Abromavage v Deutsche Bank Sec. Inc.
2024 NY Slip Op 35046(U)
November 26, 2024
Supreme Court, New York County
Docket Number: Index No. 159917/2022
Judge: Lynn R. Kotler

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON.LYNN R. KOTLER, J.S.C. PART 8

Neil Abromavage

INDEX NO. 159917/2022

MOT. DATE

- v -

MOT. SEQ. NO. 002

Deutsche Bank Securities Inc. et al

The following papers were read on this motion to/for sj

Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits ECFS Doc. No(s)._____
Notice of Cross-Motion/Answering Affidavits — Exhibits ECFS Doc. No(s)._____
Replying Affidavits ECFS Doc. No(s)._____

This is an action for unlawful retaliation in violation of the New York City Human Rights Law, Admin Code § 8-101 *et seq.* (NYCHRL). Defendants now move for summary judgment dismissing plaintiff's complaint on the basis of collateral estoppel. In short, there was a prior federal action between these parties wherein plaintiff's federal and state law retaliation claims were dismissed and the federal court declined to exercise subject matter jurisdiction over plaintiff's NYCHRL claim, which was dismissed without prejudice (see Opinion dated March 19, 2021, 18-CV-6621, *J. Caproni, V.*).

Meanwhile, plaintiff Neil Abromavage opposes the motion and cross-moves pursuant to CPLR § 3212[f] for an order directing limited discovery on the issues raised by defendants' motion. Issue has been joined and note of issue has not yet been filed, therefore summary judgment relief is available. For the reasons that follow, the motion is granted and the cross-motion is denied.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a prima facie case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). If the proponent fails to make out its prima facie case for summary judgment, however, then its motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]).

Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v. Twentieth Century Fox Film*, 3 NY2d 395 [1957]).

Dated: 11/26/24

HON. LYNN R. KOTLER, J.S.C.

1. Check one: ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION

2. Check as appropriate: Motion is ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER

3. Check if appropriate: ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST

☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

A motion for summary judgment is premature under Section 3212[f] when the opponent of the motion has not been given a reasonable period of time and an opportunity to conduct discovery which may enable them to successfully mount an opposition (*see Guzman v. City of New York,* 171 AD3d 653 [1st Dept 2019]). Plaintiff points to the testimony of Jeffrey Urwin and an affidavit from Celeste Guth, which defendants relied on in the underlying federal litigation and therefore in support of this motion. Plaintiff also requests an opportunity to take a further deposition of defendant Hantho. Plaintiff maintains that he should be granted the opportunity to take these depositions and question them on defendants' decision not to transfer plaintiff to the Financial Institutions Group (FIG) coverage role, regarding plaintiff not receiving a bonus and alleged retaliation in the form of plaintiff's termination.

There can be no dispute that the parties engaged in exhaustive discovery in the prior federal litigation. Regarding whether plaintiff has had a reasonable opportunity to obtain this information prior to the instant motion, plaintiff asserts that he did know defendants would rely upon Urwin and Guth's testimony/statements in the federal litigation because defendants failed to identify them in initial disclosures. However, as defendants point out, plaintiff was fully aware of these nonparties and had sufficient knowledge of their level of involvement in connection with defendant's actions at issue in this litigation, so that he could have requested depositions of either if he had thought it was necessary. Thus, the court agrees with defendants that plaintiff had a reasonable opportunity to obtain the discovery he now seeks and made the strategic decision not to do so. With respect to Hantho, plaintiff seeks a third deposition of this defendant. In light of this fact, plaintiff has otherwise failed to establish that he did not have a sufficient opportunity to question Hantho about the relevant and material facts at issue in this motion. Thus, the cross-motion for limited discovery must be denied. The court now turns to the motion-in-chief.

The relevant facts are as follows. Plaintiff began working for defendant Deutsche Bank Securities Inc. (DB) in 2000. During this period, plaintiff was the co-head and later the head of the FIG within Equity Capital Markets. The remaining defendants, Jeffrey Bunzel and Mark Hantho, are plaintiff's former supervisors.

