

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ORTANSA MICHAELESKO,
Plaintiff,

v.

ROBERT CARR, et al.,
Defendants.

Civil No.
3:05cv1026 (SRU)

ORDER OF DISMISSAL

Ortansa Michaelesco sued Robert Carr and Joelle Shefts, the executors of the Estate of Bernice P. Richard; Lutz & Carr, CPA, LLP; J.P. Morgan Chase & Co.; Good Morning America; Sotheby's International Realty, Inc.; Vanity Fair, Inc.; George Wachtel; and Ninette S. Bordoff, alleging violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.* The factual basis for the claim are the allegations that Michaelesco and her husband worked on a project to design a fire-proof house for Bernice P. Richard from 1985 to 1995, but were not fully paid for their work. Identical allegations supported another action brought by Michaelesco against the same defendants, *Michaelesco v. Shefts, et al.*, Civil Action No. 3:04cv00026 (SRU) (the "prior action").

I recently granted summary judgment in favor of the defendants in the prior action, concluding that the appropriate statutes of limitations barred each of the claims in that case. The defendants have written to me, requesting that I dismiss this action, *sua sponte*, as barred by principles of *res judicata*.

The Supreme Court has noted that "[j]udicial initiative of this sort might be appropriate in special circumstances. Most notably, 'if a court is on notice that it has previously decided the issues presented, the court may dismiss the action *sua sponte*, even though the defense has not

been raised. This result is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste.” *Arizona v. California*, 530 U.S. 392, 412 (2000) (quoting *United States v. Sioux Nation*, 448 U.S. 371, 432 (1980) (Rehnquist, J., dissenting)).

Michaelesco cannot prevail on her claims in this case as a matter of law. The statute of limitations for civil RICO claims is four years. *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987). The statute begins running when the plaintiff discovers her injury, not when she discovers (or should have discovered) both the injury and the pattern of racketeering activity. *Rotella v. Wood*, 528 U.S. 549, 552-53 (2000). Michaelesco filed the present action on June 24, 2005, more than four years after she brought the prior action, which was filed on May 15, 2001. Because Michaelesco had to have discovered her injury before she filed the prior action, her claims in this case are necessarily barred by the statute of limitations.

No purpose would be served by requiring the defendants to move for summary judgment on the basis of res judicata or the statute of limitations. Accordingly, I dismiss this action sua sponte. The clerk shall enter judgment for the defendants and close this case.

It is so ordered.

Dated at Bridgeport, Connecticut, this 28th day of February 2006.

/s/ Stefan R. Underhill

Stefan R. Underhill
United States District Judge