. The trial court rejected this argument, concluding that both cases were brought against the Town and both challenged the validity of the deeds based on the late recording of the reports of sale. The trial court concluded that the case raised the same issues between the same parties that were or needed to be raised in Billewicz I, and granted the Town summary judgment. Plaintiffs appeal.

On appeal, we review a grant of summary judgment without deference to the trial court. Wark v. Zucker, 2021 VT 37, ¶ 10. Summary judgment is appropriate when there are no issues of material fact, and a party is entitled to judgment as a matter of law. V.R.C.P. 56(a). Judgment in this case was granted based on claim preclusion, which bars “the litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter and causes of action are identical or substantially identical.” Berlin Convalescent Ctr., Inc. v. Stoneman, 159 Vt. 53, 56 (1992) (quotation omitted). Claim preclusion applies to those issues actually litigated and “those which should have been raised in previous litigation.” Id. (quotation omitted).

On appeal, plaintiffs concede that the parties in this case are the same as in Billewicz I, but contend that their causes of action are not identical because in this case the trespass to real estate and chattel claims involve incursions that allegedly occurred after the 2018 litigation. Plaintiffs assert that their new trespass claims are well within the three-year statute of limitations provided in 12 V.S.A. § 512(5).

Given plaintiffs' concession, the relevant question is whether the causes of action in this case are sufficiently similar to those in Billewicz I for claim preclusion to apply. To determine whether a subsequent cause of action is barred, we look at “ ‘whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.’ ” Demarest v. Town of Underhill, 2021 VT 14, ¶ 13 (quoting Restatement (Second) of Judgments § 24(2) (1982)).

Here, both sets of claims involve the same set of facts that are related in time, space, origin, and motivation. All of plaintiffs' claims—in this suit and in Billewicz I—are predicated on the assertion that the Town does not have valid title to the four parcels of land that were purchased through the tax sale because the Town failed to properly record the reports of sale. Litigation of plaintiffs' claims in this case would involve the same facts, events, witnesses, and evidence as required for Billewicz I. Moreover, plaintiffs' primary motivation in both cases is to gain valid title to the properties.

Plaintiffs' assertion of trespass claims based on new alleged incursions to their land and chattel does not prevent applying claim preclusion here because the same nucleus of facts is at issue. See Faulkner v. Caledonia Cnty. Fair Ass'n, 2004 VT 123, ¶ 14, 178 Vt. 51 (explaining that novel factual or legal theories do not preclude application of claim preclusion). To prove trespass, plaintiffs must establish that the Town intentionally entered land in plaintiffs' possession without privilege to do so. See Jones v. Hart, 2021 VT 61, ¶ 66 (providing elements of civil trespass). Plaintiffs' trespass claims, whether for alleged incursions that occurred before or after 2018, are inextricably interwoven with their assertion that they are the rightful owners of

the land parcels and not the Town because the Town failed to properly timely record the reports of the tax sale. Contrary to plaintiffs' assertion, there is no new legal theory here. Plaintiffs' "new" trespass claims rest on the same allegations asserted in Billewicz I, and therefore claim preclusion bars their suit.

Affirmed.

BY THE COURT:

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice