

<b>Raghavendra v Brill</b>
2014 NY Slip Op 33035(U)
November 26, 2014
Supreme Court, New York County
Docket Number: 600002/2011
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 46

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RAJAGOPALA S. RAGHAVENDRA a/k/a  
RANDY S. RAGHAVENDRA,

Index No. 600002/2011

Plaintiff

DECISION AND ORDER

- against -

EDWARD A. BRILL, PROSKAUER ROSE LLP,  
LEE C. BOLLINGER, TRUSTEES OF COLUMBIA  
UNIVERSITY, LOUIS D. STOBER, LAW OFFICE  
OF LOUIS D. STOBER, JANE DOE, and JOHN  
DOE,

Defendants

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LUCY BILLINGS, J.S.C.:

Plaintiff, in his latest flurry of motions, moves to reargue and renew defendants' motions to dismiss this action, which the court granted in an order dated January 31, 2014. C.P.L.R. § 2221(d) and (e). He also moves to reargue and renew his motion for declaratory and injunctive relief brought by an order to show cause, which the court declined to sign in an order dated February 6, 2014, having dismissed the claims on which plaintiff based that relief. Id.

Plaintiff seeks reargument, C.P.L.R. § 2221(d)(2), insisting the court erroneously held that the United States District Court's decision entitling defendants Stober and the Law Office of Louis D. Stober to attorneys' fees for representing plaintiff, Raghavendra v. Trustees of Columbia Univ., 686 F. Supp. 2d 332, 336 (S.D.N.Y. 2010), aff'd in part and vacated in part, 434 F. App'x 31 (2d Cir. 2011), barred his legal malpractice claims.

against the Stober defendants under the doctrine of res judicata. C.P.L.R. § 3211(a)(5). Plaintiff seeks renewal, C.P.L.R. § 2221(e)(2), claiming new facts that constitute defendants' continuing violation of his rights. The only claims that the court dismissed in this action based on the applicable statute of limitations, C.P.L.R. §§ 215(3), 3211(a)(5), however, were plaintiff's claims of intentional infliction of emotional distress and abuse of judicial process by the Stober defendants, Spinale v. 10 West 66th St. Corp., 291 A.D.2d 234, 235 (1st Dep't 2002), and his claim of intentional wrongdoing, which the court construed as a claim for a prima facie tort. Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d 917, 921 (1st Dep't 2010).

I. REARGUMENT

Plaintiff fails to present any fact or law that the court overlooked or misapprehended in its order dated January 31, 2014, dismissing plaintiff's amended complaint, or in its order dated February 4, 2014, denying his motion for relief for based on his amended complaint's claims. C.P.L.R. § 2221(d)(2); Windham v. New York City Tr. Auth., 115 A.D.3d 597, 600 (1st Dep't 2014). See Board of Educ. of City Sch. Dist. of City of N.Y. v. Grullon, 117 A.D.3d 572, 573 (1st Dep't 2014); Scelzo v. Acklinis Realty Holding LLC, 101 A.D.3d 468, 468 (1st Dep't 2012). Plaintiff simply repeats the same arguments in his original voluminous original motion, which the court already considered and determined on their merits.

Plaintiff's reiteration of a lack of opportunity to litigate

the Stober defendants' misconduct and malpractice in the federal district court's adjudication of the parties' attorneys' fees dispute does not point to any facts that this court overlooked. Instead, he claims that the authority the court relied on, Finkel v. New York City Hous. Auth., 89 A.D.3d 492 (1st Dep't 2011); Bettis v. Kelly, 68 A.D.3d 578 (1st Dep't 2009); Urlic v. Insurance Co. of State of Penn., 259 A.D.2d 1 (1st Dep't 1999); and Uzamere v. Uzamere, 89 A.D.3d 1013 (2d Dep't 2011), was inapposite because the plaintiffs in those actions had an opportunity to litigate the merits of their claims in a prior action. See Bisk v. Manhattan Club Timeshare Ass'n, Inc., 118 A.D.3d 585, 585 (1st Dep't 2014). His argument completely ignores this court's analysis and determination that the federal district court's conclusion regarding the Stober defendants' entitlement to fees was on the merits and arose from the same transactions and occurrences as his malpractice claims in this action. RM 18 Corp v. Bank of N.Y. Mellon Trust Co., N.A., 104 A.D.3d 752, 756 (2d Dep't 2013); Uzamere v. Uzamere, 89 A.D.3d at 1014. See Insurance Co. of State of Pa. v. HSBC Bank of USA, 10 N.Y.3d 32, 39 (2008). As for plaintiff's citation to a myriad of federal and state court decisions that this court did not cite, see Bisk v. Manhattan Club Timeshare Ass'n, Inc., 118 A.D.3d at 585, insofar as those decisions are controlling on this court, none supports a different principle or application of the of res judicata than was applied here. D'Alessandro v. Carro, \_\_\_ A.D.3d \_\_\_, 992 N.Y.S.2d 520, 523 (1st Dep't 2014); Parlato v. Equitable

Life Assur. Soc. of U.S., 299 A.D.2d 108, 117 n.3 (1st Dep't 2002); Merrill Lynch, Pierce, Fenner & Smith v. McLeod, 208 A.D.2d 81, 82 (1st Dep't 1995).

