

Cangro v Solomon
2010 NY Slip Op 31980(U)
July 23, 2010
Supreme Court, New York County
Docket Number: 106491/2010
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD

PART 35

Index Number : 106491/2010

CANGRO, JENNIFER

VS.

SOLOMON, PHYLLIS C.

SEQUENCE NUMBER : 001

DISMISS

INDEX NO. _____

MOTION DATE 7/6/10

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, It is ordered that this motion

FILED

JUL 28 2010

NEW YORK
COUNTY CLERK'S OFFICE

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendants Phyllis C. Solomon, Esq. and Wendy B. Shepps to dismiss the complaint of Jennifer Cangro is granted, and the Complaint is hereby dismissed in its entirety, with prejudice; and it is further

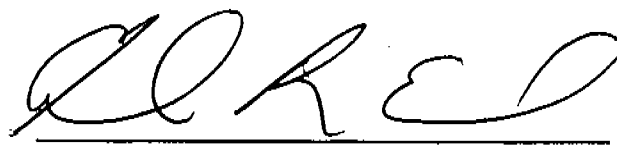
ORDERED that plaintiff JENNIFER CANGRO is hereby enjoined from commencing any future actions in the New York State Unified Court System against PHYLLIS C. SOLOMON and WENDY B. SHEPPS, without the prior approval of the appropriate Administrative Justice or Judge; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry; and it is further

ORDERED that the Clerk may enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: 7/23/10



J.S.C.

HON. CAROL EDMEAD

Check one: ☒ FINAL DISPOSITION

☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

☐ REFERENCE

☐ SUBMIT ORDER/JUDG.

☐ SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
JENNIFER CANGRO,

Index No. 106491/2010

Plaintiff,

-against-

PHYLLIS C. SOLOMON and WENDY B. SHEPPS,

Defendants.

-----X
HON. CAROL EDMEAD, J.S.C.

FILED
JUL 28 2010
NEW YORK
COUNTY CLERK'S OFFICE

MEMORANDUM DECISION

Defendants Phyllis C. Solomon, Esq. ("Solomon") and Wendy B. Shepps ("Shepps") (collectively "defendants") move to dismiss the complaint of Jennifer Cangro ("plaintiff") on the grounds that (1) the action is barred by collateral estoppel and *res judicata* (CPLR 3211(a)(5)), (2) the statute of limitations bars this action (CPLR 3211(a)(5)), (3) plaintiff failed to seek leave to commence this action against Solomon; (4) plaintiff failed to state a cause of action (CPLR § 3211(a)(7)), and (5) the action is barred by documentary evidence (CPLR § 3211(a)(1)), as well as to dismiss the punitive damages claim.

Factual Background

The instant litigation arises out of an underlying 2001 matrimonial matter relating to the divorce of plaintiff and Frank Cangro before the Supreme Court, Richmond County (the "underlying matter"). In the underlying matter, nonparty Mary V. Rosado, Esq. ("Rosado") was appointed as plaintiff's Guardian. Rosado then retained defendant Solomon to address the issue of whether the proposed Stipulation of Settlement between plaintiff and her husband appeared to

be fair to plaintiff and should be signed by the plaintiff.¹ Based on Solomon's review of the valuation of the marital property, the parties' net worth statements and conversations with Rosado, Solomon concluded in a memorandum dated November 3, 2004, that "it would be beneficial for Ms. Rosado, as guardian, to sign the proposed Stipulation of Settlement on behalf of" plaintiff (the "Memorandum").

In October 2007, plaintiff served a complaint alleging, *inter alia*, that defendant Solomon committed a fraud upon the Court, made misrepresentations and defamatory and libelous statements in the Memorandum, and accepted a "\$1500 bribe" (the "Prior Action"). On motion by defendant Solomon, the Court (Ling-Cohan, J.) dismissed the Prior Action on the ground that plaintiff failed to seek permission from the Court (which appointed the Guardian) before commencing such action. The Court further concluded that even if permission were sought and granted, plaintiff failed to state a claim in her complaint.

Plaintiff perfected an appeal of the December 9, 2008 Order. However, the Appellate Division, First Department struck plaintiff's Appellate Appendix, and her entire appeal, as the Appellate Appendix allegedly included various documents that were not considered by the Court. Plaintiff was permitted to, but failed to re-file her appeal with a corrected Appendix, and instead, commenced this action against Solomon and Solomon's counsel in the Prior Action, making the identical allegations as were asserted in the Prior Action.

