

Raghavendra v Brill

2014 NY Slip Op 33961(U)

January 31, 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 NEW YORK COUNTY

PRESENT: LUCY BILLINGS
Justice

PART 46

RAJAGOPALA S. RAGHAVENDRA

INDEX NO. 600002/2011

-v-
EDWARD A. DRILL, et al.

MOTION DATE _____

MOTION SEQ. NO. 003

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

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~~ and adjudged that:

The court grants the motion by defendants Stober and Law Office of Louis D. Stober, Jr., LLC, to dismiss the complaint against them, pursuant to the accompanying decision. C.P.L.R. § 3211(a)(1), (5), and (7).

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

Dated: 1/31/14

Lucy Billings, 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

LUCY BILLINGS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

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

Index No. 600002/2011

Plaintiff

- against -

DECISION AND ORDER

EDWARD A. BRILL, individually and as
attorney/partner at Proskauer Rose, LLP,
PROSKAUER ROSE, LLP, LEE C. BOLLINGER,
individually and as president of
Columbia University, TRUSTEES OF
COLUMBIA UNIVERSITY, LOUIS D. STOBER,
JR., individually and as attorney at law
offices of Louis D. Stober, Jr., LLC,
LAW OFFICE OF LOUIS D. STOBER, JR., LLC,
JOHN DOE 1-10, and JANE DOE 1-10,

Defendants
-----x

I. PRIOR RELATED ACTIONS

Three federal actions by plaintiff and a charge of
discrimination before the United States Equal Employment
Opportunity Commission by plaintiff against defendant Trustees of
Columbia University, claiming retaliatory and wrongful
termination of his employment and violation of his civil rights,
underlie this action. On July 30, 2009, plaintiff, his attorney
Louis D. Stober, Jr., Columbia University, and its attorneys
engaged in a full day of mediation, where plaintiff signed the
"Terms of Settlement between Rajagopala S. Raghavendra and the
Trustees of Columbia University in the City of New York." Aff.
of Robert Modica (Oct. 2, 2012) Ex. H. The settlement provides
plaintiff a substantial payment in exchange for discontinuance of

all his claims in the four actions, provides for how his employment references will be addressed in the future, and provides that the terms are final and binding on all parties.

Plaintiff subsequently sought to disavow his settlement agreement based on fraud, duress, and illegality, primarily objecting to the release of all his claims against Columbia University and payment of any attorneys' fees to Stober and his law office. In a decision dated February 19, 2010, the United States District Court for the Southern District of New York rejected plaintiff's contention that he was coerced into the mediation; determined that the settlement agreement, as a product of negotiation at arm's length, was valid, enforceable, and binding on plaintiff; and denied the relief he sought.

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). Exercising supplemental jurisdiction, the federal district court ordered plaintiff to pay his attorney according to their retainer agreement. Id., 686 F. Supp. 2d at 337-38. The Court of Appeals for the Second Circuit affirmed the enforceability of the settlement agreement and remanded the action to the district court to determine the amount of the fee plaintiff owes Stober or his law office. Id., 434 F. App'x at 32. The district court in turn ruled that Stober was entitled to one third of the total payment due plaintiff under the settlement agreement, reduced by the \$10,000 retainer fee plaintiff had paid. Raghavendra v. Trustees of Columbia Univ., 2012 WL

3778823, at *7 (S.D.N.Y. Aug. 31, 2012).

II. THIS ACTION

Plaintiff commenced this action in 2011, alleging claims against defendant Stober and the Law Office of Louis D. Stober, Jr., LLC, against defendants Columbia University and its president Bollinger, and against the Columbia defendants' attorneys, defendants Brill and his law firm Proskauer Rose LLP. The Stober, Columbia University, and Proskauer Rose defendants each move to dismiss plaintiff's amended complaint against them pursuant to C.P.L.R. § 3211(a)(1), (5), and (7). Plaintiff separately moves for declaratory and preliminary injunctive relief. C.P.L.R. §§ 3001, 6301, 6312(a).

