

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEVI BENJAMIN : CIVIL ACTION
: :
v. : :
: :
MARIE M. TOMASSO, ALETHA : NO. 98-2659
BROWN, GODFREY D. DUDLEY, : :
and THE UNITED STATES EQUAL : :
EMPLOYMENT OPPORTUNITY : :
COMMISSION : :

MEMORANDUM

Giles, J.

November ____, 1998

Plaintiff brings this pro se action against the United States Equal Employment Opportunity Commission ("EEOC") and three of its employees, apparently in their official capacities, alleging constitutional and statutory violations in the management and resolution of a discrimination charge that he filed with the EEOC in 1991. Now before the court is the defendants' Motion to Dismiss all claims, the defendants' motions to strike several pleadings, and the plaintiff's motion to file a supplemental pleading.

The court has converted the motion to dismiss to one for summary judgment under Fed. R. Civ. P. 56(c). After notice to the parties and the opportunity to submit materials in support or opposition to summary judgment, the motion is granted. Further, the plaintiff's motion to file a supplemental pleading is denied. All other pending motions are denied as moot.

Factual Background

Plaintiff filed a charge of discrimination with the EEOC

against his former employer, the New Jersey Department of the Treasury, alleging a violation of Title VII on the basis of race and seeking lost wages and re-employment. (Amended Compl. ¶¶ 2-3). Beginning in March 1992, the EEOC began efforts to settle the matter. Plaintiff signed a proposed settlement agreement on April 7, 1992 and an undated settlement agreement on July 2, 1992, which was back-dated to May 29, 1992, the day the case was closed. (Amended Compl. ¶¶ 4-5, 9-11). However, plaintiff now believes that an EEOC employee coerced him into signing the settlement agreement. (Amended Compl. ¶ 12).

Plaintiff took other steps to gain relief from the settlement agreement. He wrote a letter to Sen. Arlen Specter and to other unnamed members of Congress. (Amended Compl. ¶¶ 15, 21). He had an attorney contact the EEOC about re-opening the case, but the request was denied. (Amended Compl. ¶ 17-18).

Although he does not mention it in his amended complaint, plaintiff also brought a lawsuit in this district against the EEOC in July 1996, seeking unspecified relief arising from the EEOC's management of his claim and the signing of the 1992 settlement agreement. This complaint was dismissed in November 1996, on the alternative grounds that the two-year statute of limitations had expired and that the EEOC was not subject to suit under 42 U.S.C. § 1983. (Def. Mot Dismiss, Ex. 1). This dismissal was affirmed without opinion by the Third Circuit in

July 1997, Benjamin v. E.E.O.C., 124 F.3d 185 (3d Cir. 1997), and the United States Supreme Court denied certiorari. Benjamin v. E.E.O.C., 118 S. Ct. 317 (1997).

Plaintiff, pro se, filed a complaint and four amended complaints.¹ Defendants moved to dismiss the claim under Fed. R. Civ. P. 12(b) on several grounds, including res judicata based on the plaintiff's previous lawsuit against the EEOC.

Discussion

The facts supporting the defense of res judicata do not appear within the four corners of the plaintiff's complaint, thus the defense cannot properly be asserted in a motion to dismiss under Fed. R. Civ. P. 12(b)(6). See Rycoline Prods. v. C & W Unlimited, 109 F.3d 883, 886-87 (3d Cir. 1997) (stating that if a bar, including res judicata, is not apparent on the face of the complaint, it may not be resolved on a Rule 12(b)(6) motion). The court in such a situation thus may convert the motion,

¹ Plaintiff filed the last three amended complaints without obtaining leave of the court, as required by Fed. R. Civ. P. 15(a), and defendants have moved to strike these. The court looks to the First Amended Complaint ("Amended Compl.") as the controlling pleading, since plaintiff did not require leave of the court to file it. Moreover, the factual allegations of all the pleadings are identical and any new legal theories contained in the three most recent amendments could have been brought in the previous lawsuit. Thus, none of the proposed amended pleadings would have cured the res judicata problem and leave to amend would have been denied. See Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988) (holding that leave to amend should not be granted if the proposed amended pleading will not cure the deficiency in the original complaint).

pursuant to Fed. R. Civ. P. 12(b), to one for summary judgment under Fed. R. Civ. P. 56(c) and consider matters outside the pleadings. Rycoline, 109 F.3d at 886. The court, by Order dated October 15, 1998, provided the parties with notice of this conversion and the opportunity to submit materials admissible in a summary judgment proceeding, as required in this Circuit. See Rose v. Bartle, 871 F.2d 331, 342 (3d Cir. 1989) (holding that a district court must fairly apprise the parties of its conversion of a motion to dismiss into a motion for summary judgment and allow parties the opportunity to present appropriate materials).

