

Federal Court in New York Dismisses Former Professor's Employment Discrimination Suit

The U.S. District Court for the Southern District of New York has dismissed an employment discrimination lawsuit brought by a former employee of the City University of New York (“CUNY”).

The Case

The plaintiff in this case, a former CUNY employee who was a professor of psychology and sociology at the Borough of Manhattan Community College (“BMCC”), sued CUNY, BMCC, and several current and former employees of BMCC (collectively, the “Defendants”), alleging that the Defendants had maintained a hostile work environment, engaged in employment discrimination on the basis of her race, national origin, and age, and retaliated against her. She asserted claims under Title VII of the Civil Rights Act of 1964 (“Title VII”), the Age Discrimination in Employment Act (“ADEA”), and the Older Workers Benefit Protection Act (“OWBPA”).

The Defendants moved to dismiss.

The Court's Decision

The court dismissed the plaintiff's lawsuit.

In its decision, the court first dismissed the plaintiff's age discrimination and retaliation claims under the OWBPA, explaining that the OWBPA did not provide a private cause of action for those claims.

The court then considered the plaintiff's Title VII and ADEA claims.

The court explained that, to establish a *prima facie* case of discrimination under either Title VII or the ADEA, a complaint must allege that:

- (1) The plaintiff belonged to a protected class;
- (2) The plaintiff was qualified for the position;
- (3) The plaintiff suffered an adverse employment action; and

- (4) The adverse employment action occurred under circumstances giving rise to an inference of discriminatory intent.

The court added that, in the absence of an express discriminatory statement, a plaintiff may support an inference of discrimination by demonstrating that similarly situated employees outside of the plaintiff's protected class were treated more favorably.

The court then found that the plaintiff failed to plead factual allegations that supported even "a minimal inference of discriminatory motivation." The court pointed out that the plaintiff attributed discriminatory animus to the Defendants "almost exclusively through the use of statements made upon information and belief," without additional factual allegations to support those statements. Moreover, the court continued, the plaintiff did not provide any information about any similarly situated employee to allow the court to draw an inference that there was favorable treatment of other employees outside of her protected status.

According to the court, "[s]imply arguing that employees not in her protected groups were treated differently" was "not sufficient without pleading additional details about specific events and without pleading additional facts that [the plaintiff] was similarly situated in all material respects to those comparator employees."

Therefore, the court ruled that the plaintiff's federal race, national origin, and age discrimination claims had to be dismissed.

Next, the court considered the plaintiff's claim that she had suffered retaliation for complaints she had made. The court pointed out that a retaliation claim under both Title VII and the ADEA has four elements:

- (1) The employee engaged in a protected activity;
- (2) The employer was aware of that activity;
- (3) The employee suffered an adverse employment action; and
- (4) There was a causal connection between the protected activity and the adverse employment action.

Among other things, the court decided that the plaintiff failed to allege facts that plausibly established a causal connection between the complaints she had made and any adverse employment action that she allegedly had suffered. The court ruled that the plaintiff "failed to allege

participation in a protected activity or any causal connection” between what she offered as protected activities and any adverse employment action and, therefore, it dismissed her federal retaliation claims.

Finally, the court analyzed the plaintiff’s hostile work environment claims under Title VII and the ADEA. As the court noted, a hostile work environment claim under both Title VII and the ADEA requires showing (1) that the harassment was sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment, and (2) that a specific basis exists for imputing the objectionable conduct to the employer.

The court considered the totality of the plaintiff’s allegations and found that they did not meet “the threshold of severity or pervasiveness required for a hostile work environment claim.” In the court’s view, the plaintiff had not satisfactorily alleged facts, beyond statements made upon information and belief, that would show that she had been subjected to an abusive working environment because of her age, race, or national origin. Accordingly, the court dismissed the plaintiff’s federal hostile work environment claims.

The case is *Karunakaran v. Borough of Manhattan Community College*, No. 18 Civ. 10723 (ER) (S.D.N.Y. Feb. 12, 2021).

New York Federal Court Rejects Suit Asserting Claim for “Sexual Disparity”

The U.S. District Court for the Eastern District of New York has dismissed a plaintiff’s lawsuit for “sexual disparity,” which the court interpreted as an employment discrimination claim based on gender discrimination or sexual harassment.