Against the Stober defendants, plaintiff claims: (1) intentional and negligent misrepresentation in inducing him to sign the 2009 settlement agreement; (2) fraudulent inducement into their retainer agreement; (3) breach of the 2007 contract for attorneys' services; (4) violation of the New York Rules of Professional Conduct; (5) breach of a fiduciary duty; (6) legal malpractice and gross negligence; (7) conflict of interest; (8) breach of the settlement agreement; (9) tortious interference with the settlement agreement; (10) deliberate delay and late payment entitling him to interest at 9% per year; (11) conversion; (12) unjust enrichment; (13) violation of New York Judiciary Law § 90(2) and perjury; (14) abuse of process; (15) violation of New York General Business Law § 349; (16) additional fraudulent misrepresentation and concealment; (17) conspiracy;

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(18) breach of implied and express warranties; (19) intentional wrongdoing; (20) intentional infliction of emotional distress; and (21) violation of Judiciary Law § 487.

Against defendants Columbia University and its president Bollinger, plaintiff claims collusion with the Stober defendants and: (1) gross negligence; (2) intentional and negligent misrepresentation; (3) breach of the settlement agreement; (4) tortious interference with a contract; (5) abuse of process; (6) additional fraud and concealment; (7) aiding and abetting breach of a fiduciary duty; (8) aiding and abetting legal malpractice; (9) aiding and abetting abuse of process; (10) aiding and abetting fraud and concealment; (11) conspiracy and collusion in abuse of process, legal malpractice, breach of a fiduciary duty, and fraud; (12) intentional wrongdoing; and (13) intentional infliction of emotional distress.

Against the Columbia defendants' attorneys, defendants Brill and Proskauer Rose, plaintiff claims: (1) legal malpractice and gross negligence; (2) intentional and negligent misrepresentation; (3) aiding and abetting violation of the New York Rules of Professional Conduct; (4) breach of the settlement agreement; (5) tortious interference with a contract; (6) abuse of process; (7) additional fraud and concealment; (8) aiding and abetting breach of a fiduciary duty; (9) aiding and abetting legal malpractice; (10) aiding and abetting abuse of process; (11) aiding and abetting fraud and concealment; (12) conspiracy and collusion in aiding and abetting; (13) intentional

wrongdoing; (14) intentional infliction of emotional distress; and (15) violation of Judiciary Law § 487.

III. THE STANDARDS APPLICABLE TO THE MOTIONS TO DISMISS THE AMENDED COMPLAINT

Upon defendants' motions to dismiss the amended complaint pursuant to C.P.L.R. § 3211(a)(7), the court must accept plaintiff's allegations as true, liberally construe them, and draw all reasonable inferences in his favor. Walton v. New York State Dept. of Correctional Services, 13 N.Y.3d 475, 484 (2009); Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); IDT Corp. v. Tyco Group, S.A.R.L., 104 A.D.3d 170, 176 (1st Dep't 2012); Wadiak v. Pond Management, LLC, 101 A.D.3d 474, 475 (1st Dep't 2012). No such consideration may be given, however, to allegations that consist of only bare legal conclusions. Simkin v. Blank, 19 N.Y.3d 46, 52 (2012); David v. Hack, 97 A.D.3d 437, 438 (1st Dep't 2012). The court must determine whether the alleged facts fit within any cognizable legal theory and may dismiss a claim based on C.P.L.R. § 3211(a)(7) only if the allegations completely fail to state a claim. Leon v. Martinez, 84 N.Y.2d 83, 88 (1994); Harris v. IG Greenpoint Corp., 72 A.D.3d 608, 609 (1st Dep't 2010); Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d 267, 270-71 (1st Dep't 2004); Frank v. DaimlerChrysler Corp., 292 A.D.2d 118, 121 (1st Dep't 2002).

When a defense is based on documentary evidence, the court may dismiss claims only if that evidence conclusively establishes a defense as a matter of law. C.P.L.R. § 3211(a)(1); Lawrence v.

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Graubard Miller, 11 N.Y.3d 588, 595 (2008); Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 (2002); Leon v. Martinez, 84 N.Y.2d at 87-88; Greenapple v. Capital One, N.A., 92 A.D.3d 548, 550 (1st Dep't 2012). Dismissal of a claim is warranted under C.P.L.R. § 3211(a)(5) when defendants establish that the claim is barred by the statute of limitations, collateral estoppel, or res judicata. E.g., Chelsea 18 Partners, LP v. Sheck Yee Mak, 90 A.D.3d 38, 43 (1st Dep't 2011); Constructamax, Inc. v. Weber, 109 A.D.3d 574, 576 (2d Dep't 2013).

