

**Cangro v Rosado**

2012 NY Slip Op 30673(U)

March 14, 2012

Supreme Court, New York County

Docket Number: 104562/2010

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

JENNIFER CANGRO,  
Plaintiff,

Index No.: 104562/10

Motion Date: 01/31/12

- v -

Motion Seq. No.: 03

MARY ROSADO,  
Defendant.

Motion Cal. No.: \_\_\_\_\_

The following papers, numbered 1 to 6 were read on this motion for summary judgment.

|  | <u>PAPERS NUMBERED</u> |
|--|------------------------|
| Notice of Motion/Order to Show Cause -Affidavits -Exhibits | <u>1</u>               |
| Answering Affidavits - Exhibits _____                      | <u>2 - 5</u>           |
| Replying Affidavits - Exhibits _____                       | <u>6</u>               |

**FILED**

MAR 20 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Cross-Motion:  Yes  No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon the foregoing papers,

The court shall treat the motion of plaintiff pro se as one for summary judgment and shall deny same and the court shall grant the defendant's cross-motion for summary judgment dismissing the complaint.

The court agrees with defendant's argument that all of plaintiff's claims, with the exception of plaintiff's 18<sup>th</sup> cause of action for defamation, are barred by the doctrine of collateral estoppel.

As stated by the Court of Appeals

The equitable doctrine of collateral estoppel is grounded in the facts and realities of a particular litigation, rather than rigid rules. Collateral estoppel precludes a

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

party from relitigating in a subsequent action or proceeding an issue raised in a prior action or proceeding and decided against that party or those in privity. The policies underlying its application are avoiding relitigation of a decided issue and the possibility of an inconsistent result.

Two requirements must be met before collateral estoppel can be invoked. There must be an identity of issue which has necessarily been decided in the prior action and is decisive of the present action, and there must have been a full and fair opportunity to contest the decision now said to be controlling. The litigant seeking the benefit of collateral estoppel must demonstrate that the decisive issue was necessarily decided in the prior action against a party, or one in privity with a party. The party to be precluded from relitigating the issue bears the burden of demonstrating the absence of a full and fair opportunity to contest the prior determination.

Buechel v Bain, 97 NY2d 295, 303 -304 (2001) (citations omitted).

In Matter of Reitano (89 AD3d 535 [1<sup>st</sup> Dept 2011]), the Appellate Division, First Department, upon appeal after remand of the proceeding Matter of Rosado (Cangro) (45 AD3d 281 [1<sup>st</sup> Dept 2007]), in its decision demonstrates that all of the requirements necessary to apply the collateral estoppel bar are present in this case. The Court found that plaintiff here was provided with a full opportunity to litigate all of the issues presented in connection with the defendant's court-appointed representation of her. The Court stated that

We find that appellant [Jennifer Cangro] was not denied due process under the New York State Constitution. Pursuant to this Court's order (Matter of Rosado [Cangro], 45 AD3d 281 [2007]), and as required by CPLR 1201, a guardian ad litem was properly appointed to represent appellant's interests in this proceeding in which she contested the accounting and fees awarded to Rosado. Appellant was provided ample opportunity to make her arguments regarding the accounting, in writings by

her and her guardian ad litem, and she was also permitted to orally argue her position at a hearing. Similarly, the record is devoid of evidence that could be construed as a denial of appellant's right to equal protection.

Matter of Reitano, 89 AD3d at 536.

The issues raised in this litigation by the plaintiff are the precisely the issues determined by the Court in Reitano as they concern defendant's representation of plaintiff in connection with a court-appointed guardianship. As decisively stated by the Court

Supreme Court properly confirmed the Special Referee's report since the Referee's findings were supported by the record and there is no basis on this record to set aside his findings. Supreme Court also properly awarded respondent Rosado commissions for her work as appellant's guardian, as the record contains no evidence of wrongdoing. The court properly exercised its discretion in awarding a fee to Rosado for extraordinary services in light of the significant time and effort she spent on appellant's behalf.

Supreme Court properly awarded the various fees to others involved in the matter. The fees for the guardian ad litem, the special referee, and Rosado's counsel for this final accounting were supported by affidavits or affirmations of services and were reasonable fees for the services provided. Moreover, the sums were appropriately charged to Cangro since her baseless accusations necessitated this additional proceeding. The approval of the fees previously paid to Solomon, Reitano and Lefari was proper since they had also been supported by affidavits or affirmations of services, were reasonable, and were not objected to by the referee.

Id. (citations omitted, emphasis added).

Plaintiff's allegations in this action are therefore barred by the doctrine of collateral estoppel as the Court has previously found that they are wholly unsupported and baseless

and plaintiff's attempt to relitigate these matters borders on the contemptuous.

As this action was commenced before the Appellate Division decision of November 2011, the court shall not in this instance impose sanctions upon plaintiff for relitigating these issues but plaintiff should be on notice that further "baseless accusations" may lead to the imposition of restraints on bringing further suits in addition to monetary penalties. Cf. Matter of Rosado (Cangro), 45 AD3d at 282.

With respect to plaintiff's 18<sup>th</sup> cause of action for defamation, the court shall dismiss plaintiff's claims because plaintiff fails to set forth with specificity any defamatory words uttered by defendant. The statements about plaintiff "suffering from mental illness" and "emotionally disturbed" were contained in a police "aided" report and there is no evidence these words, even if capable of a defamatory meaning, were uttered by defendant. Even assuming that defendant stated the plaintiff had an "impaired view of reality" such a statement is non-actionable opinion in the context in which it was alleged to have been uttered. See Lapine v Seinfeld, 31 Misc 3d 736, 752 (Sup Ct, NY County, 2011) (allegations defendant called plaintiff "a wacko," "nut" and "mentally unhinged" held not to be actionable factual statements).

Accordingly, it is

ORDERED that plaintiff's motion is DENIED in its entirety;  
and it is further

ORDERED that defendant's cross-motion for summary judgment  
dismissing the complaint is GRANTED and the Clerk is directed to  
enter judgment DISMISSING the complaint.

This is the decision and order of the court.

Dated: March 14, 2012

ENTER:

~~Debra A. James~~  
J.S.C.  
**DEBRA A. JAMES**

**FILED**  
MAR 20 2012  
NEW YORK  
COUNTY CLERK'S OFFICE