The Case

The plaintiff’s statement of claim against the individual defendant and a wine and liquor store alleged that the individual defendant:

blatantly steals Post-Mates delivery driver tips & provides no pay . . . while claiming to be using Doordash and making the deliveries himself. The customer clearly puts delivery driver tips but in the system of Post-Mates he just puts in tax (lying/fraud) like \$7-20. . . . When confronted multiple times about this issue he withstood an unwelcome strange sexual and

rude tone. Very disrespectful and unprofessional as we did his deliveries for free. Plus a bit PTSD people like that can run a business and cheat the system. . . .

For relief, the plaintiff sought \$75,000 for “tax fraud/employee usage/sexual harassment/stealing delivery driver tips.”

The Court’s Decision

The court dismissed the plaintiff’s complaint for failure to state a claim.

In its decision, the court explained that Federal Rule of Civil Procedure 8 requires a plaintiff to provide “a short and plain statement of the claim showing that the pleader is entitled to relief” against each defendant named so that the defendants have adequate notice of the claims against them.

In this case, the court ruled that the plaintiff’s complaint fell “well short of the required pleading standard.” The court said that the plaintiff’s “vague and sparse submission” made it impossible to determine the basis for her claims.

The court added that, to the extent that the plaintiff sought to pursue an employment discrimination claim based on gender discrimination or sexual harassment, her conclusory allegations of “sexual disparity” and “an unwelcome strange sexual and rude tone” were insufficient to satisfy Rule 8’s requirements.

Finally, the court concluded, to the extent that the plaintiff sought to hold the individual defendant liable for employment discrimination under Title VII, her claim failed as a matter of law because “Title VII does not impose liability on individuals.”

The case is *Gioia v. Singh*, No. 20-CV-4014 (JMA) (SIL) (E.D.N.Y. Feb. 16, 2021).

Plaintiff Must Arbitrate Employment Discrimination Claims, District Court Decides

The U.S. District Court for the Southern District of New York has ruled that a plaintiff asserting employment discrimination claims against her former employer and related parties must arbitrate those claims rather than litigate them.

The Case

The plaintiff, a Black woman of Haitian national origin, started working for Related Partners, Inc., on August 16, 2016, initially filling in for a treasury analyst out on maternity leave. The plaintiff had been placed in that position by Russell Tobin & Associates (“RTA”), which provides staffing services, such as temporary employees, to its clients, including Related.

After her employment with Related ended, the plaintiff brought an employment discrimination action against Related, Hudson Yards Construction II Holdings LLC, Hudson Yards Construction II LLC, Hudson Yards Construction LLC, and two individuals (collectively, the “Related Defendants”), and RTA (together with the Related Defendants, the “Defendants”). The plaintiff brought claims pursuant to Title VII of the Civil Rights Act of 1964, alleging a hostile work environment, sexual harassment, failure to hire, and retaliation.

The defendants responded that the plaintiff’s claims were governed by a master employment agreement (the “Master Agreement”) that the plaintiff had entered into with RTA and that contained a broad arbitration provision. The defendants moved, pursuant to the Federal Arbitration Act, to compel arbitration of the plaintiff’s claims.

The plaintiff opposed the motion, arguing, among other things, that the Master Agreement had expired when the Related employee for whom the plaintiff was filling in returned from maternity leave. She also questioned the authenticity of the Master Agreement, citing the fact that two copies of the Master Agreement had been submitted to the court.

The Court’s Decision

The court granted the defendants’ motion to compel arbitration of the plaintiff’s claims.

In its decision, the court noted that there is a “strong federal policy favoring arbitration as an alternative means of dispute resolution,” and, therefore, that a court must resolve any doubts concerning the scope of arbitrable issues “in favor of arbitrability.”

The court then found that the plaintiff’s claims were governed by the Master Agreement. The court pointed out that, among other things, the Master Agreement did not contain an explicit termination or expiration date, and it concluded that the Master Agreement remained in effect with respect to the plaintiff after the Related employee returned from maternity leave.

The court also rejected the plaintiff’s argument that the Master Agreement was invalid. The court noted that the plaintiff did not actually allege that the defendants had substituted one document for another, that the Master Agreement had been forged, or that the defendants had

misrepresented the essential terms of the Master Agreement. Rather, the court continued, the plaintiff simply argued that the existence of two copies of the same contract somehow invalidated the agreement.

The court found that the two contracts were “identical,” with only an “immaterial” difference: one copy had the plaintiff’s digital signature, and the other had her physical signature. The court found no evidence that either copy of the Master Agreement was improper in any way, adding that the plaintiff offered only “general denials” of the facts on which the right to arbitration depended and that she failed to submit evidentiary facts showing that there was a factual dispute that had to be tried.

