STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Holly Blinkoff	: CHRO No. 9530406
v.	
City of Torrington	: May 10, 2004

Ruling re: Respondent's motion to dismiss and/or to enter judgment

I. Summary

By motion filed April 5, 2004, the City of Torrington ("respondent") moves that this matter be dismissed and/or that judgment enter in favor of the respondent. The respondent argues that the results of a federal civil action, favorable to the respondent, brought by Holly Blinkoff ("complainant") against the respondent are binding on the Commission on Human Rights and Opportunities ("commission") under the doctrines of res judicata and/or collateral estoppel.

In response to the motion, on April 19, 2004, the complainant filed transcripts from the federal action (March 28, 2002; April 1, 2002; April 4, 2002; April 5, 2002; April 15, 2002, charge conference; and April 15, 2002, summation and judge's charge to the jury). She also filed copies of the amended federal complaint ("federal complaint"), her federal exhibit list, and the federal court's January 9, 2002 ruling on the respondent's

motion for summary judgment ("ruling"). No explanatory memorandum was submitted. The commission filed its memorandum in opposition to the motion on April 23, 2004.

For the reasons set forth herein, the doctrine of res judicata is found to be applicable, the respondent's motion is granted and the case is dismissed.

II. Procedural history

The complainant filed her Affidavit of Illegal Discriminatory Practice with the commission on January 20, 1995. She filed an amendment to her affidavit on September 9, 1996 and another amendment on November 19, 1996. In her affidavit as amended ("CHRO affidavit") the complainant alleges that she owns a small business in the City of Torrington. She alleges that the respondent violated General Statutes §§ 46a-58(a), 46a-60(a)(4), 46a-64(a)(1) and 46a-64(a)(2) by discriminating against her in the operation of her business on the basis of her sex and religion.

On July 14, 1997, the commission filed a motion to stay the proceedings because the "Complainant in this matter has just filed an action against the Respondents in U. S. District Court, in which she has raised the same claims which appear in her CHRO Complaint No. 9530406." The commission's motion was granted on August 8, 1997.

As amended, the complainant's federal complaint consisted of eight counts. The first count, both before and after the amendment, alleged that the respondent had discriminated against her on the basis of her religion in violation of §§ 46a-58(a), 46a-60(a)(4), 46a-60(a)(1) and 46a-64(a)(2). The second count, both before and after the

amendment, alleged that the respondent had discriminated against her on the basis of her gender in violation of §§ 46a-58(a), 46a-60(a)(4), 46a-64(a)(1) and 46a-64(a)(2). The remaining counts alleged violations of federal and common laws.

In the federal action, the respondent filed a motion for summary judgment on all counts. As to the counts alleging violations of state law, the federal court noted in its ruling that a court may exercise jurisdiction over the state discrimination claims only if the complainant "has exhausted her administrative remedies under the CFEPA. Conn. Gen. Stat. §§ 46a-82 et seq. Typically, this is accomplished by the issuance of a release from CHRO at the request of one of the parties two hundred and ten days from the date of filing. Conn. Gen. Stat. §§ 46a-100-01." (Ruling, 4.)[1] The court noted that "nothing in the record indicates that she has complied with the CFEPA administrative exhaustion requirements. Because Blinkoff may have complied with these requirements, or may be able to prior to the commencement of trial, however, summary judgment with respect to Counts One and Two is denied. This denial is without prejudice, should Blinkoff fail to sufficiently demonstrate administrative exhaustion prior to trial." (Ruling, 4.)

According to the respondent, the complainant's state discrimination claims were thereafter dismissed at the start of the federal jury trial because the complainant had failed to obtain a release from the commission or to otherwise demonstrate that she had exhausted her administrative remedies, despite having been instructed to do in the court's ruling on the motion for summary judgment. Other counts were also dismissed.

A jury verdict was thereafter issued in favor of the respondent on the counts that remained.

