

Keles v Galil

2012 NY Slip Op 30068(U)

January 13, 2012

Supreme Court, New York County

Docket Number: 116143/09

Judge: Marcy S. Friedman

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

PRESENT: Marcy Friedman
Justice

PART 57

Keles, Resat

INDEX NO. 116143-2009

- v -

galil (Zvi et al)

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to 2 were read on this motion to dismiss/inconvenient
forum

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

PAPERS NUMBERED

1-2

Answering Affidavits — Exhibits _____

11-113

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Decided in accordance with
accompanying decision.

FILED

JAN 13 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/11/12

[Signature]
J.S.C.

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 57

PRESENT: Hon. Marcy S. Friedman, JSC

RESAT KELES, x

Plaintiff,

Index No.: 116143/09

- against -

DECISION/ORDER

ZVI GALIL, MORTON FRIEDMAN, PETER
RENNEE, and THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK,

Defendants.

RESAT KELES, x

RESAT KELES,

Plaintiff,

Index No.: 116468/09

- against -

DECISION/ORDER

ALAN BRINKLEY, ROXIE SMITH, ZVI GALIL,
MORTON FRIEDMAN, and THE TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF
NEW YORK,

Defendants.

RESAT KELES, x

RESAT KELES,

Plaintiff,

NEW YORK
COUNTY CLERK'S OFFICE
Index No.: 116752/09

- against -

DECISION/ORDER

LEE BOLINGER, ALAN BRINKLEY, ROXIE
SMITH, MORTON FRIEDMAN and THE TRUSTEES
OF COLUMBIA UNIVERSITY IN THE CITY OF
NEW YORK,

Defendants.

RESAT KELES, x

FILED

JAN 13 2012

* 3]

These three actions were brought by plaintiff Resat Keles, proceeding pro se, against The Trustees of Columbia University (Columbia) and various of its officers, faculty, or administrators. The three complaints plead substantially similar allegations, and arise out of plaintiff's enrollment as a doctoral student at Columbia in 2001, and the termination of positions that he alleges he held at Columbia during or after his enrollment.

A prior action, brought in 2008 and also arising out of the aforesaid enrollment, was dismissed by order of this court (Tingling, J.), which was affirmed by the Appellate Division of this Department. (Keles v Trustees of Columbia Univ., Index No. 107052/08, 2009 NY Slip Op 30865U [2009], affd 74 AD3d 435 [2010], lv denied 16 NY3d 890 [2011], cert denied 132 S Ct 155 [2011], reh denied, ___ S Ct ___, 2011 WL 6013793 [2011].) There, plaintiff alleged breach of contract on the ground, among others, that defendants "den[ied] Plaintiff registration and enrollment into courses for the Defendant's DES [Doctor of Engineering Science] program," and terminated his teaching assistantship position. (Complaint, Index No. 107052/08, ¶¶ 59, 73, 64-67.) The lower court held, and the Appellate Division affirmed, that although plaintiff categorized his claims as ones for breach of contract and tort, his challenges were directed at core academic determinations and were therefore subject to review only in an Article 78 proceeding. The court found, however, that an Article 78 proceeding was barred by the four month statute of limitations.

Here, to the extent that plaintiff again alleges that defendants breached a contract by failing to confer a Doctor of Engineering Science degree upon plaintiff (see e.g. Complaint, Index No. 9116752/09, ¶ 59), plaintiff's claim has already been adjudicated and is barred by the

doctrine of res judicata. To the extent that plaintiff alleges new acts of wrongdoing on Columbia's part -- e.g., its refusal to approve a research assistant appointment in 2006 -- those acts arose out of the same transaction or series of transactions following plaintiff's enrollment in the doctoral program, and are also barred by the res judicata precept that "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." (Chen v Fischer, 6 NY3d 94, 100 [2005] [internal citation and quotation marks omitted].)

Alternatively, even if the denial of the 2006 research assistantship was a new act, it is not properly challenged by way of a breach of contract or tort claim, as it involves a core academic determination. It is accordingly subject to challenge only in an Article 78 proceeding, which is time-barred.

In addition, to the extent that plaintiff alleges an assault in connection with defendants' refusal to permit him to work as a research assistant, the alleged assault occurred in July 2006 (See Complaint, Index No. 9116143/09, ¶ 42.) The claim is barred by the one year statute of limitations for intentional torts. (CPLR 215[3].)

The court further finds that plaintiff's tortious interference and fraud claims are duplicative of the breach of contract claim.

Finally, plaintiff cannot avoid the bar of res judicata or the statute of limitations for commencement of an Article 78 proceeding by arguing that defendants' wrongdoing was continuing, or by attempting to re-enroll in the doctoral program. (See generally Lubin v Board of Educ. of City of New York, 60 NY2d 974 [1983], rearg denied 61 NY2d 905 [1984], rearg denied 62 NY2d 803 [1984], cert denied, 469 US 823 [1984].)

[* 5] v.
The court has considered plaintiff's remaining contentions and finds them to be without merit.

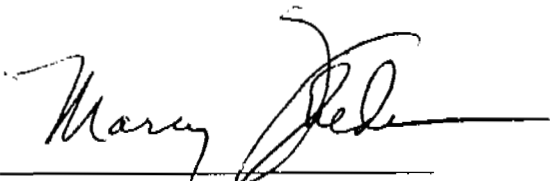
As defendants have not requested monetary sanctions in connection with the instant motion, the court declines to impose such sanctions at this time. This ruling is without prejudice to an application by defendants for sanctions, including attorney's fees to defendants for the instant motion to dismiss, in the event plaintiff commences any further litigation against defendant(s) that is frivolous within the meaning of the Part 130 of the Codes, Rules and Regulations of the State of New York. (22 NYCRR 130 et seq.)

It is accordingly hereby

ORDERED that defendants' motion is granted to the extent of dismissing the three above-captioned actions with prejudice; and it is further

This constitutes the decision and order of the court.

Dated: New York, New York
January 11, 2012



MARCY FRIEDMAN, J.S.C.

FILED

JAN 13 2012

NEW YORK
COUNTY CLERK'S OFFICE