IV. THE STOBER DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

A. Plaintiff's Duplicative Legal Malpractice Claims

Plaintiff's claim for intentional and negligent misrepresentation alleges misrepresentations by the Stober defendants (1) to plaintiff regarding attorneys' fees and the scope of the settlement covering all his claims against Columbia University and (2) to the federal district court and the mediator regarding the Stober defendants' limited representation. As the Stober defendants' breach of the retainer agreement, plaintiff alleges the Stober defendants neglected their obligations to conduct discovery and to obtain injunctive relief. For the breach of a fiduciary duty and the negligence claims, plaintiff alleges the Stober defendants failed to follow his instructions, misled him and failed to advise him adequately regarding the mediation leading to a potential universal settlement, and failed to recuse themselves. For the conflict of interest claim, plaintiff alleges the Stober defendants tricked him into

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accepting the lowest possible settlement amount. As the violation of General Business Law § 349, plaintiff alleges the Stober defendants failed to render legal services, misled him, and concealed information from him. As the violation of Judiciary Law § 90(2) and perjury, plaintiff alleges the Stober defendants falsely represented their entitlement to attorneys' fees, the scope of their representation, and the assessed value of and their credit for settling plaintiff's various actions. For the legal malpractice and additional fraud and concealment claims, plaintiff alleges the Stober defendants' overall failure to represent him adequately in the federal litigation, their fraudulent inducement to attend the mediation July 30, 2009, and to sign the settlement agreement, and their attempt to collect their fees under the retainer agreement.

The amended complaint is replete with legal conclusions and allegations of legally non-cognizable causes of action, rather than facts that set forth the elements of the claims that are legally cognizable. C.P.L.R. § 3211(a)(7); Cosentino v. Sullivan Papain Block McGrath & Cannavo, P.C., 47 A.D.3d 599 (1st Dep't 2008). See NTL Capital, LLC v. Right Track Recording, LLC, 73 A.D.3d 410, 412 (1st Dep't 2010). Insofar as the claims against the Stober defendants recited immediately above are legally cognizable and are premised on facts, the claims all relate to the Stober defendants' legal representation, are premised on the same facts and seek the same relief as plaintiff's legal malpractice claim, and thus must be dismissed as duplicative.

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Cusack v. Greenberg Traurig, LLP, 109 A.D.3d 747, 748 (1st Dep't 2013); Garnett v. Fox, Horan & Camerini, LLP, 82 A.D.3d 435, 436 (1st Dep't 2011); Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d at 271. See Ulico Cas. Co. v. Wilson, Elser, Moskowitz, Edelman & Dicker, 56 A.D.3d 1, 9 (1st Dep't 2008).

B. Plaintiff's Claims Are Barred by Res Judicata.

The federal district court, exercising its supplemental jurisdiction, Raghavendra v. Trustees of Columbia Univ., 434 F. App'x at 32, already adjudicated plaintiff's fee dispute with the Strober defendants, finding that the retainer agreement is valid and enforceable, that they diligently represented plaintiff before and during the mediation, and that they are entitled to their attorneys' fees. Raghavendra v. Trustees of Columbia Univ., 2012 WL 3778823, at *6-7; Raghavendra v. Trustees of Columbia Univ., 686 F. Supp. 2d at 337. Applying the principles of res judicata, plaintiff's malpractice claim arises from the same transactions and occurrences as the claims determined by the federal district court and Second Circuit Court of Appeals. 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 1013, 1014 (2d Dep't 2011). See Insurance Co. of State of Pa. v. HSBC Bank of USA, 10 N.Y.3d 32, 39 (2008).