On June 18, 2003, the U. S. Court of Appeals for the Second Circuit dismissed the complainant's subsequent appeal.

III. Parties' positions

In its motion, the respondent concedes that trial the complainant's state discrimination claims were not actually litigated during the federal. They were dismissed as she had failed to show that she had met her administrative exhaustion requirements. (p. 2). The respondent argues that res judicata should nevertheless apply because "[i]t is clear that the Court entertained these claims and would have heard then [sic] had Blinkoff complied with the CFEPA's requirements. Blinkoff made no attempt to obtain the requisite release of jurisdiction from the CHRO even after being given extra time to do so. Generally, the release must be obtained before the filing of a lawsuit. The Court here gave Blinkoff up to the commencement of trial to obtain the release from the CHRO. At the time of trial, the Court dismissed those claims. As such, the doctrine of res judicata is an absolute bar to Blinkoff's relitigating these claims." (p. 5.)

In its objection to the motion, the commission argues that res judicata "cannot be applied unless the party had an adequate opportunity to litigate the claim in the earlier proceeding …." (p. 2.) The commission argues that the state discrimination claims were dismissed because the court "had no jurisdiction over them, since administrative

remedies at CHRO had not been exhausted (in fact, they had been stayed). Since the federal court refused to take jurisdiction over these claims, the Complainant had no opportunity to litigate them even though she tried to have them litigated, and therefore res judicata does not apply." (Emphasis in original.) (p. 3.)

IV. Discussion

A.

"Because res judicata or collateral estoppel, if raised, may be dispositive of a claim, summary judgment was the appropriate method for resolving a claim of res judicata." (Citations omitted.) *Jackson v. R. G. Whipple, Inc.*, 225 Conn. 705, 712 (1993). In deciding a motion for summary judgment, this tribunal "must view the evidence in the light most favorable to the nonmoving party." *Id*. "The party seeking summary judgment has the burden of showing the absence of any genuine issue of material facts, which, under the applicable principles of substantive law, entitle him to a judgment as a matter of law; and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." *Witt v. St. Vincent's Medical Center*, 252 Conn. 363, 368 (2000). A "prior federal decision that satisfies either the doctrine of collateral estoppel or that of res judicata may have a preclusive effect on subsequent state litigation." *Connecticut National Bank v. Rytman*, 241 Conn. 24, 37 (1997).

The doctrine of res judicata, or claim preclusion, “provides that a former judgment serves as an absolute bar to a subsequent action involving any claims relating to such cause of action which were actually made or which might have been made. Our rules of res judicata are based on the public policy that a party should not be allowed to relitigate a matter which it already has had an opportunity to litigate." (Internal quotation marks omitted; internal citations omitted.) *The Connecticut Water Company v. Beausoleil*, 204 Conn. 38, 43 (1987). “[T]he appropriate inquiry with respect to both types of preclusion [res judicata and collateral estoppel] is whether the party had an adequate opportunity to litigate the matter in the earlier proceeding….” (Internal quotation marks omitted; citations omitted.) *Jackson v. R. G. Whipple, Inc.*, supra, 225 Conn. 717-18. “For the purposes of claim preclusion in this case, the central issue is not whether the operative facts underlying the [complainant’s] state court action are effectively the same as those underlying [her federal] action. There is little question on this score. Rather, the central issue is whether, with respect to these operative facts, the [complainant] had an adequate opportunity to litigate all of [her] claims … in the federal proceeding.” (Internal citations omitted.) *Connecticut National Bank v. Rytman*, supra, 241 Conn. 44. “Where the facts of one case are so related to another as to involve the same transaction, occurrence or event, then in all likelihood the same cause of action is involved in both cases. This situation triggers the application of the doctrine of res judicata or claim preclusion. The judgment in the former case is an absolute bar to the subsequent action involving any claims related to the former case, whether made or not

made, if they should have been made." 1 Ralph P. Dupont, Dupont on Connecticut Civil Practice, § 10-50.4. (2003 ed.)