In support of dismissal, defendants argue that the doctrines of *res judicata* and collateral estoppel bar this action. As the identical claims were already dismissed in the Prior Action, resulting in a decision in favor of Solomon, any claims which could have been raised in that prior

¹ Defendants believe that plaintiff has commenced a separate action against her Guardian.

suit, are barred under *res judicata*. Additionally, the plaintiff's instant action is barred by the doctrine of collateral estoppel, as the prior motion necessarily decided that the plaintiff's claim lacks any merit and was dismissible as a matter of law. Accordingly, plaintiff is barred from maintaining this action as against Solomon and against her counsel Shepps.

Defendants further argue that assuming the veracity of plaintiff's allegations, the subject action is time-barred. While the Complaint does not allege a claim for malpractice, the allegations pertaining to Solomon's preparation of a memo derive from her activities as an attorney. There is no basis for plaintiff's unfounded belief that Solomon was her counsel, and any such allegation is refuted by documentary evidence.² In any case, the three-year statute of limitations pursuant to CPLR § 214 governs this action. A legal malpractice action accrues when the malpractice is committed, and the instant action arises out of the underlying divorce matter, where Solomon was retained by plaintiff's guardian. As the plaintiff alleges that the instant action "stems from" wrongs committed in 2004, the three-year statute of limitations on a claim against Solomon expired in 2007, and the instant action against Solomon is thus time barred.

Additionally, litigation against Solomon as the agent of plaintiff's guardian cannot proceed without Court permission, and any untimely application by plaintiff seeking leave to proceed with the instant action against Solomon should be denied in its entirety. As an appointee of the Court, the Guardian, and the Guardian's agents, "act as an arm of the court" in matters involving the incapacitated person's property and person. Once a Guardian is appointed by a

² See various printouts from both e-law and e-Courts for the underlying action. Also, the Post Office Box address provided by plaintiff on the Complaint in the instant action, "P.O. Box 140506, Staten Island, New York 10314" is the same address listed for the "Attorney/Firm for Defendant" in the underlying action. The Court system's records also list plaintiff as a *pro se* litigant in the underlying action.

Court to represent the interests of an incapacitated person, "litigation against the guardian as a representative of the incapacitated person" and, any agent appointed by the Guardian, "may not proceed without permission of the court which appointed the guardian." As the Court noted in its decision in the Prior Action, section 1(H) of the Part 36 Rules of the Chief Judge specifically provides that a judicial appointment is required when a guardian seeks to retain counsel." The Court there properly ruled that "since an attorney retained by a guardian," such as Solomon "acts with the express authority and permission of the court, it reasonably follows that litigation against such an appointed person may not proceed without the permission of the court." The Court in the Prior Action correctly held that litigation against Solomon as the agent of plaintiff's court-appointed Guardian cannot proceed without Court permission. As plaintiff failed to plead that she secured Court permission to commence this action against Solomon, the instant action should be dismissed in its entirety.

The instant action also fails to state a cause of action. As to plaintiff's defamation claim, lawyers are immune from liability for making false or defamatory statements in judicial proceedings as long as the statement is pertinent to the proceedings. The purported statements made by Solomon in her memo were made during the course of judicial proceedings, the underlying divorce action, and were made directly in the context of those proceedings. Accordingly, "such statements were privileged and cannot form the basis of a cause of action for defamation." In the Prior Action the Court correctly held that plaintiff cannot maintain her defamation claim. Accordingly, the thirteenth cause of action in the instant action, again claiming defamation, should similarly be dismissed.

To the extent this Court finds that plaintiff has plead a legal malpractice claim, based

upon the analysis set forth in the decision in the Prior Action and upon the absence of an attorney-client relationship, that plaintiff has not plead a cause of action for legal malpractice as against defendants. The Court in the Prior Action dismissed certain allegations in plaintiffs complaint "to the extent that the complaint attempts to plead legal malpractice." The Court in the Prior Action held that "The failure to establish proximate cause mandates the dismissal of a legal malpractice action, regardless of the attorney's negligence." Again, plaintiff does not claim any actionable injury; nor does she claim that but for defendant's actions, she would have prevailed in the underlying case. Significantly, plaintiff does not clearly indicate that she did not prevail in the underlying action." Additionally, plaintiff failed to plead the first element of a cause of action for legal malpractice, *i.e.* an attorney-client relationship. The Court record for the underlying matter lists plaintiff as a *pro se* litigant in the underlying action. Solomon was not plaintiff's attorney in the underlying divorce action. Further, Solomon was not counsel for plaintiff in the Prior Action.

