

Cangro v Reitano

2013 NY Slip Op 33385(U)

December 19, 2013

Supreme Court, New York County

Docket Number: 100381/2013

Judge: Louis B. York

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 100381/2013

CANGRO, JENNIFER

vs

REITANO, GINA MARIE

Sequence Number : 001

BILL OF PARTICULARS/PRECLUSION

2

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *dismissing the action*
is granted in accordance with the accompanying
decision.

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

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 12/19/13

Ray
_____, J.S.C.
LOUIS B. YORK
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 2

-----X
JENNIFER CANGRO,

Plaintiff,

Index No. 100381/2013

-against-

DECISION AND ORDER

UNFILED JUDGMENT

GINA MARIE REITANO,

Defendant.

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-----X

In this action, Plaintiff Jennifer Cangro alleges that Defendant Gina Marie Reitano served as both attorney and Guardian ad Litem for Plaintiff despite a conflict of interest, failed to attend Civil Appeals Management Plan conference, took part in a police pension scam, made false statements regarding Plaintiff's physical and mental condition, applied escrow towards the payment of her rent, and misrepresented the amount of time she spent on Defendant's case to pad her billable hours. Plaintiff asks the Court to award her \$1,050,000,000.00 in damages. Plaintiff moves to compel Defendant to comply with Bill of Particulars. Defendant opposes the motion and cross-moves to dismiss this action pursuant to CPLR §3211(a)(5) and/or (7) and grant Defendant a protective order against Plaintiff to bar future suits. For the reasons below, the Court grants Defendant Reitano's motion.

Background

Defendant served as Plaintiff's attorney during her divorce proceeding in May 2002 until April 2004. Justice Frank V. Pontero of the Richmond Supreme Court appointed Defendant as Plaintiff's Guardian on May 29, 2002. Defendant also testified during Plaintiff's hearing to determine guardianship and made statements about Plaintiff's mental and physical condition.

Defendant's testimony referenced a pattern of bizarre behavior by Plaintiff, and included statements that allegedly demonstrated Plaintiff's inability to manage her own affairs. Defendant was relieved as Guardian ad Litem by Order of Justice Rachel A. Adams of the Richmond Supreme Court on April 30, 2004. In 2009, Plaintiff brought her first lawsuit against Defendant, claiming, among other things, that Defendant engaged in various wrongful acts during her representation of Plaintiff, which included representing Plaintiff despite a conflict of interests, and also engaged in fraud, defamation, and gross negligence. In her October 15, 2009 decision, Judge Emily Jane Goodman granted Defendant's Motion to Dismiss, and found that Plaintiff's claims were time barred under the statute of limitations.

In 2010, Plaintiff again brought suit re-alleging the claims she set forth in the 2009 Complaint. On October 4, 2010 Justice Emily Jane Goodman again granted Defendant's Motion to Dismiss and awarded Defendant costs and fees. Justice Goodman held that Plaintiff's claims were barred under *res judicata* and found that any statements made in Defendant's court papers in connection with Defendant's defense to Plaintiff's lawsuit were privileged. In the Opinion, Justice Goodman declined to award a protective order and sanctions but warned Plaintiff that if she continued to file repetitive litigation against Defendant arising out of the same issues Defendant may be awarded sanctions and a protective order against her. Following the decision, Plaintiff sought leave to appeal Justice Goodman's decision. On February 9, 2012 the Supreme Court, Appellate Division, First Department affirmed Justice Goodman's decision and ruled in favor of Defendant.

Now in a third action, Plaintiff seeks relief against Defendant Gina Marie Reitano. The Complaint restates Plaintiff's allegations from her prior proceedings regarding Defendant's conduct during the divorce action. Plaintiff also requested an order to compel Defendant to

comply with the Bill of Particulars. Defendant Reitano now moves for dismissal. In her motion, Defendant alleges that Plaintiff's complaints are barred under *res judicata* and fail to state a cause of action. Defendant also requests that the Court sanction Plaintiff for repeatedly bringing a frivolous claim.