Implicit in the federal courts' rulings is either that Strober defendants did not commit malpractice or that any conceivable malpractice did not injure plaintiff. The federal

courts' determinations were on the merits of the claims, between the same parties, precluding plaintiff from maintaining the same claims under the rubric of legal malpractice in this action. C.P.L.R. § 3211(a)(5); Finkel v. New York City Hous. Auth., 89 A.D.3d 492, 493 (1st Dep't 2011); Bettis v. Kelly, 68 A.D.3d 578, 579 (1st Dep't 2009); Uzamere v. Uzamere, 89 A.D.3d at 1014-15. See Urlic v. Insurance Co. of State of Penn., 259 A.D.2d 1, 4 (1st Dep't 1999). Even if plaintiff alleges the Stober defendants' unlawful practices based on a different legal theory, res judicata and collateral estoppel bar him from relitigating the same factual issues here. C.P.L.R. § 3211(a)(5); Insurance Co. of State of Pa. v. HSBC Bank of USA, 10 N.Y.3d at 39; Masi v. Sivin, 69 A.D.3d 520, 521 (1st Dep't 2010); Women's Interart Ctr., Inc. v. New York City Economic Dev. Corp. (EDC), 65 A.D.3d 426, 427 (1st Dep't 2009). Even were plaintiff authorized to maintain a claim in a judicial forum that the Stober defendants violated the rules of professional conduct, he fails to show that this claim, as well, is in any way distinct from his attack on the competency of the Stober defendants' representation, which the federal courts explicitly found involved no legal malpractice. See Schwartz v. Olshan Grundman Frome & Rosenzweig, 302 A.D.2d 193, 199 (1st Dep't 2003); William Kaufman Org. v. Graham & James, 269 A.D.2d 171, 173 (1st Dep't 2000); Swift v. Ki Young Choe, 242 A.D.2d 188, 192 (1st Dep't 1998).

Similarly, plaintiff's claims that the Stober defendants fraudulently induced him into the retainer agreement, are

converting his settlement payment by seeking their attorneys' fees from the settlement, and will be unjustly enriched by obtaining their fees simply take issue with the federal courts' findings that the Stober defendants are entitled to their fees under the retainer agreement. Plaintiff in any event fails to plead the elements of fraudulent inducement, C.P.L.R. § 3016(b); Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 178-79 (2011); Rivera v. JRJ Land Prop. Corp., 27 A.D.3d 361, 364 (1st Dep't 2006); Giant Group v. Arthur Andersen LLP, 2 A.D.3d 189, 190 (1st Dep't 2003), conversion, or unjust enrichment. Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d at 182-83; Russo v. Heller, 80 A.D.3d 531, 532 (1st Dep't 2011); Algomod Tech. Corp. v. Price, 65 A.D.3d 974, 975 (1st Dep't 2009); Sergeants Benevolent Assn. Annuity Fund v. Renck, 19 A.D.3d 107, 111-12 (1st Dep't 2005). Therefore these claims, too, must be dismissed, based on their lack of factual support, C.P.L.R. 3211(a)(7), as well as res judicata and collateral estoppel. C.P.L.R. § 3211(a)(5); Insurance Co. of State of Pa. v. HSBC Bank of USA, 10 N.Y.3d at 39; Finkel v. New York City Hous. Auth., 89 A.D.3d at 492-93; Women's Interart Ctr., Inc. v. New York City Economic Dev. Corp. (EDC), 65 A.D.3d at 427-28.

Plaintiff's claim that the Stober defendants violated Judiciary Law § 487, by inducing plaintiff into signing the settlement agreement and misleading the federal court regarding the scope of their representation, is similar. Plaintiff likewise fails to allege the requisite deceit or pattern of

delinquency to state a claim under Judiciary Law § 487(1). Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d 1, 13 (1st Dep't 2008); Mars v. Grant, 36 A.D.3d 561, 562 (1st Dep't 2007). Plaintiff equally fails to draw a causal connection between any deceit or delinquency by the Stober defendants and adverse consequences to him, a deficiency that is also fatal to any such claim. Maksimiak v. Schwartzapfel Novick Truhowsky Marcus, P.C., 82 A.D.3d 652 (1st Dep't 2011); Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13; Nason v. Fisher, 36 A.D.3d 486, 487 (1st Dep't 2007); Jaroslawicz v. Cohen, 12 A.D.3d 160, 161 (1st Dep't 2004).

