

Bauman v Mount Sinai Hosp.

2008 NY Slip Op 32597(U)

September 25, 2008

Supreme Court, New York County

Docket Number: 0102293/2008

Judge: Walter B. Tolub

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WALTER B. TOLUB

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Index Number : 102293/2008

BAUMAN, JAY MITCHELL M.D.

VS.

MOUNT SINAI HOSPITAL

SEQUENCE NUMBER : 001

DISMISS ACTION

PART _____

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

~~IS DENIED~~ **IS DECIDED**

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

FILED

SEP 26 2008

COUNTY CLERK'S OFFICE

NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/26/08

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x
JAY MITCHELL BAUMAN, M.D.,

Plaintiff,

Index No. 102293/08
Mtn Seq. 001

-against-

THE MOUNT SINAI HOSPITAL and
MICHAEL L. BRODMAN, M.D.,

Defendants.

FILED
SEP 26 2008
COUNTY CLERK'S OFFICE
NEW YORK

WALTER B. TOLUB, J.:

This is Defendants' motion to dismiss the Complaint pursuant to CPLR 3211(a)(7) and for sanctions pursuant to Administrative Rule 130.1.1.

Facts

Plaintiff is a physician in Obstetrics and Gynecology and maintained admitting privileges at Mount Sinai Hospital from 1986 through 2005. Defendant Mount Sinai Hospital is a voluntary teaching health care facility. Defendant Michael Brodman, M.D., is the Chair of the Department of Obstetrics, Gynecology and reproductive Science at Mount Sinai Hospital.

Plaintiff claims that while working for Mount Sinai Hospital ("Hospital"), he and his patients encountered discrimination and disparate treatment because of their creed and cultural and linguistic differences.

Plaintiff, commenced this action (the "Current Action") seeking damages for the suspension and eventual termination of

his privileges to treat private patients at the Hospital.

Following the suspension of Plaintiff's privileges and the decision of a Hospital peer-review committee upholding the suspension, Plaintiff filed: (1) a petition in New York State Supreme Court under Article 78 of the CPLR seeking injunctive relief restoring his Hospital privileges ("Article 78 Proceeding"); (2) an action in the Southern District of New York claiming that the termination of his privileges was part of a conspiracy by the Hospital to defame and defraud the Plaintiff and take over his Orthodox Clients ("SDNY Action"); and (3) a Complaint before the Public Health Council of the City of New York State Health Department regarding the propriety of the termination of his privileges. Each of these actions concluded with a decision in favor of the Hospital and Dr. Brodman.

The Article 78 Action was commenced on July 14, 2005 seeking preliminary and permanent injunctive relief restoring Plaintiff's privileges at the Hospital. On July 29, 2005, injunctive relief was denied on the grounds that Plaintiff failed to exhaust his administrative remedies. Then, on November 9, 2005, the court dismissed Plaintiff's Petition because there was no evidence that the Hospital failed to follow the disciplinary and suspension process (Bauman v. Mount Sinai Hospital, Index No. 109727/2005 [Nov. 9, 2005]).

On August 11, 2005, Plaintiff commenced an action against

the Defendants in the Southern District of New York claiming that his privileges were suspended and then terminated in violation of the Health Care Quality Improvement Act of 1986 and the Racketeer Influenced and Corrupt Organizations Act (RICO). Plaintiff also asserted state law claims for defamation, adverse treatment and fraud based upon statements he claims the Hospital made. Judge Chin dismissed the SDNY Action with prejudice and stated that:

In sum, I reject Dr. Bauman's allegations of a grand conspiracy designed to ruin his reputation and take over his medical practice. His suggestion that all the individuals involved - Dr. Brodman, Dr. Drayer, Dr. Rubin, Dr. Figur, the physicians assistant, the third-year resident, the members of the QCC and the hearing Committee, the administrator who authorized the Report, the psychiatrist who evaluated his competence, and the physicians who covered his patients - were somehow engaged in a malicious scheme to out him from the Hospital is supported by nothing but sheer speculation. To the contrary, the exhibits attached to the Amended Complaint demonstrate that the actions taken to suspend Dr. Bauman, restrict his practice, and eventually terminate his privileges were reasonably based upon serious and founded allegations that he violated Hospital protocol - allegations that the Hospital had to investigate - and a pattern of non-compliance with the conditions of his reinstatement.