Res Judicata

Res judicata, or claim preclusion, requires a final judgment on the merits in a prior suit involving the same parties or their privies and a subsequent suit based on the same cause of action. Lubrizol Corp. v. Exxon Corp., 929 F.2d 960, 963 (3d Cir. 1991). Preclusion applies to claims actually brought or which could have been brought in the prior action. Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981).

First, there unquestionably was a final judgment on the merits from the dismissal of the prior case for failure to state a claim. Any dismissal of a case, with some exceptions not applicable here, operates as an adjudication on the merits to bar further litigation between the parties. Fed. R. Civ. P. 41(b); see Napier v. Thirty or More Unidentified Fed. Agents, 855 F.2d

1080, 1087 (3d Cir. 1988). Plaintiff did not specify precisely the nature of his legal claims against the EEOC in the first action, but the constitutional and statutory claims arising from the handling of the complaint at least could have been brought in that first action. See Napier, 855 F.2d at 1086. Similarly, any claims against the three EEOC employees arising from their conduct in the management of the same complaint could have been brought in the prior action.

Second, the parties are the same or in privity. The EEOC has been a named defendant in both actions. The three employees were sued in their official capacities and thus are considered in privity with the governmental body for res judicata purposes. Gregory v. Chehi, 843 F.2d 111, 120 (3d Cir. 1988).

Third, both suits are based on the same cause of action, which is determined by looking toward the "essential similarity of the underlying events giving rise to the various legal claims." Lubrizol, 929 F.2d at 963 (internal quotation marks omitted). Courts look at whether the acts complained of were the same, whether the material facts alleged were the same, and whether witnesses and documentation used to prove the allegations are the same. Id.

This action and the prior lawsuit both arose from the EEOC's handling and management of plaintiff's third-party employment discrimination claim and both complaints feature essentially

similar factual allegations and the witnesses and evidence would be the same. The complaint in the instant case does allege some additional acts that occurred since 1992, including other efforts by the plaintiff to obtain redress for the EEOC's alleged wrongdoing. (Amended Compl. ¶¶ 17-20). That does not change the fact that the underlying event from which these constitutional violations allegedly arise, and the material facts surrounding that event, essentially are the same. Moreover, to the extent that some of the additional acts alleged occurred prior to the dismissal of the first action in November 1996, (Amended Compl. ¶¶ 17-19), such new claims could have been brought in the initial action and now are subject to the claim preclusion bar.

Because the court concludes that this action is barred by res judicata and grants summary judgment in favor of the defendants on that ground, it need not address the other arguments for dismissal in the defendants' motion.

Supplemental Pleading

Plaintiff also moved to serve a supplemental pleading, pursuant to Fed. R. Civ. P. 15(d). This rule permits a party to serve a pleading "setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fed. R. Civ. P. 15(d). Plaintiff's proposed supplemental pleading does not set forth any such new transactions, occurrences, or events, and the motion is denied.

CONCLUSION

For the foregoing reasons, plaintiff's claim is barred by the doctrine of res judicata, so summary judgment is granted in favor of the defendants and against the plaintiff. Further, the plaintiff's motion to file a supplemental pleading is denied, as the proposed pleading does not set forth any new transactions, occurrences, or events.

An appropriate order follows.

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JUDGMENT

AND NOW, this ___ day of November 1998, it hereby is ORDERED that summary judgment is GRANTED IN FAVOR of Defendant and AGAINST plaintiff. Further, it hereby is ORDERED that the plaintiff's motion to file a supplemental pleading is DENIED. Further, it hereby is ORDERED that all other pending motions in this case are DENIED AS MOOT.

BY THE COURT:

JAMES T. GILES J.

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