C. Plaintiff's Claims Are Time Barred.

Plaintiff's claims of intentional infliction of emotional distress and abuse of judicial process by the Stober defendants, in that they tricked and harassed him by moving for their fees under the retainer agreement in the federal court and by their fraudulent conduct before and during the mediation in 2009, are barred by the one year statute of limitations for intentional torts. C.P.L.R. § 215(3); Spinale v. 10 West 66th St. Corp., 291 A.D.2d 234, 235 (1st Dep't 2002). Plaintiff further fails to allege facts demonstrating any conduct that rises to the extreme and egregious level required for intentional infliction of emotional distress or demonstrating the issuance of any process beyond moving for their fees, 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 917, 921 (1st Dep't 2010).

Liberally construing plaintiff's claim of intentional wrongdoing as a claim for a prima facie tort, it, too, is barred by the statute of limitations. C.P.L.R. § 3211(a)(5); Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d at 921. It, too, lacks the facts to support such a claim. Plaintiff fails to plead any facts showing malicious acts by the Stober defendants, solely motivated to cause plaintiff harm, as required to plead 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 dismisses all claims for intentional torts.

D. Plaintiff's Further Failure to Plead Claims for Relief

The Stober defendants are not parties to the settlement agreement between plaintiff and Columbia University, nor does plaintiff plead any facts showing the Stober defendants are required to perform under the agreement or made any affirmative promises associated with the agreement or otherwise. VisionChina Media Inc. v. Shareholder Representative Servs., LLC, 109 A.D.3d 49, 58 (1st Dep't 2013); Carol v. Madison Plaza Assoc., LLC, 95 A.D.3d 735, 736 (1st Dep't 2012). Therefore plaintiff fails to plead the facts necessary to support a breach of that agreement and his entitlement to interest on the amount owed under the agreement, requiring dismissal of those claims. C.P.L.R. § 3211(a)(7).

Plaintiff's alternative claim that the Stober defendants tortiously interfered with the settlement agreement fails because

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plaintiff shows neither that the Stober defendants procured a breach by Columbia University, nor even that a breach occurred. C.P.L.R. § 3211(a)(7); Telerep, LLC v. U.S. Intl. Media, LLC, 74 A.D.3d 401, 402 (1st Dep't 2010); Marks v. Smith, 65 A.D.3d 911, 916 (1st Dep't 2009). The federal courts' rejection of plaintiff's challenge to the settlement agreement's validity and to his own performance obligations under the agreement also collaterally estops plaintiff from claiming that Columbia University's failure pay is a breach as long as he refuses to perform under the agreement. C.P.L.R. § 3211(a)(5); Women's Interart Ctr., Inc. v. New York City Economic Dev. Corp. (EDC), 65 A.D.3d at 427-28.

Plaintiff further claims breaches of the implied and express warranties applicable to the sale of merchandise and thus inapplicable to the legal services provided by the Stober defendants. Castillo v. Tyson, 268 A.D.2d 336, 337 (1st Dep't 2000). Plaintiff's conclusory allegations in any event fail to set forth any express or implied guarantees by the Stober defendants. C.P.L.R. § 3211(a)(7). If plaintiff's claim is considered a breach of the implied duty of good faith and fair dealing, it solely concerns the parties' contract for legal services covered by his legal malpractice claim and therefore duplicates that claim. C.P.L.R. § 3211(a)(5); Cusack v. Greenberg Traurig, LLP, 109 A.D.3d at 748; Garnett v. Fox, Horan & Camerini, LLP, 82 A.D.3d at 436; Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d at 271.

Finally, plaintiff's conspiracy claim, alleging that all defendants colluded to commit legal malpractice, abuse of judicial process, breach of a fiduciary duty, and fraud, lacks any facts showing conspiratorial conduct. C.P.L.R. § 3211(a)(7); Fleischer v. NYP Holdings, Inc., 104 A.D.3d 536, 537 (1st Dep't 2013). See Weinberg v. Mendelow, ___ A.D.3d ___, 2014 WL 148635, at *1 (1st Dep't Jan. 16, 2014). Since civil conspiracy is not a cause of action independent of the wrong that defendants conspired to commit, when plaintiff has failed to plead any of those predicate claims, the conspiracy claim fails with them. Kickertz v. New York Univ., 110 A.D.3d at 281; Hoeffner v. Orrick, Herrington & Sutcliffe LLP, 85 A.D.3d 457, 458-59 (1st Dep't 2011). As for any of plaintiff's claims that allege misrepresentation or fraud, plaintiff fails to plead any facts showing that the Stober defendants knowingly made material misrepresentations to induce his reliance, his justifiable reliance, and his resulting injury. VisionChina Media Inc. v. Shareholder Representative Servs, LLC, 109 A.D.3d at 58; Carol v. Madison Plaza Assoc., LLC, 95 A.D.3d at 736. Therefore dismissal of these claims also is warranted under C.P.L.R. § 3211(a)(7).