Thus, the court ruled that the Master Agreement was enforceable and was in effect at the time the alleged harassment occurred.

Having found the Master Agreement to be enforceable, the court next analyzed whether the arbitration provision was applicable.

The court conceded that the arbitration provision contained “broad language.” Under the agreement, the plaintiff was required to arbitrate “*any dispute* arising between [the plaintiff and RTA] or between [the plaintiff] and Client concerning [the plaintiff’s] employment . . . as well as any claim by [the plaintiff] of employment discrimination or improper treatment in connection with such employment.” (Emphasis added.) Moreover, the court continued, the arbitration provision also included a non-exhaustive list of claims that it covered, including claims based on “Title VII of the Civil Rights Act of 1866, 1964, and 1991, . . . New York State and City Human Rights Law or any other additional, related or comparable federal, state or local statute, regulation or ordinance or otherwise.”

The court then ruled that the plaintiff’s claims fell squarely within the terms of the arbitration provision and that all of the plaintiff’s claims were covered by the Master Agreement’s reference to “any dispute arising between [the plaintiff and RTA] or between [the plaintiff] and Client concerning [the plaintiff’s] employment.”

The court added that the arbitration provision explicitly stated that “any claim by [the plaintiff] of employment discrimination or improper treatment in connection with such employment shall be submitted to arbitration,” and it decided that the plaintiff’s Title VII claims were “captured within the provision’s illustrative list of arbitrable claims.”

Therefore, the court concluded that the arbitration provision encompassed the plaintiff's claims, and that the plaintiff's claims had to be referred to arbitration. It also stayed the case pending arbitration of the plaintiff's claims.

The case is *Occilien v. Related Partners, Inc.*, No. 19 Civ. 7634 (KPF) (S.D.N.Y. Jan. 19, 2021).

Appellate Court Affirms Decision Enforcing Covenant Not to Compete Stemming from Sale of Law Practice

In a case in which the plaintiff sought to recover damages for breach of a covenant not to compete and for injunctive relief, the Appellate Division, Second Department, has upheld a trial court's decision granting the plaintiff's motion preliminarily enjoining the defendant from competing with the plaintiff within a specified radius of the business the defendant had previously sold to the plaintiff.

The Case

In August 2017, the plaintiff entered into a written agreement to purchase the defendant's existing law practice on North Sea Road in Southampton, together with all of the law practice's assets, including the goodwill of the practice, in exchange for a share of monthly revenues. The contract contained a covenant not to compete, which prohibited the defendant from practicing law within a 15-mile radius of the North Sea office for a period of five years.

The plaintiff subsequently alleged that, within four months of executing the agreement, the defendant opened a new law office approximately one mile from the North Sea office, contacted a number of his former clients, and engaged in other conduct that violated the covenant not to compete.

In December 2017, the plaintiff filed a lawsuit against the defendant to recover damages for breach of the covenant not to compete and for breach of the implied covenant of good faith and fair dealing. The plaintiff also moved for a preliminary injunction barring the defendant from opening a law office within a 15-mile radius of the North Sea office and from soliciting clients of the North Sea office; requiring the defendant to return the files he allegedly had removed from the North Sea office without permission; and mandating that the defendant surrender exclusive control and ownership of the North Sea office email account.

The trial court granted those branches of the plaintiff's motion that were to preliminarily enjoin the defendant from opening or operating a law practice within a 15-mile radius of the North Sea office or from taking any action to contact any former clients or clients of the plaintiff for the purpose of soliciting them as clients for any other law practice he owned or with which he was affiliated.

After additional motion practice, the defendant moved his law practice to a location outside the 15-mile radius, but allegedly continued to practice law within the 15-mile radius.

In September 2018, the plaintiff moved to enjoin the defendant from practicing law within a 15-mile radius of the North Sea office, rendering legal services to persons within that radius, or preparing legal documents affecting any property or persons within that radius. The plaintiff also sought a court order requiring that the defendant remove his law practice signs from his prior offices.

The trial court granted the plaintiff's motion.

After the trial court denied the defendant's motion to require that the plaintiff post an undertaking, the defendant appealed.

The Appellate Court's Decision

The appellate court affirmed the trial court in full, except that it granted the defendant's motion to require the plaintiff to post an undertaking.

