

Raghavendra v Bollinger
2014 NY Slip Op 33728(U)
January 31, 2014
Supreme Court, New York County
Docket Number: 103389/2013
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 46

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RAJAGOPALA S. RAGHAVENDRA, a/k/a
RANDY S. RAGHAVENDRA,

Index No. 103389/2013

Plaintiff

- against -

DECISION AND ORDER

LEE C. BOLLINGER, individually and as
president of Columbia University, and
TRUSTEES OF COLUMBIA UNIVERSITY,

Defendants
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I. BACKGROUND

On September 23, 2005, defendants terminated plaintiff's employment based on his misconduct. Plaintiff commenced a flurry of actions in the New York and federal courts challenging this termination and, after entering an agreement settling several of those actions in 2009, now pursues litigation challenging that agreement. Plaintiff continues to apply for positions at defendant Columbia University, despite the undisputed fact that defendants informed him in 2007 and then in correspondence in 2008 that he would not be considered for future employment at Columbia University and that defendants would not respond to any further application plaintiff submits.

In this action plaintiff claims defendants: (1) refused to rehire him based on racial discrimination and retaliation in violation of the New York State Human Rights Law (NYSHRL) and New York City Human Rights Law (NYCHRL); and (2) conspired to discriminate and retaliate illegally by refusing to hire him.

Defendants move to dismiss the complaint pursuant to C.P.L.R. § 3211(a) (5) and (7).

II. THE APPLICABLE STANDARDS

Upon defendants' motion to dismiss the complaint pursuant to C.P.L.R. § 3211(a) (7), the court must accept plaintiff's allegations as true, liberally construe them, and draw all reasonable inferences in his favor. Walton v. New York State Dept. of Correctional Services, 13 N.Y.3d 475, 484 (2009); Nonnon v. City of New York, 9 N.Y.3d 825, 827 (2007); IDT Corp. v. Tyco Group, S.A.R.L., 104 A.D.3d 170, 176 (1st Dep't 2012); Wadiak v. Pond Management, LLC, 101 A.D.3d 474, 475 (1st Dep't 2012). No such consideration may be given, however, to allegations that consist of only bare legal conclusions. Simkin v. Blank, 19 N.Y.3d 46, 52 (2012); David v. Hack, 97 A.D.3d 437, 438 (1st Dep't 2012). The court must determine whether the alleged facts fit within any cognizable legal theory and may dismiss a claim based on C.P.L.R. § 3211(a) (7) only if the allegations completely fail to state a claim. Leon v. Martinez, 84 N.Y.2d 83, 88 (1994); Harris v. IG Greenpoint Corp., 72 A.D.3d 608, 609 (1st Dep't 2010); Weil, Gotshal & Manges, LLP v. Fashion Boutique of Short Hills, Inc., 10 A.D.3d 267, 270-71 (1st Dep't 2004); Frank v. DaimlerChrysler Corp., 292 A.D.2d 118, 121 (1st Dep't 2002). Dismissal of a claim is warranted under C.P.L.R. § 3211(a) (5) when defendants establish that the claim is barred by the statute of limitations, collateral estoppel, or res judicata. E.g., Chelsea 18 Partners, LP v. Sheck Yee Mak, 90 A.D.3d 38, 43 (1st

Dep't 2011); Constructamax, Inc. v. Weber, 109 A.D.3d 574, 576 (2d Dep't 2013).

III. DISMISSAL IS WARRANTED.

Defendants maintain that they terminated plaintiff's employment based on his misconduct, rendering him ineligible to be rehired for any position pursuant to Columbia University's personnel policy. Plaintiff insists that this policy not be applied to him and that defendants' refusal to employ him was motivated by discrimination based on his race, color, national origin, and age and on illegal retaliation.

Insofar as plaintiff already instituted the same claims for illegal discrimination and retaliation under NYSHRL and NYCHRL in his federal actions, the settlement agreement, which the federal courts determined to be valid and enforceable, resolved those claims. Raghavendra v. Trustees of Columbia Univ., 686 F. Supp. 2d 332, 336 (S.D.N.Y. 2010), aff'd in part and vacated in part, 434 F. App'x 31 (2d Cir. 2011). Under the principles of res judicata, plaintiff is barred from maintaining in this action the same claims based on the same transactions or occurrences that have been resolved on the merits in the federal actions, where the court has not definitively established that it would have declined to exercise supplemental jurisdiction over plaintiff's claims under state law. Insurance Co. of State of Pa. v. HSBC Bank of USA, 10 N.Y.3d 32, 39 (2008); Urlic v. Insurance Co. of State of Penn., 259 A.D.2d 1, 4 (1st Dep't 1999); RM 18 Corp v. Bank of N.Y. Mellon Trust Co., N.A., 104 A.D.3d 752, 756 (2d

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Dep't 2013); Uzamere v. Uzamere, 89 A.D.3d 1013, 1014-15 (2d Dep't 2011). See GTFM, LLC v. Nagy, 18 A.D.3d 266, 267 (1st Dep't 2005).

The limitations period of three years applicable to plaintiff's claims under NYSHRL and NYCHRL, C.P.L.R. § 214(2), began to run when plaintiff learned of defendants' refusal to rehire him, which last occurred via their correspondence in 2008, notice that plaintiff does not deny receiving. Vig v. New York Hairspary Co., L.P., 93 A.D.3d 565, 566 (1st Dep't 2012); Cordone v. Wilens & Baker, P.C., 286 A.D.2d 597, 598 (1st Dep't 2001). As plaintiff commenced this action in 2013, the court dismisses these statutory claims as time barred. C.P.L.R. § 3211(a)(5).

Plaintiff claimed conspiracy under 42 U.S.C. § 1983(3) in his federal actions, but maintains that his conspiracy claim is under state law here. New York law, however, does not recognize civil conspiracy as an independent cause of action. Kickertz v. New York Univ., 110 A.D.3d 268, 281 (1st Dep't 2011); Hoeffner v. Orrick, Herrington & Sutcliffe LLP, 85 A.D.3d 457, 458-59 (1st Dep't 2011). Even if the statute of limitations did not bar plaintiff's claims under the Human Rights Laws, those statutorily created claims would not constitute the independent tort necessary to sustain a conspiracy claim. Tucker v. City of New York, 84 A.D.3d 640, 642 (1st Dep't 2011); Kimmel v. State, 76 A.D.3d 188, 193 (4th Dep't 2010); Monsanto v. Electric Data Sys. Corp., 141 A.D.3d 514, 515 (2d Dep't 1988). Apart from plaintiff's claims under the Human Rights Laws, his vague,

conclusory claim of a violation of state law lacks a factual showing of a cognizable underlying tort. In any event, plaintiff similarly fails to plead any facts showing the additional necessary element of an agreement between the conspirators or other intentional conspiratorial conduct. C.P.L.R. § 3211(a)(7); 1766-68 Assoc., LP v. City of New York, 91 A.D.3d 519, 520 (1st Dep't 2012); Abacus Fed. Savings Bank v. Lim, 75 A.D.3d 472, 474 (1st Dep't 2010).

IV. DISPOSITION

Based on the statute of limitations barring plaintiff's Human Rights Law claims, C.P.L.R. § 214(2), and the absence of any underpinning for his conspiracy claim, as explained above, the court grants defendants' motion to dismiss the complaint. C.P.L.R. § 3211(a)(5) and (7). This decision constitutes the court's order and judgment of dismissal.

DATED: January 31, 2014

Lucy Billings

LUCY BILLINGS, J.S.C.

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J.S.C.