

**Jacobs v Mostow**

2008 NY Slip Op 30351(U)

January 30, 2008

Supreme Court, Nassau County

Docket Number: 7715-07/

Judge: Karen Veronica Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 22 NASSAU COUNTY**

**PRESENT:**

**Honorable Karen V. Murphy**  
**Justice of the Supreme Court**

\_\_\_\_\_x

**DAVID B. JACOBS,**

**Plaintiff(s),**

**-against-**

**MICHAEL MOSTOW, HORACE WILLIAMS,  
HERSCHEL WILLIAMS, ARNOLD GOLDBERG,  
ROOSEVELT UNION FREE SCHOOL DISTRICT,  
BOARD OF EDUCATION OF THE ROOSEVELT  
UNION FREE SCHOOL DISTRICT, GLENN  
SIMMONS, ARTHUR RIEGEL, JASPAN  
SCHLESINGER HOFFMAN, LLP, LAWRENCE  
TENENBAUM, STEVEN A. FAYER, M.D.,  
PEARSON, RANDALL SOLOMON, M.D., NEW  
YORK STATE UNITED TEACHERS,  
ROOSEVELT TEACHERS' ASSOCIATION, THE  
NEW YORK STATE TEACHERS' RETIREMENT  
SYSTEM, THE STATE OF NEW YORK  
EDUCATION DEPARTMENT, and THE STATE  
OF NEW YORK,**

**Defendant(s).**

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**Index No. 7715/07**

**Motion Submitted: 1/18/08**

**Motion Sequence: 001, 002, 003, 004,  
005, 006, 007**

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....XXX
- Reply.....
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Motion (Seq. No. 2) by the plaintiff David B. Jacobs, *pro se* for an Order pursuant to CPLR § 1003 and CPLR § 3025(a) permitting the plaintiff to amend the caption on the

summons to include the names of defendants Richard Shane and Neil Dudich as reflected in the caption on the complaint; correcting the spelling of defendant Arthur Riegel's name; and extending the time to serve the summons and complaint on defendants Michael Mostow, Horace Williams, Herschel Williams and Glenn Simmons and to dispense with the need for affidavits requiring a notary's signature and stamp is decided herein.

Plaintiff David Jacobs, a former teacher in the Roosevelt Union Free School District (Roosevelt) was terminated for cause from employment with Roosevelt after having been found unfit to teach by several medical professionals, following a 14-day evidentiary hearing in which he was represented by counsel. (Plaintiff is now *pro se*). Plaintiff acknowledges in the complaint that the Honorable Joanna Seybert, United States District Court Judge of the United States District Court, Eastern District of New York, has already issued a judgment and decision relating to plaintiff's federal action (*Jacobs v Mostow, et al.*), which is against all the same defendants and alleges the same cause of action. Plaintiff has brought these claims in both the Federal and State Courts, without success. In the complaint in the within action he states he brought this action "to protect his rights and interests from the defense of statute of limitations should the appeal from the decision and judgment above [dismissing his federal action] be affirmed." Complaint, page 1. Plaintiff first brought an action in this court in 2001 (*Jacobs v Mostow, et al.*, Index No. 01-4162). The latter action was dismissed in 2003, but reinstated by the Appellate Division in 2005 because the lower court had dismissed it "without notice to the parties and in the absence of an application by the defendants for such relief" *Jacobs v Mostow*, (23 A.D.3d 623-624, 806 N.Y.S.2d 213 (2d Dept., 2005); see also, *Jacobs v Mostow*, 306 A.D.2d 439, 761 N.Y.S.2d 500 (2d Dept., 2003) and 306 A.D.2d 440, 761 N.Y.S.2d 501 [2d Dept., 2005]). Plaintiff then brought the Federal Court action in 2005 (referred to above) (*Jacobs v Mostow, et al.*, CV 05-4808). Judge Seybert dismissed the action in September 2006. The plaintiff's appeal of Judge Seybert's decision is pending. The rule in New York is that the pendency of an appeal does not prevent the use of the challenged judgment as the basis of collateral estoppel. (See, *Anonymous v Dobbs Ferry Union Free School District*, 19 A.D.3d 522, 797 N.Y.S.2d 120 [2d Dept., 2005]).

The reason given by the plaintiff for requesting permission to extend the time to serve defendants William Mostow, Horace Williams, Herschel Williams and Glenn Simmons within the statutory 120-day period is his allegation that the attorneys for the Roosevelt Union Free School District initially agreed to accept service by mail pursuant to CPLR § 312-a for William Mostow, Horace Williams, Herschel Williams and Glenn Simmons but then changed their minds. The attorneys for Roosevelt do not refute the excuse offered by plaintiff. William Mostow, Horace Williams and Herschel Williams were employed by Roosevelt. Glenn Simmons was an elected member of the Board of Education of Roosevelt. The attorney for Roosevelt has not indicated that it or any of the defendants would be

prejudiced by the extension. On the contrary, under the circumstances and to avoid unnecessary litigation expenses it would seem prudent and in the interests of its taxpayers for Roosevelt School District to agree to accept service of the summons and complaint on behalf of William Mostow, Horace Williams and Herschel Williams at this time.

With regard to plaintiff's request to dispense with the need for affidavits requiring a notary stamp and signature, the court agrees with the reasoning set forth in the affirmation of Stanley A. Camhi, Esq., submitted on behalf of co-defendants Jaspán Schlesinger Hoffman LLP and Lawrence T. Tenenbaum dated September 12, 2007 wherein Mr. Camhi states:

"3. Jacobs' only argument in support of eliminating the notary's signature requirement on his affidavits is that he is a *pro se* plaintiff and obtaining the signatures on affidavits and affidavits of service causes him 'needless inconvenience and hardship.' Jacobs Aff., ¶ 1. His argument is without merit. Any inconvenience and hardship is self-imposed by the nature of Jacobs' claims and the number of defendants he has chosen to name in his lawsuit.