The instant action is dismissible as a matter of law as against Solomon, as plaintiff failed to plead facts tending to support a compensatory or punitive damage claim based on Solomon's failure to appear at an October 29, 2004 hearing in the underlying matter.

It is also argued that there is no independent cause of action for punitive damages, and plaintiff's claims are insufficient to support a claim for punitive damages. Plaintiff's allegations that Shepps failed to appear at a preliminary conference, presented irrelevant caselaw in Solomon's motion to dismiss the Prior Action, and that Shepps was somehow involved with the removal of an affidavit of service presumably from the court file, do not rise to such a level as to constitute a high degree of moral turpitude or wanton dishonesty to support a punitive damages

claim. Solomon's preparation of a Memorandum setting forth her opinions as to the reasonableness of a Stipulation also does not rise to such a level. The Guardian made the decision to submit the Memorandum to the Court in the underlying action and all Shepps did was to litigate the Prior Action on behalf of her client, Solomon. Thus, plaintiff's punitive damages claim was properly dismissed by the Court in the Prior Action and should be dismissed herein.

Defendants further argue that the documentary evidence confirms that plaintiff appeared in the underlying action *pro se* and that Solomon was never counsel for plaintiff in the underlying action. Plaintiff failed to plead whether the Guardian or the Court even considered or relied upon Solomon's Memorandum in deciding whether to approve the Settlement Agreement, whether the plaintiff herself signed the Agreement, and whether the Agreement was negotiated further following Solomon's review. The Court in the Prior Action held that although "plaintiff indicates that the court relied on defendant's statements in the Memorandum and incorporated them into orders and judgments thereby damaging plaintiff," plaintiff "does not provide information as to the contents of such court orders and judgments. Additionally, it does not appear from plaintiff's allegations that she was affected, in any actionable way, by the prior court's orders which incorporated defendant's recommendations." The evidence submitted in support of defendant's motion to dismiss confirms that Solomon was not plaintiff's counsel and was not charged with the responsibility of representing plaintiff and making the ultimate decision to execute the Agreement; she only provided her opinion and recommendation. Accordingly, based on the documentary evidence submitted herewith, plaintiff's complaint should be dismissed.

Finally, should this Court dismiss plaintiff's Complaint, the Court should also issue an Order preventing plaintiff from filing any future actions against defendants or the respective law

firms.

In opposition, plaintiff argues that her first through seventeen causes of action state claims against Solomon due to Solomon's alleged failure to appear at a pretrial conference in October 2004, for improper, inadequate, and irreconcilable statements made in Solomon's Memorandum, for taking a "bribe" in connection with preparing the Memorandum, for defrauding a "federal agency" (Medicare), for misrepresenting that her name did not appear on a compliance conference order, and for defamatory and libelous statements made in the Memorandum. Solomon's defamatory statements concerning plaintiff's alleged psychological defects made with malice are actionable and warrant punitive damages.

Plaintiff further argues that she stated claims against Shepps in the eighteen through twenty-four causes of action, for her failure to appear at a preliminary conference and failure to comply with a bill of particulars, for implicating plaintiff's failure to serve pleadings and indirectly removing a filed affidavit of service, misrepresentations concerning service by overnight mail, improper citations to overreaching caselaw, and failing to convert a motion to dismiss to one for summary judgment.

Additionally, plaintiff argues that there was no Prior Action against Shepps or trial in the Prior Action against Solomon. The Court's order dismissing the Prior Action, the Appellate Division's order striking the Appellate Record (based on Shepps's false accusation that documents submitted on appeal were not before the lower Court), and the Appellate Division's order dated January 22, 2010, are not conclusive on the fraud claim herein. The prior Court order dismissed the action for plaintiff's failure to secure leave to commence the action and not for failure to state a cause of action. The Appellate Division decisions were not on the merits. Thus,

such orders lack *res judicata* effect.

Further, plaintiff argues that documentary evidence establishes that defendants defrauded the Court by making false statements and misrepresentations concerning, *inter alia*, plaintiff's failure to file proof of service, and establishing plaintiff's right to sue *via* Appellate Division vacatur of an order restraining plaintiff from commencing an action (§185).

And, the action is not time-barred, since plaintiff is given six months from the date the Prior Action was terminated to recommence an action which arises out of the same transaction or occurrence as the Prior Action. This action is also timely under the continuing tort doctrine, as Shepps continued to falsely represent on June 9, 2010 that plaintiff appeared in the matrimonial action *pro se* and failed to secure leave before commencing this action.

