

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25621
Y/hu

_____AD3d_____

Argued - October 23, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
RANDALL T. ENG
PLUMMER E. LOTT, JJ.

2008-05615
2009-08844

DECISION & ORDER

David B. Jacobs, appellant, v Michael Mostow,
et al., defendants, Arthur Riegel, et al., respondents.

(Index No. 7715/07)

David B. Jacobs, Freeport, N.Y., appellant pro se.

Garbarini & Scher, P.C., New York, N.Y. (William D. Buckley of counsel), for respondent Arthur Riegel.

Jaspan Schlesinger, LLP, Garden City, N.Y. (Stanley A. Camhi of counsel), for respondents Jaspan Schlesinger Hoffman, LLP, and Lawrence Tenenbaum.

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, N.Y. (William Cusack of counsel), for defendant Steven A. Fayer.

Dorsey & Whitney, LLP, New York, N.Y. (Jonathan M. Herman and Marc Reiner of counsel), for respondent NCS Pearson, Inc.

Ivonine, Devine & Jensen, LLP, Lake Success, N.Y. (W. Robert Devine and Brian E. Lee of counsel), for respondent Randall A. Solomon.

James R. Sandner, New York, N.Y. (Christopher M. Callagy of counsel), for respondents New York State United Teachers, Roosevelt Teachers' Association, Richard Shane, and Neil Dudich.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter Karanjia and Sasha Samberg-Champion of counsel), for respondents New York State Teachers' Retirement System, State of New York Education Department, and State of New York.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from (1) an order of the Supreme Court, Nassau County (Murphy, J.), dated May 12, 2008, which granted those branches of the separate motions of the defendant Arthur Riegel, the defendants Jaspan Schlesinger Hoffman, LLP, and Lawrence Tenenbaum, the defendant Steven A. Fayer, the defendant NCS Pearson, Inc., the defendant Randall Solomon, the defendants New York State United Teachers, Roosevelt Teachers' Association, Richard Shane, and Neil Dudich, and the defendants New York State Teachers' Retirement System, the State of New York Education Department, and the State of New York, which were to dismiss the complaint pursuant to CPLR 3211 insofar as asserted against them, and (2) a judgment of the same court, entered July 18, 2008, which, upon the order, is in favor of those defendants and against him, dismissing the complaint insofar as asserted against those defendants. The notice of appeal from the order dated May 12, 2008, is deemed also to be a notice of appeal from the judgment (*see* CPLR 5501[c]).

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondents appearing separately and filing separate briefs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on appeal from the judgment (*see* CPLR 5501[a][1]).

The Supreme Court properly dismissed the complaint insofar as asserted against Arthur Riegel, the hearing officer at the plaintiff's disciplinary hearing, inasmuch as "arbitrators are immune from liability for acts performed in their arbitral capacity" (*Indemnity Ins. Co. of N. Am. v Mandell*, 30 AD3d 1129, 1130; *see John Street Leasehold v Brunjes*, 234 AD2d 26). The Supreme Court properly dismissed the complaint insofar as asserted against Steven Fayer, because the claims against him are barred by the doctrine of res judicata (*see Gramatan Home Invs. Corp. v Lopez*, 46 NY2d 481, 485). The Supreme Court properly dismissed the complaint insofar as asserted against New York State United Teachers, Roosevelt Teachers' Association, Richard Shane, Neil Dudich, Lawrence Tenenbaum, and Jaspan Schlesinger Hoffman, LLP, because the causes of action against those defendants are barred by the applicable statutes of limitation (*see* CPLR 214[5]; 215[3]; 217[2][a]; *Waterman v Transport Workers' Union Local 100*, 176 F3d 150, *affg for reasons stated* at 8 F Supp 2d 363, 370-371). The complaint was properly dismissed insofar as asserted against NCS Pearson, Inc., inasmuch as the plaintiff failed to state a cause of action against that defendant (*see* CPLR 3211[a][7]). The complaint was properly dismissed insofar as asserted against Randall Solomon in that, insofar as it alleged negligence or breach of contract, it failed to state a cause of

action (*see* CPLR 3211[a][7]), and insofar as it alleged medical malpractice, it is barred by the statute of limitations (*see* CPLR 214-a). Furthermore, the complaint was properly dismissed insofar as asserted against the New York State Teachers' Retirement System, the State of New York Education Department, and the State of New York, inter alia, because the plaintiff failed to comply with procedural requirements governing claims against the State and, in any event, failed to state a claim against those defendants (*see* CPLR 3211[a][7]).

The plaintiff's remaining contentions either are without merit or need not be addressed in light of our determination.

FISHER, J.P., ANGIOLILLO, ENG and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court