V. THE COLUMBIA UNIVERSITY DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

Plaintiff contends that the Columbia University defendants conspired with the Stober defendants to misinform the mediator that Stober represented plaintiff despite knowing he was proceeding unrepresented; denied him honest attorney representation; induced plaintiff to attend the mediation; failed

to inform him that the potential settlement might include related actions in addition to the one action for which he retained Strober; colluded with Strober to deceive him into signing the 2009 settlement agreement; used direct intimidation, racial humiliation, and psychological abuse during the mediation; used deceptive language in the settlement agreement; harassed and intimidated him by prolonged and unnecessary litigation after he signed the agreement; and breached it by failing to pay plaintiff as it provided. As plaintiff fails to allege any facts demonstrating Bollinger's personal involvement in the transactions or occurrences on which plaintiff's claims are premised, the court dismisses all claims against Bollinger in his individual capacity. C.P.L.R. § 3211(a)(7); JDF Realty v. Sartiano, 93 A.D.3d 410 (1st Dep't 2012); Duane Reade, Inc. v. Local 338 Retail, Wholesale, Dept. Store Union, UFCW, AFL-CIO, 17 A.D.3d 277, 278 (1st Dep't 2005); Kahmi v. Tay, 244 A.D.2d 266 (1st Dep't 1997). Even with respect to the Columbia University, plaintiff's conclusory allegations lack any facts showing the objectionable conduct recited above.

A. Failure to Plead Claims For Relief

Since Columbia University was plaintiff's adversary, and plaintiff shows no fiduciary relationship with this defendant, it owed plaintiff no special duty of care. Therefore the court dismisses plaintiff's claims that depend on such a duty: gross negligence, negligent misrepresentation, and fraudulent concealment. C.P.L.R. § 3211(a)(7); Gomez-Jimenez v. New York

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Law Sch., 103 A.D.3d 13, 17-18 (1st Dep't 2012); Dobroshi v. Bank of Am., N.A., 65 A.D.3d 882, 884 (1st Dep't 2009).

The intentional torts alleged by plaintiff likewise lack essential elements. His abuse of process claim fails to allege any process issued against him by Columbia University. The abuse of litigation as a means to entrap and humiliate him that he alleges, even had he supported it with facts, is not regularly issued process. Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d at 921. His "intentional wrongdoing" claim, even if construed as a prima facie tort, similarly lacks the requisite facts showing Columbia University's malicious acts, motivated solely to cause him harm. Phillips v. New York Daily News, 111 A.D.3d at 421; Casa de Meadows Inc. (Cayman Is.) v. Zaman, 76 A.D.3d at 920-21. His allegations that Columbia University intentionally inflicted emotional distress on him by its breach of the settlement agreement, its continued litigation against him, and its statements and conduct during the litigation do not reach the extreme and egregious level required for intentional infliction of emotional distress. Phillips v. New York Daily News, 111 A.D.3d at 421; Kaye v. Trump, 58 A.D.3d 579 (1st Dep't 2009). Therefore the court dismisses these three claims. C.P.L.R. § 3211(a)(7).

The court also dismisses plaintiff's aiding and abetting claims against Columbia University. C.P.L.R. 3211(a)(7). First, plaintiff has failed to plead the claims against the Strober defendants that he claims Columbia University aided and abetted.

