

STATE OF MISSOURI)
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CITY OF ST. LOUIS)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

FILED
MAY 18 2011

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
BY _____ DEPUTY

DARNELL FOREST,)
)
Plaintiff,)
) Cause No. 1022-CC0621
vs.)
) Division No. 31
BARNES-JEWISH HOSPITAL, et)
al.,)
)
Defendants.)

ORDER AND JUDGMENT

The Court has before it Defendants Barnes-Jewish Hospital and Patrick Barnes' Joint Motion to Dismiss or Alternative Motion for Summary Judgment, and Defendants' Motion for Sanctions Against Plaintiff Darnell Forest and His Attorney Jeffrey M. Witt. The Court has reviewed the submissions of the parties, the relevant authorities, and the arguments of counsel, and now rules as follows.

On or about February 10, 2010, Plaintiff filed this employment discrimination action *pro se* against Barnes-Jewish Hospital, Patrick Barnes, Genelda Cornelison, and Mary Arnold, alleging violations of the Missouri Human Rights Act arising from the termination of his employment from Barnes-Jewish Hospital. Genelda Cornelison and Mary Arnold have not been served. On or about March 25, 2010, Defendants Barnes-Jewish Hospital and Patrick Barnes

filed this motion for summary judgment, arguing that the Court should dismiss Plaintiff's claims on the basis of res judicata, because Plaintiff had raised the same claims in an earlier lawsuit. The following facts are uncontroverted:¹

On April 30, 2004, Plaintiff filed a *pro se* Petition in state court against his employer, Barnes-Jewish Hospital ("Hospital") and supervisors, Patrick Barnes and Eveline Sicka. In his 2004 Petition ("Forest I"), Plaintiff alleged unlawful discrimination in violation of the Missouri Human Rights Act ("MHRA"), the Age Discrimination in Employment Act ("ADEA"), and Title VII of the Civil Rights Act of 1964.

After Forest I was removed to federal court, Plaintiff filed a series of amended complaints, and alleged in his Third Amended Complaint that Hospital discriminated against him in connection with his job assignments and training in violation of the MHRA, the ADEA, and 42 U.S.C. §1981.

The District Court dismissed Defendants Barnes and Sicka from Plaintiff's lawsuit because, at the time, there was no individual liability under Title VII, the ADEA, or the MHRA. The District Court subsequently granted the Hospital summary judgment on all of Plaintiff's remaining claims in Forest I.

On April 11, 2006, Plaintiff filed a charge of discrimination with the Missouri Commission on Human Rights ("MCHR"), alleging he was denied a promotion in retaliation for filing his previous

¹ Plaintiff filed a Response to Defendants' Joint Motion to Dismiss or Alternative Motion for Summary Judgment and a Memorandum, but did not file a response to Defendants' Statement of Uncontroverted Material Facts, the failure of which is an admission of the truth of the facts stated. Rule 74.04(c)(2).

Charge of Discrimination and lawsuit. On February 8, 2007, the MCHR issued Plaintiff a Notice of Right to Sue.

On February 2, 2007, Plaintiff filed a second lawsuit against the Hospital and Mr. Barnes, this time in federal court, alleging that the Hospital and Barnes discriminated against him in connection with his training, failed to promote him and retaliated against him in violation of Title VII and the ADEA. On July 26, 2007, the District Court dismissed several of Plaintiff's claims on the basis of res judicata, because the claims involved the same parties and claims as Plaintiff raised in Forest I.

On July 19, 2007, while his second lawsuit was still pending in federal court, Plaintiff filed a third lawsuit, in state court, against the Hospital and Barnes, as well as two additional defendants, Genelda Cornelison and Mary Arnold. In the third lawsuit, brought pursuant to 42 U.S.C. §1981 and the MHRA, Plaintiff alleged that the Hospital and Barnes wrongfully discharged him in retaliation for filing his prior discrimination charges and due to his race and gender.

Plaintiff also alleged that Genelda Cornelison conspired to terminate Plaintiff's employment and that Mary Arnold "negligently investigated" his internal complaint of discrimination.

On October 2, 2007, after Plaintiff's third lawsuit (the state law case) was removed to federal court and consolidated with his second lawsuit, Plaintiff filed a Second Amended Consolidated Complaint ("Forest II").