(Bauman v. Mount Sinai Hospital, 05 Civ. 7126 [SDNY Dept. 26, 2006] Opinion at 27).

Plaintiff then filed his New York State Public Health Law Complaint on August 4, 2006. In that Action Plaintiff claimed that his privileges were terminated for interpersonal,

departmental and political reasons (Public Health Council Complaint, D Ex. F). On May 16, 2007, Plaintiff's Complaint was dismissed. The Health Council found that the Hospital's reasons for terminating Plaintiff's privileges were consistent with Public Health Law.

The Current Action also arises out of the suspension and termination of Plaintiff's clinical privileges at the Hospital. Brought under the New York City Human Rights Law, Plaintiff claims that this action is different than the prior actions because it focuses on disparate treatment and retaliation. Plaintiff also claims that there is no prior action which directly addressed claims surrounding discrimination. Defendants argue that this action should be dismissed under the doctrine of res judicata.

Discussion

A motion to dismiss pursuant to CPLR 3211(a)(7) requires the court to decide whether one or more defenses to an action are meritorious (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §36:01). If the court finds that a defense applies as a matter of law, it dismisses the claim subject to that defense (*id.*).

Here, Defendants argue that the Complaint must be dismissed as a matter of law because it is barred under the doctrine of res judicata. The doctrine of res judicata bars future litigation of

a claim between the same parties that has already been litigated to a final determination (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §36:350 citing Matter of Hodes v. Axelrod, 70 NY2d 364 [1987]). For a matter to be barred by res judicata; (1) the parties must be identical to those in the previous action; (2) the cause of action must be the same in the previous action; and (3) there must have been a full and fair opportunity to litigate the cause of action in the previous proceeding (Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §36:350 [internal citations omitted]).

The Court of Appeals has adopted a "transaction" test to determine whether a previous litigation bars the present action under the doctrine of res judicata. Under the test, if it is determined that the present action arises out of the same transaction as a prior action, and there was a judgment in the prior action, then res judicata bars all causes of actions arising out of those transactions regardless of whether or not the specific causes of action were raised in the first action (Outerial v. Otis Elevator, Inc., 220 AD2d 255 [1st dept 1995]; also Barr, Atlman, Lipshie, Gerstman, *New York Civil Practice Before Trial*, [James Publishing 2006] §36:351).

Contrary to Plaintiff's argument that this action is different than any prior action because it focuses on disparate

treatment and retaliation, virtually every key factual allegation made in the Current Action was pled in the SDNY Action and both the Current Action and the SDNY Action arise out of the suspension and termination of Plaintiff's clinical privileges at the Hospital. Furthermore, as highlighted *supra*, Judge Chin specifically held in his decision that the actions taken to suspend Plaintiff, restrict his practice and eventually terminate his privileges, were reasonably based upon serious and founded allegations that he violated Hospital protocol (Bauman v. Mount Sinai Hospital, 05 Civ. 7126 [SDNY Dept. 26, 2006] Opinion at 27).

Plaintiff's claims under New York City Human Rights Law could have been brought in the SDNY Action. Plaintiff's discrimination claims were ripe for adjudication and concerned the same series of events and transactions dealt with in the SDNY Action. The SDNY Action was dismissed on its merits and therefore the doctrine of res judicata prohibits Plaintiff from litigating the Current Action. Accordingly, defendants' motion to dismiss must be and is granted.

Defendants' motion for sanctions pursuant to 22 NYCRR 130-1.1 has been considered and is denied. Although Plaintiff's case lacks merit, the commencement of the action is not so egregious as to constitute frivolous conduct within the meaning on 22 NYCRR 130-1.1 (Parametric Capital Management, LLC v. Lacher, 26 AD3d

175 [1st Dept 2006]).

Accordingly, it is

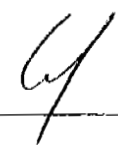
ORDERED that Defendants' motion to dismiss is granted and the Complaint is dismissed in its entirety; and it is further

ORDERED that Defendants' motion for sanctions is denied; and it is further

ORDERED that the Clerk of the Court enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 9/21/05



HON. WALTER B. TOLUB, J.S.C.

FILED
SEP 26 2008
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