In its decision, the appellate court first ruled that, contrary to the defendant's argument, the covenant not to compete was "valid and enforceable." The appellate court decided that the parties' written agreement was not unenforceable for lack of consideration. "Absent fraud or unconscionability, the adequacy of consideration is not a proper subject for judicial scrutiny," the appellate court explained.

The appellate court then ruled that the parties' agreement did not constitute an illegal fee-splitting agreement in violation of the New York State rules governing attorneys' conduct. The appellate court pointed out that the rule concerning the sale of a law practice provides for a specific exception to the rule prohibiting lawyers from dividing a fee for legal services with another lawyer not associated in the same law firm.

Moreover, the appellate court continued, covenants not to compete related to the sale of a business and its accompanying good will “may be enforced when they are reasonable in scope and duration, do not unreasonably burden the promisor, and do not harm the general public.”

Here, the appellate court found, the scope and duration of the covenant not to compete were “reasonable” and “did not unreasonably harm the defendant or the general public.” It concluded that the plaintiff had established its right to a preliminary injunction, and that it had to post an undertaking in an amount fixed by the trial court because that requirement “may not be waived.”

The case is *Keneally, Lynch & Bak, LLP v. Salvi*, 190 A.D.3d 961 (N.Y. 2d Dep’t 2021).

New York Trial Court Issues Preliminary Injunction Enforcing Noncompete Agreement

A trial court in New York, relying on a noncompete agreement, has issued a preliminary injunction enjoining a former member of a limited liability company from providing specified services and from claiming credit for certain work on her website and on her social media.

The Case

The plaintiff, a design professional who previously was a member of Whitehall Interiors NYC, LLC, sued Whitehall and the founding members of the firm, seeking an accounting, injunctive and declaratory relief, and money damages, claiming monies that were “due for her work” for Whitehall.

The defendants answered the complaint and asserted counterclaims for breach of contract, breach of fiduciary duty, and a judgment declaring, among other things, that the plaintiff’s membership in Whitehall had terminated in 2018. As a result, the defendants argued, the plaintiff was not entitled to inspect Whitehall’s books and records and she had violated a noncompete and non-solicitation agreement that she had negotiated upon her separation from Whitehall in 2018.

The defendants moved for a preliminary injunction to bar the plaintiff from competing for Whitehall business and for claiming credit for Whitehall projects.

Specifically, the defendants sought to enjoin the plaintiff from (1) performing or offering any “services associated with or related to the selection or purchasing of furniture, fixtures or equipment (FF&E Services)” for Gemini Rosemont Development Services LLC, a major client of Whitehall, including the project known as 531-539 Sixth Avenue, or (2) claiming credit on her

website and/or social media for any work performed by Whitehall for “Tower 31” or “The Continental.”

The plaintiff opposed the defendants’ motion, including with an affidavit from Paul Gerwin, executive vice president of Gemini Rosemont, who stated that the plaintiff had been hired by Gemini Rosemont not to provide FF&E Services, but to “coordinate, furnish, accessorize and act as the artistic director for the marketing renderings for Gemini.”

In response, the defendants argued that this was a “distinction without a difference” and that the plaintiff effectively had conceded that she was performing some work prohibited by the parties’ agreement.

The Court’s Decision

The court issued a preliminary injunction in favor of the defendants.

In its decision, the court explained that, to obtain a preliminary injunction, the defendants had to demonstrate, by clear and convincing evidence:

- (1) A likelihood of success on the merits;
- (2) Irreparable injury if a preliminary injunction was not granted; and
- (3) A balance of equities in its favor.

The court then ruled that the defendants had “met this burden.”

The court found that, based on the submissions by both sides, the defendants had demonstrated a likelihood of success as to at least some of their counterclaims and in defense of the claims made against them by the plaintiff.

The court also said that a balancing of the equities favored the defendants because the plaintiff would “suffer no injury or prejudice” by being enjoined from conducting business only as to the narrow scope requested by the defendants, which conduct, the court added, “would likely be in violation of the parties’ agreement.”

The court next decided that the defendants had shown that should this relief not be granted, “they would suffer irreparable harm in that the loss of goodwill and reputation” could not entirely be compensated by money damages.

Accordingly, the court granted the defendants’ motion for a preliminary injunction to the extent of enjoining the plaintiff, pending the disposition of the action or until a further order of the court, from (1) performing or offering any “services associated with or related to the selection or

purchasing of furniture, fixtures or equipment (FF&E Services)” for Gemini Rosemont, including the project known as 531-539 Sixth Avenue, and (2) claiming credit on her website and/or social media for any work performed by Whitehall for “Tower 31” or “The Continental.”

