

<b>Jaffa Group, LLC v Gould</b>
2020 NY Slip Op 34038(U)
December 7, 2020
Supreme Court, Kings County
Docket Number: 515091/19
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS, PART 73

Index No.: 515091/19  
Motion Date: 9-28-20  
Mot. Seq. No.: 1

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JAFFA GROUP, LLC., BEDIS ZORMATI, GARY  
SICKLER and EDGAR MARIN,

Plaintiffs,

-against-

**DECISION/ORDER**

BONNIE BROOKE GOULD, ESQ.,

Defendant.

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NYSEF Item Nos: 5-52 were read on this motion:

Upon the foregoing papers, the motion is decided as follows:

The defendant, BONNIE BROOKE GOULD, ESQ., moves for (1) an Order of the Court dismissing all claims brought in this action; (2) an Order of the Court Permitting Disclosure of a Confidential Settlement Agreement; (3) an Order of the Court sanctioning plaintiffs and their counsel pursuant to Rule 130- 1(A); and (4) for such other relief as this Court determines is just and proper.

**Background:**

By order dated June 26, 2016, Justice Charles E. Ramos appointed the defendant, BONNIE BROOKE GOULD, ESQ., to serve as guardian ad litem (GAL) for Irwin Brooks in the case of *26th LS Series Ltd v. Brooks et al.*, Index Number 651566/2012 (“the New York County action”). The case was commenced in May of 2012 and litigated in the commercial division of Supreme Court, New York County. Justice Ramos’ June 26, 2016 order provided that: “the costs and fees of the guardian ad litem shall be borne equally between 26<sup>th</sup> LS Series Ltd., Gary

Sickler, Edgar Marin, Bedis Zormati, Jaffa Group LLC and Jack Wolcowitz, but in such manner that the guardian ad litem shall have no knowledge of which parties are paying her fees;...”

In September of 2018, the parties entered into a confidential settlement agreement (CSA) resolving the matter. The CSA was executed by each of the plaintiffs and was approved and signed by their counsel.

On October 19, 2018, after having reviewed defendant’s billing records and Affirmation of Services ("GAL affirmation"), which were filed on October 17, 2018, Justice Ramos issued an Order captioned "Order Fixing Compensation of Guardian ad Litem", which fixed defendant’s compensation at \$138,655.00. The Order provided:

ORDERED, that the compensation of Bonnie Brooke Gould, Esq., as Guardian ad litem for Irwin Brooks is hereby fixed in the sum of \$138,655.00 and shall be paid in accordance with the court's order dated June 29, 2016, and the Confidential Settlement Agreement dated Sept 20, 2018.

Thereafter, counsel for the parties to the New York County action executed a stipulation of discontinuance of the action, with prejudice, on November 12, 2018, dismissing the NY County Action. While a copy the stipulation of discontinuance or CSA is annexed to defendant’s moving papers, the defendant states in her supporting affidavit that the each party in the NY County Action, including counsel for each of the plaintiffs, executed the stipulation of discontinuance with prejudice (Gould Aff. ¶ 35). Along with a letter dated December 13, 2018 from Maranda E. Fritz, counsel for plaintiffs Jaffa Group, Zormati, and Marin in the New York County action, the defendant received a check payable in the amount of \$138,655.00 for her fees.

Notwithstanding the above, Marin and Jaffa Group made various complaints against the defendant concerning the propriety of her fees. One of these complaints, which was made to the Grievance Committee, Appellate Division of the First Department, is still pending. In this action, the plaintiffs again challenge the propriety of the fees awarded to the defendant in the New York County action. By correspondence dated July 26, 2020 which was filed through the NYS E-file system, defendant's attorneys advised the Court that on June 30, 2020, Justice Andrea Masley issued a decision and order in the New York County action resolving a motion. The motion was made by Leroy Brooks who sought, among other things, a declaration that the CSA resolving the action is null and void and an order vacating Justice Ramos' Order dated October 18, 2018 which awarded the defendant \$138,655.00 in fees. Leroy Brooks is the son of AUDRIE BROOKS and IRWIN BROOKS, the latter having passed away on September 13, 2019. Although Leroy Brooks was not a party to the New York county action, he was a signatory to the CSA having executed the agreement as Irwin Brook's attorney in fact pursuant to a power of attorney.

Justice Masley denied the motion finding that the stipulation of discontinuance terminated the action and as well as the Court's jurisdiction to grant the relief requested. She further held that that Leroy Brooks failed to assert any legal basis to vacate the stipulation or justified any of the other requested relief.

**Discussion:**

Defendant correctly contends that this action is barred by the principles of res judicata. "Under the doctrine of res judicata, a disposition on the merits bars litigation between the same parties, or those in privity with them, of a cause of action arising out of the same transaction or series of transactions as a cause of action that either was raised or could have been raised in the

prior proceeding' ” (*Bayer v. City of New York*, 115 A.D.3d 897, 898, 983 N.Y.S.2d 61, quoting *Abraham v. Hermitage Ins. Co.*, 47 A.D.3d 855, 855, 851 N.Y.S.2d 608).

“A stipulation of discontinuance with prejudice without reservation of right or limitation of the claims disposed of is entitled to preclusive effect under the doctrine of res judicata’ ” (*Cora v. Ranjan*, 98 A.D.3d 598, 599, 949 N.Y.S.2d 503, quoting *Liberty Assoc. v. Etkin*, 69 A.D.3d 681,682–683, 893 N.Y.S.2d 564; see *Matter of Chiantella v. Vishnick*, 84 A.D.3d 797, 798, 922 N.Y.S.2d 525; *Matter of Hofmann*, 287 A.D.2d 119, 123, 733 N.Y.S.2d 168).

Here, the defendant stated in her affidavit that after CSA was executed, the parties to the New York County action executed a stipulation discontinuing the action, with prejudice. Plaintiffs do not dispute this nor do they claim that the stipulation of discontinuance was entered into with a reservation of right or with a limitation of claims. Clearly, the proprietary of defendant’s fees for acting as GAL was an issue raised or one that could have been raised in the New York county action. Accordingly, the stipulation of discontinuance that was executed in the New York County action is entitled to preclusive effect under the doctrine of res judicata and bars this action. Defendant’s motion to dismiss the action must therefore be granted. The court has considered plaintiffs’ arguments in opposition to the motion and find them to be without merit.

Accordingly, it is hereby

**ORDRED** that that the defendant’s motion to dismiss this action pursuant to the principles of res judicata is **GRANTED**. In light of this determination, the Court need not consider the other grounds for dismissal raised by the defendant. It is further

**ORDRED** that the branch of the motion which seeks cost and sanctions is **DENIED**.

The remainder of the motion is moot.

This constitutes the decision and order of the Court.

Dated: December 7, 2020

**PPS**

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**PETER P. SWEENEY, J.S.C.**

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020