In any event, plaintiff nowhere raises any fact or legal principle that this court overlooked in dismissing his amended complaint's claims against the Stober defendants based on collateral estoppel, his failure to plead legally cognizable claims for relief, or the applicable statute of limitations. C.P.L.R. § 2221(d)(2). See Board of Educ. of City Sch. Dist. of City of N. Y. v. Grullon, 117 A.D.3d at 573; Scelzo v. Acklinis Realty Holding LLC, 101 A.D.3d at 468. Finally, plaintiff raises no fact or law that the court overlooked justifying reargument of the court's dismissal of his claims against defendants Brill, Proskauer Rose LLP, Bollinger, or Trustees of Columbia University as barred by res judicata, collateral estoppel, and plaintiff's failure to plead legally cognizable claims for relief. Therefore the court denies plaintiff's motions insofar as they seek reargument. C.P.L.R. § 2221(d)(2).

## II. RENEWAL

Even excusing plaintiff's failure to identify and support his motion for renewal separately from his motions for reargument, C.P.L.R. § 2221(f), plaintiff's offer of new facts and law fails to meet C.P.L.R. § 2221(e)(2)'s requirement that the new facts or law would have changed the court's original determination. Windham v. New York City Tr. Auth., 115 A.D.3d at 600; Levin v. New York City Health & Hosps. Corp. (Harlem Hosp.

Ctr.), 119 A.D.3d 480, 483 (1st Dep't 2014). Nowhere has plaintiff identified any changes in law warranting a re-examination of plaintiff's plethora of repetitive arguments.

D'Alessandro v. Carro, \_\_\_ A.D.3d \_\_\_, 992 N.Y.S.2d at 523.

The facts plaintiff offers are the same facts exhaustively recited in plaintiff's amended complaint and opposition to defendants' motions to dismiss this action. Venecia V. v. August V., 113 A.D.3d 122, 129 (1st Dep't 2013); Peterson v. City of New York, 120 A.D.3d 1328, 1329 (2d Dep't 2014). Insofar as the new facts plaintiff offered copiously detailed the status of his federal court actions and allegations regarding the parties' dealings subsequent to this court's decision January 31, 2014, they neither are relevant to the court's determination, nor warrant a change in that determination. Yarn Trading Corp. v. United Pads & Trim Inc., 118 A.D.3d 600, 601 (1st Dep't 2014); Windham v. New York City Tr. Auth., 115 A.D.3d at 600; Levin v. New York City Health & Hosps. Corp. (Harlem Hosp. Ctr.), 119 A.D.3d at 483; Farahman v. Dalhousie Univ., 96 A.D.3d 618, 619-20 (1st Dep't 2012).

Insofar as plaintiff claims a continuing violation of his rights that might avoid a dismissal of claims based on the statute of limitations, C.P.L.R. §§ 215(3), 3211(a)(5), no new facts demonstrate any conduct that rises to the extreme and egregious level required for intentional infliction of emotional distress or demonstrate the issuance of any process to constitute abuse of process. C.P.L.R. § 3211(a)(7); Phillips v. New York

Daily News, 111 A.D.3d 420, 421 (1st Dep't 2013); Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d at 921. Nor do any new facts demonstrate malicious acts by the Stober defendants, solely motivated to cause plaintiff harm, as required for a prima facie tort. C.P.L.R. § 3211(a)(7); Kickertz v. New York Univ., 110 A.D.3d 268, 280 (1st Dep't 2013). Therefore the court denies plaintiff's motions insofar as they seek renewal. C.P.L.R. § 2221(e)(2).

### III. DISPOSITION

For all the reasons explained above, the court denies plaintiff's motions to reargue and renew (1) defendants' motions to dismiss this action, which the court granted in an order dated January 31, 2014, and (2) his motion for declaratory and injunctive relief brought by an order to show cause, which the court declined to sign in an order dated February 6, 2014. C.P.L.R. § 2221(d) and (e).

DATED: November 26, 2014

*Lucy Billings*

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LUCY BILLINGS, J.S.C.