Second, he fails to plead any facts showing Columbia University had actual knowledge of and took affirmative steps to enable the Stober defendants' wrongful conduct. Vilar v. Rutledge, 106 A.D.3d 489, 490 (1st Dep't 2013); Winkler v. Battery Trading, Inc., 89 A.D.3d 1016, 1017 (1st Dep't 2011). For the same reasons that the court dismissed plaintiff's claim of conspiracy and collusion against the Stober defendants, the court dismisses this claim against Columbia University as well. C.P.L.R. § 3211(a)(7); Kickertz v. New York Univ., 110 A.D.3d at 281; Fleischer v. NYP Holdings, Inc., 104 A.D.3d at 537; Hoeffner v. Orrick, Herrington & Sutcliffe LLP, 85 A.D.3d at 458-59.

B. Claims Barred By Res Judicata and Collateral Estoppel

Under res judicata, the federal courts' rulings that the settlement agreement was not a product of fraud bar plaintiff from claiming Columbia University's fraud, misrepresentation, and aiding and abetting of fraud or misrepresentation during the mediation, since the claims adjudicated by the federal courts were based on the same transactions and occurrences. C.P.L.R. § 3211(a)(5); Bettis v. Kelly, 68 A.D.3d at 579; Uzamere v. Uzamere, 89 A.D.3d at 1014-15. According to the federal court's ruling requiring plaintiff to tender all necessary executed documents releasing all his claims against Columbia University, it is not obligated to pay him under the settlement agreement until he complies with his required obligations under the agreement. Raghavendra v. Trustees of Columbia Univ., 2012 WL 3778823, at * 6-7. This ruling precludes plaintiff from

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enforcing Columbia University's performance of the agreement while he vehemently continues to disavow it. C.P.L.R. § 3211(a)(5); Women's Interart Ctr., Inc. v. New York City Economic Dev. Corp. (EDC), 65 A.D.3d at 427-28. Under these circumstances, since Columbia University has not breached the settlement agreement, plaintiff fails to plead a claim for that relief. C.P.L.R. § 3211(a)(7); Lavigny Holdings Ltd. v. Collier Intern. Partners V-A, LP, ___ A.D.3d ___, 2014 WL 67324, at *1 (1st Dep't Jan. 9, 2014).

Plaintiff's claim of Columbia University's tortious interference with a contract alleges that Columbia University bribed the Stober defendants with an attorneys' fees payment from plaintiff's settlement. Res judicata and collateral estoppel bar this claim, too, as it seeks to relitigate the Strober defendants' entitlement to their fees according to the retainer agreement. C.P.L.R. § 3211(a)(5); Women's Interart Ctr., Inc. v. New York City Economic Dev. Corp. (EDC), 65 A.D.3d at 427-28. Insofar as this claim is premised on a different theory, plaintiff fails to show how Columbia University procured a breach of any contract by any other party or nonparty, whether of the settlement agreement that is between plaintiff and Columbia University only, the retainer agreement between him and the Stober defendants, or any other contract. C.P.L.R. § 3211(a)(7); Telerep, LLC v. U.S. Intl. Media, LLC, 74 A.D.3d at 402; Marks v. Smith, 65 A.D.3d at 916.

VI. THE PROSKAUER ROSE DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

All plaintiff's claims against the Proskauer Rose defendants, the law firm and its attorney Brill, are premised on the firm's legal representation of Columbia University. As plaintiff fails to allege any facts demonstrating Brill's personal involvement in the transactions or occurrences on which plaintiff's claims are premised, the court dismisses all claims against Brill in his individual capacity. C.P.L.R. § 3211(a)(7); JDF Realty v. Sartiano, 93 A.D.3d 410; Duane Reade, Inc. v. Local 338 Retail, Wholesale, Dept. Store Union, UFCW, AFL-CIO, 17 A.D.3d at 278; Kahmi v. Tay, 244 A.D.2d 266.

Plaintiff makes the same conclusory allegations and the identical claims, except for additional claims of legal malpractice, violation of Judiciary Law § 487, and aiding and abetting violation of the New York Rules of Professional Conduct, against Proskauer Rose as against Columbia University. Therefore, for the same reasons as those identical claims against Columbia University were dismissed, they are dismissed against Proskauer Rose. C.P.L.R. § 3211(a)(5) and (7).