In Forest II, Plaintiff alleged claims of race and age discrimination and retaliation under Title VII, §1981, the ADEA and the MHRA. Specifically, in Forest II, Plaintiff alleged that he was discriminated and retaliated against by the Hospital and Barnes

for being denied a "promotion," in the way he was trained, by the termination of his employment on July 16, 2007, and by being subjected to alleged harassment by the delay in his termination. Plaintiff also alleged in Forest II that Mary Arnold negligently investigated his internal employee appeal and a related oral complaint he made to Arnold. Finally, Plaintiff alleged in Forest II that Genelda Cornelison "conspired" with Barnes to terminate his employment with the Hospital.

On March 4, 2008, Hospital and Barnes filed a joint motion for summary judgment and Mary Arnold and Genelda Cornelison filed separate motions for summary judgment. Hospital and Barnes argued (among other things) that Plaintiff's discriminatory and retaliatory discharge claims under the MHRA were barred because Plaintiff failed to exhaust his administrative remedies by filing a Charge of Discrimination concerning those claims.

On April 25, 2008, after Defendants filed their motion for summary judgment and more than 280 days after his termination from employment, Plaintiff filed an untimely Charge of Discrimination with the MCHR alleging he was terminated by the Hospital because of his age, race, and in retaliation for participating in protected activity.

On March 30, 2009, the District Court granted Hospital and Barnes' motion for summary judgment, dismissing Plaintiff's discriminatory and retaliatory termination claims under the MHRA due to his failure to exhaust his administrative remedies.

The District Court granted Cornelison's motion for summary judgment on Plaintiff's conspiracy claim, because Plaintiff produced no evidence showing that Cornelison knowingly agreed to discriminate or retaliate against Plaintiff or that any of her

actions were motivated by discriminatory or retaliatory animus, and there was no "meeting of the minds" between Cornelison and Barnes.

The District Court granted summary judgment in favor of Mary Arnold, because Missouri does not recognize a tort of "negligent investigation." Accordingly, the District Court entered judgment against Plaintiff on all of his claims against the Hospital, Barnes, Cornelison, and Arnold on March 30, 2009.

Plaintiff appealed the District Court's decision in Forest II. While the appeal was pending, on November 16, 2009, the MCHR issued Plaintiff a Right to Sue letter based on his April 25, 2008 charge alleging discrimination and retaliation in connection with his employment termination. The Right to Sue letter informed Plaintiff that if his MHRA claims were not brought within two years of the event he claimed was discriminatory, his claims may be barred. Two years from Plaintiff's termination would have been July 16, 2009.

The Eighth Circuit Court of Appeals issued an unpublished, per curium opinion on February 4, 2010, affirming the District Court's decision in Forest II.

Plaintiff filed the instant suit on February 10, 2010 ("Forest III"), raising the same conspiracy claims he raised in Forest II and against the same Defendants. In Forest III, Plaintiff alleges that the Hospital and Barnes discriminated against him in connection with the termination of his employment because he is African-American, in retaliation for engaging in protected activity, because of his age, and because of "mixed motives," all in violation of the MHRA. Plaintiff also alleges that Defendants conspired to fire him.

Defendants argue that Plaintiff's claims should be dismissed, or alternatively summary judgment should be granted in Defendants'

favor, on the basis of res judicata, the statute of limitations, or the failure to exhaust administrative remedies. Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Larabee v. Eichler, 271 S.W.3d 542, 545 (Mo. banc 2008); Rule 74.04(c)(6). A defending party moving for summary judgment may establish a right to judgment by showing "(1) facts that negate any one of the claimant's element facts, (2) that the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements, or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly pleaded affirmative defense." ITT Commercial Finance v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 381 (Mo. banc 1993). If the moving party makes a prima facie showing that it is entitled to judgment as a matter of law, the non-moving party then has a specific burden: "A denial may not rest upon the mere allegations or denials of the party's pleading. Rather, the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial." Rule 74.04(c)(2). The court accords the non-moving party the benefit of all reasonable inferences in the record. ITT, 854 S.W.2d at 376.

