307 A.D.2d 272, 762 N.Y.S.2d 421, 2003 N.Y. Slip Op. 16083
(Cite as: 307 A.D.2d 272, 762 N.Y.S.2d 421)

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Supreme Court, Appellate Division, Second Department, New York.
CHARLES & BOUDIN, Plaintiff,
v.
Hilda MEYER, et al., Defendants Third-Party Plaintiffs-Appellants,
Fleet Bank, f/k/a Natwest Bank, Defendant Third-Party Defendant-Respondent.
July 14, 2003.

Bank account holders brought action against bank to recover damages for wrongful restraint of bank account, approximately three years after holders dismissed their appeal of the Supreme Court's prior order that bank was bound by a valid restraining notice not to release money from the account. The Supreme Court, Nassau County, Jonas, J., dismissed action and imposed sanctions against account holders for costs and reasonable attorney fees. Account holders appealed. The Supreme Court, Appellate Division, held that: (1) action was barred by doctrine of collateral estoppel, and (2) action was frivolous, warranting sanctions.

Affirmed.

West Headnotes

[1] Judgment 228 654

228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(A) Judgments Conclusive in General
228k654 k. Judgment on Discontinuance, Dismissal, or Nonsuit. Most Cited Cases
Bank account holders' action against bank to recover damages for wrongful restraint of bank account was barred by doctrine of collateral estoppel, where approximately three years prior to filing action holders dismissed their appeal of the Supreme Court's prior order that bank was bound by a valid restraining notice not to release money from the account.

[2] Costs 102 2

102 Costs
102I Nature, Grounds, and Extent of Right in General
102k1 Nature and Grounds of Right
102k2 k. In General. Most Cited Cases
Plaintiffs' commencement of action barred by collateral estoppel constituted frivolous conduct warranting the imposition of a sanction requiring the plaintiffs to reimburse defendant for actual expenses reasonably incurred and reasonable attorney fees. 22 NYCRR 130-1.1(a).
****422** Elaine Rudnick Sheps, P.C., New York, NY, defendant third-party plaintiff-appellant pro se, and for defendants third-party plaintiffs-appellants Hilda Meyer and Elaine Rudnick Sheps.

Debra Wabnik for defendant third-party defendant-respondent.

MYRIAM J. ALTMAN, J.P., GLORIA GOLDSTEIN, LEO F. McGINITY, and WILLIAM F. MASTRO, JJ.

***272** In an action to recover damages for wrongful restraint of a bank account, the defendants third-party plaintiffs appeal (1), as limited by their brief, from so ***273** much of an order of the Supreme Court, Nassau County (Jonas, J.), dated May 9, 2002, as granted the motion of the defendant third-party defendant to dismiss the third-party complaint and for the imposition of a sanction to the extent of awarding the defendant third-party defendant costs and disbursements, and (2) from so much of an order of the same court entered October 24, 2002, as, upon reargument, awarded the defendant third-party defendant the sum of $8,209.81 as reasonable attorney's fees.

ORDERED that the order dated May 9, 2002, is affirmed insofar as appealed from; and it is further,

ORDERED that the order entered October 24, 2002, is reversed insofar as appealed from, and the matter is remitted to the Supreme Court, Nassau County, for a hearing and determination as to what constitutes reasonable attorney's fees incurred with respect to the defendant third-party defendant's application to dis-

miss the third-party action; and it is further,

ORDERED that one bill of costs is awarded to the defendant third-party defendant.

The instant controversy arose when the appellants, in an effort to enforce judgments in favor of the appellant Hilda Meyer and against Martin Meyer, served a restraining notice upon Fleet Bank restraining account number 203-5607689. The subject bank account was in the name of the accounting firm Charles & Boudin, which commenced this action to recover damages against the appellants and Fleet Bank, asserting that the restraining notice had caused its checks to "bounce," thereby damaging its reputation. In opposition to the motion of Fleet Bank to dismiss the ****423** main action insofar as asserted against it, the appellants contended that "a strong presumption is raised" that Martin Meyer "has a beneficial interest in the Charles & Boudin account restrained." The Supreme Court granted Fleet Bank's motion, on the ground that the appellants intentionally issued the restraining notice against the bank account in question and intended "to hold the Bank responsible if it distributed funds from the account." The appellants filed a notice of appeal from that order, but withdrew their appeal before perfecting it.

[1] Some three years later, the appellants brought a third-party action against Fleet Bank, asserting that Fleet Bank "acted recklessly and negligently when it restrained account # 203-5607689." The Supreme Court properly dismissed the third-party action as barred by the doctrine of collateral estoppel (*see* *Kaufman v. Eli Lilly & Co.*, 65 N.Y.2d 449, 455, 492 N.Y.S.2d 584, 482 N.E.2d 63; *Gilberg v. Barbieri*, 53 N.Y.2d 285, 441 N.Y.S.2d 49, 423 N.E.2d 807; *Maheu v. Long Is. R.R.*, 244 A.D.2d 465, 664 N.Y.S.2d 115; *Pigno v. Bunim*, 69 A.D.2d 814, 415 N.Y.S.2d 50).

[2] ***274** Commencement of this third-party action constituted frivolous conduct warranting the imposition of a sanction requiring the appellants to reimburse Fleet Bank for "actual expenses reasonably incurred and reasonable attorney's fees" (22 NYCRR 130-1.1[a]). However, under the circumstances of this case, a hearing and determination on the question of what constitutes reasonable attorney's fees attributable to the frivolous conduct in issue is warranted *(see* *Marinelli v. Oceanside Knolls*, 253 A.D.2d 741, 677 N.Y.S.2d 483).

We have not considered the appellants' contention that the Supreme Court improperly granted reargument as it is beyond the scope of their limited notice of appeal from the order entered October 24, 2002 (*see* *Dingle v. Pergament Home Ctrs.*, 141 A.D.2d 798, 530 N.Y.S.2d 25).

N.Y.A.D. 2 Dept.,2003.
Charles & Boudin v. Meyer
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