Plaintiff also asserts that defendants should be equitably estopped from shielding their fraud and misrepresentations or from raising the statute of limitation defense.

In reply, defendants add that plaintiff's new claim for fraud, raised for the first time in opposition to the motion, fails to state a cause of action. Plaintiff failed to assert a misrepresentation of present fact by either defendant, or that any such representation was made with knowledge of its falsity. Nor does plaintiff allege any intent to deceive or scienter, and the fraud claim lacks the required level of specificity.

Discussion

Collateral Estoppel/Res Judicata

"The doctrine of collateral estoppel precludes a party from relitigating 'an issue which has previously been decided against him in a proceeding in which he had a fair opportunity to fully litigate the point'" (*In re Abady*, 22 AD3d 71, 800 NYS2d 651 [1st Dept 2005] *citing*

Kaufman v Eli Lilly & Co., 65 NY2d 449, 455, 492 NYS2d 584 [1985], quoting *Gilberg v Barbieri*, 53 NY2d 285, 291, 441 NYS2d 49 [1981]). The two requirements for its application are: first, the identical issue necessarily must have been decided in the prior action and be decisive in the present action, and second, the party to be precluded must have had a full and fair opportunity to contest the prior determination (*In re Abady*, at 81). "[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identity and decisiveness of the issue" (*Ryan v New York Telephone Co.*, 62 NY2d 494, 501 [1984]; *Capital Telephone Co., Inc. v Pattersonville Telephone Co., Inc.*, 56 NY2d 11, 18; *Schwartz v Public Admin.*, 24 NY2d 65, 73). The opponent, on the other hand, has the burden of establishing the absence of a full and fair opportunity to litigate the issue in the administrative hearing (*Ryan*, 62 NY2d at 501; *Capital Telephone*, 56 NY2d at 18).

Res judicata, or claim preclusion, is invoked when parties seek to relitigate entire causes of action between them and applies to matters which were actually litigated or could have been litigated in the earlier action (*DaimlerChrysler Corp. v Spitzer*, 6 Misc 3d 228, 782 NYS2d 610 [Sup Ct Albany County 2004]; see *Hyman v Hillelson*, 79 AD2d 725, 726, affd 55 NY2d 624). Pursuant to the doctrine of *res judicata*, "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 based upon different theories or if seeking a different remedy" (*O'Brien v City of Syracuse*, 54 NY2d 353, 357; see also, *Smith v Russell Sage Coll.*, 54 NY2d 185; *Matter of Reilly v Reid*, 45 NY2d 24; *Feigen v Advance Capital Mgt. Corp.*, 146 AD2d 556, 558; Restatement [Second] of Judgments § 24). In order for the doctrine of *res judicata* to apply, the party to be precluded in the current action must have been a party to the prior action where the claim at issue was litigated or could

have been litigated. "Res judicata serves to preclude the renewal of issues actually litigated and resolved in a prior proceeding as well as claims for different relief which arise out of the same 'factual grouping' or 'transaction', and which should have or could have been resolved in the prior proceeding" (*Braunstein v Braunstein*, 114 AD2d 46, 53 [2d dept 1985]). In order for *res judicata* to apply, however, the foundational facts must be related in ' "time, space, origin, or motivation [as well as] form a convenient trial unit" ' and it must be established that the ' "treatment [of the foundational facts] as a unit conforms to the parties' expectations" ' (*Smith v Russell Sage Coll.*, 54 NY2d at 192-193, *supra*, quoting from Restatement [Second] of Judgments [Tent Draft No. 1] § 61).

As to Solomon, collateral estoppel applies to bar plaintiff's action against her as to all claims. First, the Court's prior decision, dated December 8, 2008 (Ling-Cohan, J.) stated that "Once a guardian is appointed by a court to represent the interests of an incapacitated person, litigation against the guardian as a representative of the incapacitated person may not proceed without the permission of the court which appointed the guardian." (p. 4). The Court continued " . . . section 1 (H) of the Part 36 of the Rules of the Chief Judge specifically provides that a judicial appointment is required when a guardian seeks to retain counsel. Thus, since an attorney retained by a guardian acts with the express authority and permission of the court, it reasonably follows that litigation against such an appointed person may not proceed without the permission of the court . . ." (p. 4). This holding was not overturned or reversed by any Appellate Court. Therefore, since plaintiff and defendant had a full opportunity to contest this issue, and in fact litigated this issue before the Court, the Court's holding in this regard is binding upon the parties. As plaintiff is collaterally estopped from litigating the issue of whether leave is required, and

having failed to establish that leave was granted by the Richmond County Court to commence this action against Solomon, plaintiff's action cannot proceed.