However, if the federal *court "would clearly not have had jurisdiction* to entertain the omitted theory or ground (or, having jurisdiction, *would clearly have declined to exercise it as a matter of discretion*), then a second action in a competent court presenting the omitted theory or ground should not be precluded." (Emphasis in original; internal quotations omitted; citation omitted.) *Connecticut National Bank v. Rytman*, supra, 241 Conn. 44.

B.

The res judicata analysis has two basic parts of. First, the state and federal claims must be examined to determine whether the underlying facts are effectively the same in both and are so related to one another so as to constitute the same event. Second, if the facts are effectively the same, the process in the federal action must be examined to determine whether the complainant had an adequate opportunity to litigate her state discrimination claims in federal court. Determining whether the complainant had an adequate opportunity also involves examining whether the federal court had jurisdiction and whether the federal court had jurisdiction but declined as a matter of discretion.

1.

The alleged violations of state and federal law as alleged in the complainant's federal complaint obviously arise from the same operative facts. Paragraphs 1 through 10 of the federal complaint identify the parties to the action. Paragraphs 11 and 12 address federal jurisdiction and venue. Count One alleges public accommodation based on religion in violation of General Statutes §§ 46a-58(a), 46a-60(a)(4), 46a-64(a)(1) and 46a-64(a)(2). It consists of paragraphs 1 through 12 incorporated by reference and paragraphs 13-53 detailing the history of the complainant's business operation, the alleged discriminatory acts committed by respondent's city planner and planning and zoning commission and the damages sustained by the complainant. Paragraphs 1-53 are then incorporated by reference into Count Two, alleging public accommodation discrimination on the basis of gender (female) in violation of General Statutes §§ 46a-58(a), 46a-60(a)(4), 46a-64(a)(1) and 46a-64(a)(2). Paragraphs 1 through 53 are also incorporated by references into Counts Three through Eight alleging violations of the federal Fourteenth Amendment, 42 U.S.C. § 1983, tortious interference with business expectancy, and intentional and negligent infliction of emotional distress. Additional paragraphs added to Counts Three through Eight do not add any additional factual information. Thus, the operative facts underlying both the federal claims and the state discrimination claims clearly arose from the same transactions, occurrences or events.

In comparing the state discrimination claims alleged in the federal complaint to the state discrimination claims alleged in the CHRO affidavit, it is again apparent that

the same operative facts underlie both actions. In paragraphs 13-53 of Counts One and Two of her federal complaint, the complainant alleges that between 1989 and 1998 the respondent's city planner and planning and zoning commission treated the complainant differently than similarly situated non-Jewish, male excavators. She asserts that she was required to obtain permits for types of operations that non-Jewish, male excavators were not required to obtain. She further contends that her permits came with restrictions that were not imposed on other sites. She charges that she was cited for zoning violations while other excavators were allowed to operate in violation of zoning restriction and that zoning regulations were strictly enforced and selectively applied to here but not as to her competitors. She also alleges that the respondent boycotted her business.

Likewise, the CHRO affidavit recites the same general claims and underlying facts. The complainant alleges that between 1989 and 1995 the respondent's city planner and its planning and zoning commission treated her differently than similarly situated non-Jewish, male owned excavation business operators. She contends that restrictions imposed on her days and time of operation were not imposed on other operators. She also asserts that rules and regulations were applied and interpreted differently between her and other operators and that other excavation operators were not cited for zoning violations. She further charges that the respondent will not do business with her. Thus, these factual allegations in the federal complaint mirror those of the complainant's CHRO affidavit.

2.

As the same operative facts underlie the state discrimination claims and the in both the federal complaint and the CHRO affidavit, the analysis moves to the second step: whether the complainant had an adequate opportunity to litigate her state discrimination claims in federal court. Clearly, the complainant clearly had such an opportunity. She included these claims in her federal complaint, was given additional time to obtain a release and voluntarily decided not to pursue the state discrimination claims in the federal trial.