The court concluded by ordering the defendants to post an undertaking in the amount of \$5,000 as a condition of granting the preliminary injunction.

The case is *Asprea v. Whitehall Interiors NYC, LLC*, No. 653586/2019 (Sup. Ct. N.Y. Co. March 2, 2021).

Triable Issues of Fact Lead Court to Deny Summary Judgment Motion Challenging Noncompete Agreement

A New York trial court has denied a plaintiff’s motion to dismiss his former employer’s counterclaims asserting that the plaintiff had violated the noncompete provisions of his employment agreement, finding that triable issues of fact precluded granting the plaintiff’s motion.

The Case

After outside investors took control of TSR, Inc., and replaced its board of directors, TSR terminated the employment of its chief executive officer, Christopher Hughes, asserting that he had committed various misdeeds that warranted his dismissal for “Cause” (as defined in his employment agreement).

Hughes subsequently filed suit against TSR with a complaint that contained two causes of action.

In the first cause of action, for breach of contract, the plaintiff alleged that TSR had breached his employment agreement by terminating him without cause and by refusing to honor the agreement’s requirement for severance payments.

In his second cause of action, the plaintiff alleged that TSR had breached the duty of good faith and fair dealing by failing to comply with its obligations under the employment agreement, and by relying on pretext as grounds to terminate him in order to avoid its obligations to pay the severance owed to him.

In its answer and counterclaims, TSR provided a counterstatement of facts in which it asserted that the plaintiff had breached his employment agreement and had been terminated for cause. TSR also contended that the plaintiff’s conduct violated the maintenance of confidence and

non-compete agreement (the “Non-Compete Agreement”) that the plaintiff had signed when he signed his employment agreement and that, according to TSR, survived the end of the plaintiff’s employment.

TSR alleged that, over the course of four decades, it had developed confidential and proprietary information, including but not limited to an extensive and proprietary client list; a proprietary database of employees and independent contractors; and trade secrets involving data processing, computer services, and other technical information used in furtherance of service to its clients, employees, and consultants. TSR asserted that it took measures to guard the confidentiality of that information including but not limited to having employees sign a confidentiality agreement.

According to TSR, the plaintiff was retaining records to engage in competition with TSR because the plaintiff was actively pursuing the acquisition of “Company A,” which was an acquisition target of TSR during the plaintiff’s employment. TSR further asserted that, since his termination of employment, the plaintiff had repeatedly contacted TSR employees to solicit information about TSR for his own competitive advantage, and that multiple employees had complained to TSR about the plaintiff’s persistent outreach and inquiries.

TSR contended that this conduct violated the section of the Non-Compete Agreement that provided that the plaintiff could not, for a period of nine months following his employment, “solicit, contact, represent, or offer to represent the Company’s Full-Time Employees and/or Independent Contractors,” as well the section of the Non-Compete Agreement that provided that the plaintiff “shall not during the term of his employment by the Company and for a period of nine (9) months following the termination of his employment with the Company, directly or indirectly on his own behalf or on behalf of others, engage in the business of providing, or be employed by a company that provides, IT staffing services (or other services similar to, or competitive with, the Company’s services) to business enterprises with locations in the New York Metropolitan Area (a ‘Competitive Business’).”

TSR brought counterclaims for declaratory relief-termination (first counterclaim), breach of the Non-Compete Agreement (second, third, and fourth counterclaims), breach of fiduciary duty (fifth counterclaim), misappropriation of trade secrets (sixth counterclaim), declaratory and injunctive relief – unfair competition (seventh counterclaim), and conversion (eighth counterclaim).

The plaintiff moved for summary judgment on each of his causes of action. He also sought a determination that the Non-Compete Agreement was unenforceable, based on its terms and due to TSR's breach of the Employment Agreement. Finally, the plaintiff also sought summary judgment dismissing TSR's counterclaims with prejudice.

The Court's Decision

The court denied the plaintiff's motion for summary judgment.

In its decision, the court first denied the plaintiff's motion for summary judgment on his claims for breach of his employment agreement, finding that the plaintiff had not set forth a *prima facie* case for breach of the employment agreement. The court ruled that, rather than conclusively establishing his entitlement to summary judgment, the plaintiff's affidavit raised "multiple factual issues" with respect to these claims.