In any event, as to the merits of plaintiff's claims against Solomon, the first through fourteenth causes of action alleged herein are likewise barred based on collateral estoppel and *res judicata*. Plaintiff's first through fourteenth causes of action alleged herein seek the identical relief based upon the same set of facts and circumstances alleged in the instant action.³ Plaintiff's sixteenth cause of action regarding Solomon's statements concerning plaintiff's mental deficiencies and the absence of Solomon's name on the compliance conference order, were also claimed in plaintiff's prior complaint. And, plaintiff's seventeenth cause of action alleging that Solomon accepted a bribe, committed waste, absence of name on the compliance conference order, concealment of Pension Fund Administrator statement and made other misrepresentations concerning plaintiff's mental deficiencies were alleged in plaintiff's prior eleventh, fifteenth, and sixteenth causes of action. The Order dated December 9, 2008 in the

³ It was alleged that Solomon made the following misrepresentations in her Memorandum: that the monthly amount was sufficient (first cause of action in prior and instant complaints), plaintiff will not be able to support herself (second cause of action in prior and instant complaints), plaintiff will continue to receive pension benefits in the event the insured predeceases plaintiff and there is no need for life insurance (third cause of action in prior and instant complaints), that the marital property's valuation date as August 23, 2001 was fair (fourth cause of action in prior and instant complaints), that the \$100,000 lump sum payment to plaintiff was fair (fifth cause of action in prior and instant complaints), plaintiff removed substantial money from various accounts (sixth and seventh causes of action in prior and instant complaints), that plaintiff wrongfully sold a certain property for a very low price (eighth cause of action in prior and instant complaints), plaintiff failed to pay the mortgage on a certain property resulting in a foreclosure (ninth cause of action in prior and instant complaints), the Stipulation was fair and there is foreclosure pending at a certain property (tenth cause of action in prior and instant complaints), 40% of husband's pension was equitable because plaintiff caused marital waste (eleventh and twelfth causes of action in prior and instant complaints), plaintiff suffers from psychological defects and deficiencies (thirteenth cause of action in prior and instant complaints), and that an earlier action was commenced in 1997 (fourteenth in prior and instant complaints). As to the remainder of plaintiff's prior causes of action, it was alleged that Solomon accepted a bribe (fifteenth and seventeenth causes of action in prior and instant complaints), amount is sufficient to sustain plaintiff (sixteenth and first causes of action in prior and instant complaints), and general fraudulent misrepresentations (seventeenth cause of action in the first complaint). The instant complaint's thirteenth cause of action adds that plaintiff committed waste, as alleged in her prior and instant eleventh and twelfth cause of action in prior and instant complaints.

Prior Action dismissed these claims, not only on the procedural ground that plaintiff failed to seek leave to sue Solomon, but also, for failure to state a cause of action. The Court held that, even had plaintiff sought and obtained court approval to commence the instant action, dismissal was still warranted based on the insufficiency of the pleadings under relevant caselaw. Therefore, contrary to plaintiff's contention, the Court determined that these causes of action were insufficiently plead, and cannot be sustained herein.

As to plaintiff's fifteenth cause of action alleging that Solomon defrauded the federal government by stating that Medicare will sufficiently take care of plaintiff's health care needs,⁴ this new claim not alleged in the prior complaint, fails to state a cause of action. When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see*, CPLR § 3026), and the court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory" (*Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994]). The elements of fraudulent misrepresentation are: (1) the defendant made a material false representation, (2) the defendant intended to defraud the plaintiffs thereby, (3) the plaintiff reasonably relied upon the representation, and (4) the plaintiff suffered damage as a result of his or her reliance (*Swersky v Dreyer and Traub*, 219 AD2d 321, 326, 643 NYS2d 33 [1st Dept 1996]). The misrepresentation must be pleaded with sufficient particularity, as required by CPLR 3016(b). The language of 3016(b) merely requires that a claim of misrepresentation be pleaded in sufficient detail to give adequate notice (*see Foley v D'Agostino*, 21 AD2d 60, 64, 248

⁴ This claim was also alleged in plaintiff's seventeenth cause of action herein.