First, the commission's contention that the federal court dismissed the state discrimination claims for lack of jurisdiction appears to be factually incomplete. In the transcript of March 28, 2002 (pp. 41-42), the following exchange occurs between the judge ("The Court") and the complainant's attorney, John Williams ("Mr. Williams"):

> "The Court: …. Let me interrupt this kind of chain of argument with a question for Mr. Williams about whether Counts One and Two are still in the case. As you recall, we need to get a CHRO right to sue letter.
>
> "Mr. Williams: Those are not in the case. We decided not to pursue those claims in this trial, Your Honor.
>
> " The Court: All right, very good. Okay, so actually as long as we're on this point, why don't we run down and make sure we're

all on the same page as to what the claims are on the page."

Thus, it appears that the complainant intentionally and voluntarily chose not to pursue her state discrimination claims in federal court.

Second, there is no indication in the federal ruling of January 9, 2002 or this exchange on March 28, 2002 that the court would not have had jurisdiction had the complainant obtained the release. There is also no indication, had the complainant obtained the release, that the court would have exercised its discretion to refuse to hear the state discrimination claims. Rather, because the federal court in its ruling gave the complainant additional time to obtain the release before it dismissed her state discrimination claims and raised the issue again on March 28, 2002, the strong indication is that the court would indeed have had jurisdiction and allowed the state discrimination claims to proceed.

Third, the complainant's hardship is self-created. The federal court's lack of jurisdiction occurred because the complainant voluntarily chose not to seek the requisite release from the commission. It is important to note what did not happen in this case. The commission did not refuse to lift its stay so that the complainant could request a release. The complainant never sought a lifting of the stay. The commission did not refuse the complainant's request for a release. The complainant never requested one. Neither the commission nor the complainant offer a meaningful explanation for why the complainant did not prosecute her state discrimination claims in federal court – that

was, after all, the reason the stay was requested, granted and remained in effect for six years.

C.

The respondent also argues that the CHRO affidavit should be dismissed under the doctrine of collateral estoppel. The respondent contends that the issues raised in the CHRO affidavit were actually litigated and a final jury verdict in favor of the respondent was issued as a part of the complainant's federal 42 U. S. C. § 1983 claim. The respondent, though, does not compare and relate the legal standards and elements of a § 1983 claim (Transcript, April 15, 2002, Judge's charge) to those of the state discrimination claims (*Wroblewski v. Lexington Gardens, Inc.*, 188 Conn. 44 (1982) and its progeny). However, this argument need not be resolved given the applicability of the doctrine of res judicata.

V. Conclusion

1. The underlying facts of both the federal claims and the state discrimination claims in the federal complaint are the same. The factual basis of the state discrimination claims set forth in both the CHRO affidavit and the federal complaint are the same. The state and federal claims all arose from the same transactions, occurrences or events.

2. The complainant had an adequate opportunity to litigate her state discrimination claims along with her federal claims in federal court.

3. The doctrine of res judicata is applicable to this case.

VI. Order

Order: this case is dismissed.

_____
Hon. Jon P. FitzGerald
Presiding Human Rights Referee

C:
Ms. Holly Blinkoff
Albert G. Vasko, Esq.
David M. Teed, Esq.

[1] The court misinterprets § 46a-101. After two hundred ten days from the date of the filing of the affidavit, the request for a release is not made jointly by the parties, only the complainant can request a release. "The complainant and the respondent, by themselves or their attorneys, may jointly request that the complainant receive a release from the commission at any time from the date of filing of the complaint until the expiration of two hundred ten days from the date of filing of the complaint. The complainant, or his attorney, may request a release from the commission if his complaint with the commission is still pending after the expiration of two hundred ten days from the date of its filing." § 46a-101(b). The misinterpretation does not affect the substance of the respondent's motion, the commission and the complainant's responses, or this ruling.