Analysis

The issue before the Court is whether Plaintiff's claims are barred under the doctrine of *res judicata*. *Res judicata* prohibits future litigation between the same parties, or those in privity with the parties, on a cause of action stemming from the same transaction or series of transactions as one cause of action that was raised or could have been raised in a prior proceeding. *Djoganopoulos v. Polkes*, 67 AD3d 726, 727, 889 NYS2d 213, 215 (2nd Dept. 2009); see *Gramatan Home Invs. Corp. v. Lopez*, 46 NY2d 481, 485, 414 N.Y.S.2d 308, 386(1979). In the current proceeding the issues not only stem from the same transaction, but are identical to those contained in Plaintiff's prior complaints. Once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if the plaintiff's claims are based on different theories or is seeking a different remedy. *Sosa v. JP Morgan Chase Bank*, 33 AD3d 609,611, 822 N.Y.S.2d 122, (2nd Dept. 2006) citing *O'Brien v. City of Syracuse*, 54 NY2d 353, 357, 445 N.Y.S.2d 687, (1981).

In both of Plaintiff's earlier cases Justice Goodman dismissed the Complaints. The "party seeking the benefit of collateral estoppel has the burden of demonstrating the identity of the issues in the present litigation and the prior determination, whereas the party attempting to defeat its application has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior action." *Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 456, 492 N.Y.S.2d 584, 588 (1985). Plaintiff must demonstrate that in the prior proceedings she was

somehow deprived of the opportunity to fully and fairly litigate the issues contained in the complaint. This she has not done. Plaintiff's Complaint does not assert any new causes of action against Defendant nor does it in any way demonstrate that she was denied a full and fair opportunity to litigate the issues in the prior actions. Plaintiff simply reasserts the issues set forth in the first two complaints, which were denied with adequate explanation. While the Court is aware that restricting access the courts is harsh, it is a remedy that is necessary in this case in light of the defendant's repeated filings of the same application and numerous attempts to re-litigate the same issue. Accordingly, Defendant's Motion to Dismiss is granted as Plaintiff's claims are barred under the doctrine of res judicata.

Defendant also asks the Court to grant sanctions and a protective order against Plaintiff. Although Justice Goodman did not award a protective order or grant sanctions, she did warn Plaintiff that future litigation of these issues may result in either or both being awarded against her. Though public policy generally requires free and open access to the courts, this requirement is not without limits. *Jourdan v. Yardeny*, No. 24838/05 NY Slip. Op., 951 NYS2d 86, 86 (2012). The Court has both the duty and power "to protect courts, citizens and opposing parties from the injurious impact of repetitive, unfounded...litigation *Jourdan v. Yardeny*, No. 24838/05 NY Slip. Op., 951 NYS2d 86, 86 (2012) (citations omitted). In bringing repetitive actions, a litigant deprives other litigants of their proper share of judicial resources. The courts have a duty to stop and prevent these abuses of the judicial process. *Spremo v. Babchik*, 155 NY2d 796, 802, 589 NYS2d 1019, 1024 (1992). Sanctions are appropriate when the action in question is deemed "frivolous" in that it is without legal merit; is undertaken primarily to delay or prolong litigation or harm or harass another; or it asserts material factual statements which are false. *Levy v. Carol Management Group*, 260 AD2d 27, 34, 698 N.Y.S.2d 226, 232 (1st Dept. 1999). Plaintiff's

action need only meet one of these criteria to warrant sanctions. This dispute has been going on for over four years. Plaintiff has ignored Justice Goodman's warning that her claims were without legal merit and any future action on these issues could result in sanctions, a warning of which this Court takes special notice. Accordingly, this time the plaintiff is sanctioned and Defendant is granted a protective order.

Because Plaintiff's claims are barred by res judicata, the Court need not reach the issue of whether Defendant had an obligation to provide information in compliance with the Bill of Particulars.


For the reasons above, it is

ORDERED and ADJUDGED that the motion^{to}/dismiss is granted as the claims asserted by Plaintiff are barred under the doctrine of *res judicata*, and the case is dismissed with prejudice and with costs and disbursements against the Plaintiff in the sum of \$ ____ as determined by the Clerk; and it is further

ORDERED a sanction of \$500.00 is awarded against Plaintiff payable to Defendant as part of this judgment.

Enter: 2/19/13

Dated:



Louis B. York, J.S.C.

UNFILED JUDGMENT

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LOUIS B. YORK
J.S.C.