The court then found that "[f]actual and legal issues" also remained with respect to the enforceability of the employment agreement and the Non-Compete Agreement. In particular, the court said, whether or not the plaintiff had been fired for cause, or which party had breached the employment agreement, were "fact-intensive issues" that could not be determined at this juncture of the case.

Similarly, the court concluded, although the plaintiff contended that he had not violated the Non-Compete Agreement, whether or not the plaintiff had disclosed TSR's confidential information or had engaged in competition with TSR also were "inherently factual issues."

The case is *Hughes v. TSR, Inc.*, No. 651753/2020 (Sup. Ct. N.Y. Co. March 5, 2021).

Court Dismisses Plaintiff's Fifth Employment Discrimination Suit

The U.S. District Court for the Southern District of New York has dismissed a fifth employment discrimination lawsuit filed by a plaintiff who had been fired from his position as an office assistant.

The Case

The plaintiff in this case was employed by the City University of New York ("CUNY") until August 18, 2017, when he was fired from his position as an office assistant in CUNY's Office of Facilities, Planning, Construction and Management. Before and after he was fired, the plaintiff filed

complaints in the U.S. District Courts for the Southern and Eastern Districts of New York asserting claims of employment discrimination and retaliation.

In his first action ("*Stinson I*"), the plaintiff alleged that the defendants had discriminated and retaliated against him beginning in 2015, and that this conduct culminated in his firing in 2017. He asserted claims under Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act of 1990 ("ADA"), the Family and Medical Leave Act of 1993 ("FMLA"), and the New York State and New York City Human Rights Laws ("NYSHRL" and "NYCHRL," respectively). The court granted the defendants' motions to dismiss.

Twenty-two days after the court dismissed *Stinson I*, the plaintiff filed another lawsuit arising from his employment ("*Stinson II*"). In *Stinson II*, the plaintiff asserted claims that he had previously asserted in *Stinson I*, including claims of discrimination and retaliation and claims under the FMLA. He also asserted claims that he had not previously asserted in *Stinson I* arising from events that allegedly had taken place after he had been fired.

The court determined that the plaintiff was barred from asserting his claims under the FMLA under the doctrine of issue preclusion and, after the plaintiff filed an amended complaint, it dismissed *Stinson II* without prejudice.

Thereafter, the plaintiff filed another employment discrimination action arising from his employment ("*Stinson III*"), asserting claims under the FMLA, the NYSHRL, and the NYCHRL.

The court dismissed *Stinson III* on its own motion under the doctrines of claim preclusion, issue preclusion, and Eleventh Amendment immunity. It noted that the plaintiff's claims in *Stinson III* were "based on the same events underlying his complaint in *Stinson I*, that is, events that occurred up until his firing on August 18, 2017." The court also warned the plaintiff that further litigation of his employment discrimination claims based on events occurring before his firing or other non-meritorious matters would result in an order barring him from filing any new actions without prior permission.

Ten days after the court dismissed *Stinson III*, the plaintiff filed yet another suit ("*Stinson IV*"), asserting claims under federal and state law arising from the defendants' alleged actions during a post-termination arbitration and during unemployment-insurance proceedings.

While *Stinson IV* still was pending, the plaintiff filed a fifth action, asserting a variety of employment discrimination claims under Title VI of the Civil Rights Act of 1964, Title VII, the

Rehabilitation Act of 1973, the ADA, and the NYCHRL. The plaintiff's claims arose from events allegedly leading up to his discharge and events that allegedly took place after his firing.

The Court's Decision

The court dismissed the plaintiff's fifth lawsuit.

In its decision, the court explained that the plaintiff, in his fifth suit, asserted some employment discrimination and retaliation claims and raised some issues concerning his employment and the termination of his employment "that either were or could have been adjudicated in his previous actions." The court ruled that, under the doctrines of claim and issue preclusion, the plaintiff "may not relitigate those claims and issues."

The court also decided that some of the claims the plaintiff was asserting in his fifth lawsuit were claims he also was asserting in *Stinson IV*, arising from his former employer's alleged actions in proceedings that took place after his termination. Therefore, the court dismissed those claims as "duplicative," although without prejudice to his claims in *Stinson IV*.

After dismissing the plaintiff's federal claims, the court declined to exercise supplemental jurisdiction over the plaintiff's claims under state law, and it dismissed his lawsuit in full.

The case is *Stinson v. Pearson*, No. 1:20-CV-8701 (LLS) (S.D.N.Y. March 10, 2021).



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