NYS2d 121 [1st Dept 1964]). Even assuming the truth of plaintiff's allegations, the allegations fail to indicate that the statement constituted a material misrepresentation, or that plaintiff reasonably relied upon such statement.

As to plaintiff's punitive damages claim against Solomon, a cause of action for punitive damages cannot stand as a separate cause of action since it constitutes merely an element of the single total claim for damages on the underlying causes of action (*APS Food Systems, Inc. v Ward Foods, Inc.*, 70 AD2d 483, 421 NYS2d 223 [1st Dept 1979] citing *Goldberg v New York Times*, 66 AD2d 718; *Ferrucci v State of New York*, 42 AD2d 359, 362, affd 34 NY2d 881; *Kallman v Wolf Corp.*, 25 AD2d 506). In any event, plaintiff failed to sufficiently state a facts indicating that Solomon's behavior in the matrimonial action was "so outrageous as to evince a high degree of moral turpitude" (see *Rosenkrantz v Steinberg*, 13 AD3d 88, 786 NYS2d 35 [1st Dept 2004]; see also *Cohen v Mazoh*, 12 AD3d 296, 784 NYS2d 857 [1st Dept 2004] ["the facts alleged do not establish gross, wanton or willful fraud or other morally culpable conduct to a degree sufficiently warranting punitive damages"]; *Camillo v Geer*, 185 AD2d 192, 587 NYS2d 306 [1st Dept 1992] [record does not support a finding of outrageous conduct warranting award of punitive damages]).

Therefore, based on the above, plaintiff's claims as against Solomon are dismissed.

As to Shepps, she was counsel to Solomon and not a party in the Prior Action. Nor were the instant claims against Shepps alleged or addressed in the Prior Action. Therefore, it cannot be said that plaintiff's claims against Shepps are barred under the doctrines of collateral estoppel or *res judicata*.

However, all of the claims, including but not limited to, Shepps's alleged failure to

appear at a preliminary conference and failure to convert a motion cannot be maintained since plaintiff has no standing to assert such claims. The claims against Shepps pertain to her handling of the defense of Solomon. Thus, Shepps's was *not* plaintiff's attorney. Moreover, the record fails to disclose any damages to plaintiff proximately caused by such alleged failures. Thus, plaintiff fails to state any legally cognizable claims against Shepps. Further, for the reasons stated above, plaintiff's claim for punitive damages against Shepps lacks merit.⁵

Finally, there is no merit to plaintiff's contention that defendants should be equitably estopped from raising the defenses to this action.

In light of the fact that this Court has now twice spoken as to plaintiff's inability to seek any redress against Solomon for the work she performed in the underlying matrimonial action, and the clear lack of merit of any claims against Solomon's former attorney, Shepps, plaintiff shall be precluded and enjoined from commencing any further actions in the New York State Unified Court System against said defendants, without the prior approval of the appropriate Administrative Justice or Judge. "Our courts have an interest in preventing the waste of judicial resources by a party who knows that his or lawsuit has no legitimate basis in law or fact and continues to attempt to relitigate resolved claims and issues" (*Uzamere v Uzamere*, 28 Misc 3d 1207 [Sup Ct Kings County 2010]).

⁵ It is noted that under CPLR 205(a), a plaintiff whose action was timely commenced but subsequently terminated by reason other than voluntary discontinuance, neglect to prosecute, a lack of personal jurisdiction or a final judgment on the merits, may recommence the action within six months of the termination of the prior action even though the applicable Statute of Limitations period has expired in the interim. The alleged malpractice claim against Shepps pertains to acts she allegedly performed in 2008 and 2009, after the Prior Action was commenced in 2007, and before this action was commenced in 2010. CPLR 205(a) is inapplicable.

Conclusion

Based on the foregoing, it is hereby

ORDERED that the motion by defendants Phyllis C. Solomon, Esq. and Wendy B. Shepps to dismiss the complaint of Jennifer Cangro is granted, and the Complaint is hereby dismissed in its entirety, with prejudice; and it is further

ORDERED that plaintiff JENNIFER CANGRO is hereby enjoined from commencing any future actions in the New York State Unified Court System against PHYLLIS C. SOLOMON and WENDY B. SHEPPS, without the prior approval of the appropriate Administrative Justice or Judge; and it is further

ORDERED that defendants serve a copy of this order with notice of entry upon all parties within 20 days of entry; and it is further

ORDERED that the Clerk may enter judgment accordingly.

This constitutes the decision and order of the Court.

Dated: July 23, 2010



Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMED

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