

Jones v Riese Org.

2011 NY Slip Op 30676(U)

March 22, 2011

Supreme Court, New York County

Docket Number: 105489/2010

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON
Justice

PART 55
105489/10

Jones, Charles

INDEX NO. 105491/10

MOTION DATE 11/12/10

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

- v -

The Riess Organization

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED	
1-3	_____
4-6	_____
7-9	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance
with the annexed Memorandum decision and order.

FILED
MAR 23 2011
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 3/22/11

JANE S. SOLOMON
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 55

-----X
CHARLES JONES

Index No.:105489/2010

Plaintiff,

DECISION & ORDER

-against-

THE RIESE ORGANIZATION d/b/a RIESE
RESTAURANTS and/or RIESE BROS;
BOARD OF MANAGERS OF 761-779
SEVENTH AVENUE CONDOMINIUM; BOARD OF
MANAGERS OF EXECUTIVE PLAZA
CONDOMINIUM,

Defendants.

FILED

MAR 23 2011

NEW YORK
COUNTY CLERK'S OFFICE

-----X
JANE S. SOLOMON, J.:

Pro se plaintiff Charles Jones (Jones) moves to reargue the prior decision of this court that granted defendants motion to dismiss the complaint on the grounds of res judicata, collateral estoppel and the statute of limitations. Defendants oppose the motion both procedurally and on the merits. The motion is decided as follows.

In the underlying action, Jones alleged causes of action for continuing trespass/nuisance and negligence, stemming from the operation of an exhaust flue installed outside his apartment window over twenty years ago. He brought a law suit in 2003 against several entities including the defendants here. Jones alleged, amongst other things, that the flue constituted a continuing trespass or nuisance.

As explained in the underlying decision:

[In the 2003 action] [t]he sole allegation against Riese, for continuing trespass, was dismissed because

of a statute of limitations violation and Jones's motion to amend his complaint to include a request for a permanent injunction was denied . . . Jones's personal injury claims were severed and he was given leave to replead in a new action. The parties settled the remainder of the lawsuit, which was then discontinued with prejudice . . .

Jones's personal injury lawsuit . . . which included the Condominium defendants, though not Riese . . . commenced in 2005 and was discontinued with prejudice pursuant to a stipulation of discontinuance in 2007

(*Jones v. The Riese Organization*, Index No. 105489/2010 [Sup Ct, NY County, 2010][citations omitted]).

The underlying decision held that Jones's continuing trespass/nuisance and negligence claims were collaterally estopped as they arose entirely from facts already litigated in the prior 2003 and 2005 lawsuits. His claim for monetary damages arising from the operation of the flue was likewise estopped. His request for a permanent injunction halting use of the flue was denied on the ground of res judicata, as Jones complained of the flue prior to the 2003 action, but did not seek injunctive relief in either his 2003 complaint or his amended complaint.

Subsequent to responding to this motion, counsel for defendant Riese Organization informed the court that Jones's failed to adhere to a 1999 court order issued in *Jones v. Newman* (1999 WL 493429 [SDNY]) (the 1999 Order), which directed that Jones:

is barred from filing any civil lawsuit in a court of the United States, regardless of subject matter, without first obtaining leave of such court. Further [Jones] is ordered to staple a copy of this opinion to any further complaint, whether filed in federal or state court, so

[*4]
that any such court 'may take judicial notice of matters relevant to new litigation brought by him' (Id., at 14).

Jones responds that Riese's counsel should be sanctioned for frivolous conduct because the 1999 Order only applies only to "courts of the United States," and according to Jones, "[t]he Supreme Court of the State of New York . . . is not 'a court of the United States'" (Jones Letter, dated November 2, 2010). Contrary to Jones's belief, this court is a court of the United States. If it is Jones's contention that the order only applies to Federal courts, his belief is belied by the language of the order itself. Jones did not comply with the 1999 Order, and this action would rightly be barred had the court known of the 1999 Order.

In any event, on the merits, a motion to reargue will be granted if a court misapprehended relevant facts or misapplied the controlling law (*Mike v. Riverbay Corp.*, 56 AD3d 357 [1st Dept., 2008]). Jones appears to argue that this court incorrectly applied the doctrine of res judicata because there was no final decision against Riese on the merits in the 2003 or 2005 actions. Jones is incorrect. Riese was dismissed from the 2003 action because, even then, the statute of limitations had run on Jones's claim. A cause of action that was stale in 2003 remains stale in 2011. Jones's other argument--that he now seeks different damages is equally unpersuasive.

[* 5]

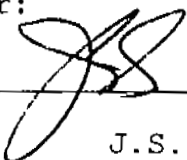
Jones has, once again, burdened his opponents, and this court, with overwrought and needless argument in violation of court order. Jones is admonished that any violation of the court order prohibiting further litigation will be treated as a contempt under New York's Judiciary Law.

Accordingly, it hereby is

ORDERED that the motion is denied with \$100 costs against the movant.

Dated: *March 27* 2011

Enter:



J.S.C.

JANE S. SOLOMON

FILED

MAR 23 2011

**NEW YORK
COUNTY CLERK'S OFFICE**