A fundamental element of a claim for legal malpractice, an attorney-client relationship between plaintiff and defendant, is missing against Proskauer Rose. Plaintiff alleges no other contractual obligation owed by Proskauer Rose to him, nor any other facts supporting the attorney's liability to a nonclient. Hadar v. Pierce, 111 A.D.3d 439, 440 (1st Dep't 2013); Federal Ins. Co. v. North Am. Specialty Ins. Co., 47 A.D.3d 52, 58-59

[* 21]
(1st Dep't 2007).

Again, even were plaintiff authorized to maintain a claim in a judicial forum regarding the Stober defendants' violation of the rules of professional conduct, collateral estoppel bars his relitigation of the competency of the Stober defendants' representation inherent in his claim that Proskauer Rose aided and abetted such a violation. See Schwartz v. Olshan Grundman Frome & Rosenzweig, 302 A.D.2d at 199; William Kaufman Org. v. Graham & James, 269 A.D.2d at 173; Swift v. Ki Young Choe, 242 A.D.2d at 192. As with his aiding and abetting claims against Columbia University, because plaintiff has failed to plead the claims against the Stober defendants that he claims Proskauer Rose aided and abetted or any facts showing it knew of and took affirmative steps to enable the Stober defendants' wrongful conduct, the elements of aiding and abetting are also missing. Vilar v. Rutledge, 106 A.D.3d at 490; Winkler v. Battery Trading, Inc., 89 A.D.3d at 1017.

Plaintiff's claim that Proskauer Rose violated Judiciary Law § 487, like his claim against the Stober defendants for such a violation, again fails to allege the requisite deceit, pattern of delinquency, or causal connection between any such conduct by Proskauer Rose and adverse consequences to him, to state a claim under that statute. Maksimiak v. Schwartzapfel Novick Truhowsky Marcus, P.C., 82 A.D.3d at 652; Kaminsky v. Herrick, Feinstein LLP, 59 A.D.3d at 13; Mars v. Grant, 36 A.D.3d at 562; Nason v. Fisher, 36 A.D.3d at 487. Therefore the court dismisses

plaintiff's claims for legal malpractice, aiding and abetting, and violation of Judiciary Law § 487 against Proskauer Rose as well. C.P.L.R. § 3211(a)(5) and (7).

VII. PLAINTIFF'S MOTION FOR EQUITABLE RELIEF

Plaintiff separately moves for a declaratory judgment that any attorneys' fee claims by the Strober defendants are premature and unenforceable pending the determination of his claims against them in this action. Plaintiff also seeks an injunction requiring the Columbia University defendants to comply immediately with the terms of the settlement agreement dated July 30, 2009, by paying plaintiff the amount provided in the agreement without prejudice to his pending claims, including these defendants' breach of the settlement agreement.

Since the court dismisses all the claims in the amended complaint against all defendants for the reasons explained above, plaintiff fails to show a likelihood of success on the merits of his claims as required for preliminary injunctive relief.

Second on Second Café, Inc. v. Hing Sing Trading, Inc., 66 A.D.3d 255, 264, 276 (1st Dep't 2009); Speranza v. Repro Lab Inc., 62 A.D.3d 49, 55-56 (1st Dep't 2009); Alayoff v. Alayoff, 112 A.D.3d 564, 565 (2d Dep't 2013). Nor is there any need for the immediate relief plaintiff seeks against the Stober defendants, because they have not counterclaimed for attorneys' fees in this action. Both their entitlement to fees and the Columbia University defendants' obligations under the settlement agreement already have been adjudicated. This court lacks the authority to

contravene the federal courts' determinations on those issues.

Syncora Guar. Inc. v. J.P. Morgan Sec. LLC, 110 A.D.3d 87, 93-94 (1st Dep't 2013); UBS Sec. LLC v. Highland Capital Mgt., L.P., 86 A.D.3d 469, 474 (1st Dep't 2011).

VIII. DISPOSITION

For all the reasons set forth above, the court grants all defendants' motions to dismiss the amended complaint, dismisses this action in its entirety, C.P.L.R. § 3211(a), and denies plaintiff's motion for declaratory and preliminary injunctive relief. C.P.L.R. §§ 3001, 6301, 6312(a). This decision constitutes the court's order and judgment of dismissal.

DATED: January 31, 2014



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.