"Res judicata" is a common-law doctrine that means "a thing adjudicated," and precludes a party from relitigating a formerly-made claim. Chesterfield Village, Inc. v. City of Chesterfield, 64 S.W.3d 315, 318 (Mo. banc 2002); France v. Hunter, 317 S.W.3d 172, 175 (Mo.App. S.D. 2010). Res judicata bars a subsequent claim

where the following elements are satisfied: (1) identity of the thing sued for, (2) identity of the cause of action, (3) identity of persons or parties to the action, and (4) identity of the quality of the person for or against whom the claim is made. King Gen'l Contractors v. Reorganized Church of Jesus Christ of Latter Day Saints, 821 S.W.2d 495, 501 (Mo. banc 1991). The doctrine applies to "every point properly belonging to the subject matter of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time." Id.

This case presents a perfect application of the doctrine of res judicata. Plaintiff brought the same claims alleged here, against the same parties, in the federal court action. That action was decided on the merits, and upheld on appeal. Therefore, because the claims, parties, and relief sought are identical to the allegations in the Forest II, Plaintiff's claims against Defendants in this matter are barred by the doctrine of res judicata.

Next, Defendants move for sanctions against Plaintiff and his attorney, Mr. Witt, for filing a frivolous claim. Rule 55.03(c) states that an attorney or party presenting a claim, defense, or contention in a paper filed with the Court certifies that such legal contentions are not maintained for an improper purpose, are warranted by law, and have evidentiary basis. Sanctions may be imposed for violations of Rule 55.03(c), by motion or on the Court's own initiative. Rule 55.03(d). Sanctions "may consist of or include directives of a nonmonetary nature, an order to pay a penalty into court, or ... an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." Rule 55.03(d).

Whether to impose sanctions for a violation of Rule 55.03 is discretionary with the court. Robin Farms, Inc. v. Beeler, 991 S.W.2d 182 (Mo.App. W.D. 1999). The purpose of such sanctions is threefold:

(1) to prevent the congestion of court dockets, with unmeritorious causes, pleading, motion or other paper, (2) to prevent the filing of frivolous pleadings, motions or other papers, (2) to prevent the filing of frivolous pleadings, motion or other papers, and (3) to compensate others for the delay, expense and harassment of responding to a matter, cause, motion, pleading or appeal which is frivolous or meritless.

Dillard Dep't Stores, Inc. v. Muegler, 775 S.W.2d 179, 186 (Mo.App. E.D. 1989).

The Court believes that the imposition of monetary sanctions against Mr. Witt, Plaintiff's attorney, are not warranted in the present case, because Mr. Witt was not involved throughout the history of this case. Plaintiff filed this particular action *pro se*, and Mr. Witt entered his appearance on Plaintiff's behalf on or about April 30, 2010, after Defendants filed their motion for summary judgment.

Rule 55.03(d)(2)(A) provides that monetary sanctions shall not be awarded against a represented party for a violation of Rule 55.03(c)(2). See Brown v. Kirkham, 23 S.W.3d 880, 885 (Mo.App. W.D. 2000). However, that Rule seems to presuppose that the party was represented by counsel at the time he asserted his unwarranted claim, and thus the attorney would be the person who in fact violated Rule 55.03(c)(2) by signing the petition. In this case, it appears that Plaintiff himself was the one to have filed a frivolous claim in violation of Rule 55.03(c), after a several-year history of filing multiple claims on the same subject without the

assistance of counsel. Rule 55.03(d) specifically allows "appropriate sanctions" upon the lawyers, law firms, or parties that have violated Rule 55.03(c). The Court believes a monetary sanction against Plaintiff in the sum of \$1000.00, reflecting the reasonable cost of filing and presenting the motions for summary judgment, is appropriate to prevent the filing of frivolous claims and to compensate Defendants for having to respond to such claims.

THEREFORE, it is Ordered and Decreed that Defendants Barnes-Jewish Hospital and Patrick Barnes' Motion for Summary Judgment is GRANTED, and Defendants' Motion for Sanctions is GRANTED. Judgment is entered in favor of Defendants and against Plaintiff on Plaintiff's Petition. Further, Plaintiff Darnell Forest is ordered to pay to Defendants the sum of one thousand dollars (\$1000) as a sanction for filing an unwarranted claim in this matter.

SO ORDERED:



JOAN L. MORIARTY, Judge

Dated: May 18, 2011

cc: Daniel Doetzel
Jeffrey Witt