4. The purpose of an affidavit is to assure under penalty of perjury, the truth and accuracy of the information set forth in the document submitted to the Court, and upon which the Court may rely in rendering its decision. *See, e.g. Slavenburg Corp. v Opus Apparel, Inc.*, 53 N.Y.2d 799, 801, 422 N.E.2d 570, 571 (1981) (noting that affidavits not made or sworn before a notary public or authorized official would have 'no probative value because the affirmant would not be answerable for the crime of perjury should he make a false statement'); *In re Portnow*, 253 A.D. 395, 2 N.Y.S.2d 533 (2<sup>nd</sup> Dept., 1938) ('Those who make affidavits are held to strict accountability for the truth and accuracy of their contents.');

392 *Fifth v K & D Gourmet Deli*, N.Y.L.J., Dec. 29, 1999, pg. 22, col. 3 (Civ. Ct. New York Cty. 1999) ("The requirement that an affirmation be signed and sworn by a notary public is an important safeguard against perjury.")

5. Requiring an individual to swear to the truth of the matters set forth is not a meaningless exercise nor is it imposed upon a litigant simply to inconvenience him or to create an unnecessary burden. Affidavits and sworn statements, when required by the rules are to insure the integrity of the judicial process. *See*, N.Y. C.P.L.R. § 3021, § 3022 (requiring pleadings to be verified or else it can be treated "as a nullity.")

6. Based upon Jacobs' prior conduct in another litigated matter, it is particularly appropriate that the requirement not be dispensed with. Jacobs was an attorney who was suspended from the practice of law by the Appellate Division, Second Department, for certain misconduct relating to his charging clients excessive legal fees and for improperly obtaining a confession of judgment from a client for his fees. Despite being suspended from practicing law, Jacobs misrepresented to this Court (Winslow, J.S.C.) in another action he filed, also entitled *Jacobs v Mostow*, (Index No. 01-004162), that he was an attorney. See Exhibit A. The notarization requirement in which Jacobs is required to swear under oath to the truth of his statements will help to assure that his representations to the Court are true and accurate.

7. In sum, Jacobs has not offered any legitimate reason why the rules should not apply equally to him as they do to every other litigant who brings a lawsuit. The fact that he personally finds the process burdensome, time consuming, cumbersome, or inconvenient is simply not a sufficient reason to jettison the rules and requirements which are designed to insure that information presented to the Court is both truthful and accurate."

The plaintiff's motion for an Order pursuant to CPLR § 1003 and CPLR § 3025(a) permitting the plaintiff to amend the caption on the summons to include the names of defendants Richard Shane and Neil Dudich as reflected in the caption on the complaint; correcting the spelling of defendant Arthur Riegel; and extending the time to serve the summons and complaint on defendants Michael Mostow, Horace Williams, Herschel Williams and Glenn Simmons until June 1, 2008 is granted and the caption shall read as recited above. The plaintiff's application to dispense with the need for affidavits requiring a notary's signature and stamp is denied.

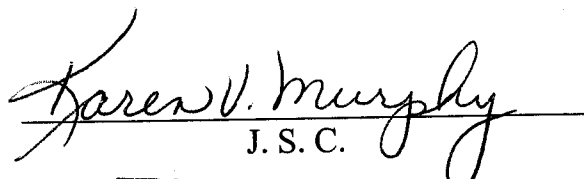
The attorneys for the defendants The New York State Teachers' Retirement System, the State of New York Education Department and the State of New York (Mot. Seq. No. 1); defendant Steven A. Fayer (Mot. Seq. No. 3); defendant NCS Pearson, Inc. (Mot. Seq. No. 4); defendants Roosevelt Teachers' Association, New York State United Teachers, Richard Shore and Neil Dudich ( Mot. Seq. No. 5); defendant Arthur Riegel (Mot. Seq. No. 6); and defendant Randall Solomon, M.D. (Mot. Seq. No. 7) have each brought a motion to dismiss the complaint. The attorneys for defendants Jaspán Schlesinger Hoffman, LLP and Lawrence Tenenbaum entered into a Stipulation dated August 20, 2007 with the plaintiff *pro se* extending the time for the Jaspán defendants to move, answer or take any action with respect to the complaint in the within action *sine die* pending the outcome of the appeal in the action entitled: *David Jacobs v Michael Meslow, et al.*, Docket No. 06-4829-CV.

To date, the Court has not received any opposition papers from the plaintiff in regard to the motions to dismiss the complaint (Seq. No. 1, 3, 4, 5, 6, 7). Since this action has appeared on the calendars of other justices of the Supreme Court Nassau County, and to assure that a determination of each pending motion is made on the merits, the return date of the aforesaid motions are adjourned *sua sponte* to February 29, 2008. Plaintiff shall have until February 15, 2008 to serve opposing papers to the aforesaid motions to dismiss. Reply affirmations shall be served no later than February 29, 2008.

Failure of the plaintiff to submit opposition papers to the respective motions to dismiss by February 15, 2008, may result in the relief being granted by default.

The foregoing constitutes the Order of this Court.

Dated: January 30, 2008  
Mineola, N.Y.

  
J. S. C.

**ENTERED**

FEB 04 2008  
NASSAU COUNTY  
COUNTY CLERKS OFFICE