In April 2015, an anonymous complaint was made to DB regarding nonparty Jason Gurandiano, a coverage banker. As part of DB's investigation into that complaint, plaintiff was interviewed and provided information about misconduct he allegedly witnessed. As a result of the investigation, Gurandiano was terminated in July 2015. Plaintiff claims that he was then retaliated against by Bunzel, Hantho and nonparty John Eydenberg based upon his role in Gurandiano's termination. Plaintiff filed complaints with HR about his perceived retaliation. In turn, HR concluded that Bunzel and Hantho had not retaliated against plaintiff or otherwise violated DB policies. Ultimately, plaintiff was terminated from DB and thereafter commenced the prior federal action in 2018.

As outlined in Judge Caproni's Opinion, plaintiff asserted seven adverse employment actions in his federal complaint: (i) the artificial depression of his revenue; (ii) the failure to move Plaintiff to a new position; (iii) reassignment of his clients; (iv) denial of funding to attend conferences; (v) a negative performance review; (vi) no 2015 bonus; and (vii) termination from DB. In granting defendants' motion for summary judgment and dismissing plaintiff's federal and state law retaliation claims, Judge Caproni stated: "in short, while Abromavage established a prima facie case of retaliation for the seven adverse employment actions, Defendants proffered legitimate and non-retaliatory reasons for all seven. Abromavage did not demonstrate that Defendants' reasons were pretextual, weak, implausible, inconsistent, or contradictory, and he failed to show that retaliation was a but-for cause of the adverse actions." Judge Caproni's Opinion was affirmed by the Second Circuit (2022 WL 4360950 2022).

The doctrine of collateral estoppel precludes a party from relitigating an issue clearly raised in a prior action or proceeding and decided against that party or those in privity to that party. "'[C]ollateral estoppel, a flexible doctrine, should not be mechanically applied just because some of its formal prerequisites, like identity of parties, identity of issues, a final and valid prior judgment and a full and fair opportunity to litigate the prior determination, may be present'" (*Jeffreys v Griffin*, 1 NY3d 34, 41 [2003], *quoting People v Roselle*, 84 NY2d 350, 357 [1994]).

"[T]he burden rests upon the proponent of collateral estoppel to demonstrate the identicality and decisiveness of the issue, while the burden rests upon the opponent to establish the absence of a full and fair opportunity to litigate the issue in [the] prior action or proceeding" (*Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349 [1999] [internal quotation marks and citation omitted]).

Defendants have established that collateral estoppel should be applied here: the factual allegations raised in plaintiff's complaint are virtually identical to those asserted in the federal action, his specific claim that the defendants unlawfully retaliated against him is the same as what was raised in the federal litigation, the parties are the same and the court has already implicitly determined that plaintiff had a full and fair opportunity to litigate the prior determination. When a federal court declines to exercise jurisdiction over a plaintiff's state or local law claims, collateral estoppel may still bar those claims provided that the federal court decided issues identical to those raised by the plaintiff's state court complaint (*Milone v. City Univ. of N.Y.*, 153 AD 807 [2d Dept 2017] citing *Clifford v County of Rockland*, 140 AD3d at 1110 [2d Dept 2016]; *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 [1st Dept 2014]).

In her opinion, Judge Caproni granted summary judgment in favor of defendants because "the record conclusively revealed some other, nondiscriminatory reason[s] for the employer's decision[s]", specifically declining revenue and personnel changes. Further, plaintiff's complaint that he was cordoned off from certain of his clients was sufficiently rebutted by defendants' assertion that they properly repositioned some of those clients from financial institutions to technology companies so that they could be marked to investors and receive higher valuations. On this point, Judge Caproni noted that plaintiff's mere disagreement with defendants' proffer did not "undercut the legitimacy of the rationale for the decision, nor does it establish pretext." These factual determinations are fatal to plaintiff's retaliation claims under the NYCHRL in this action.

To establish a claim of retaliation under the broad standards of the New York City Human Rights Law, Plaintiff must demonstrate: "(1) participation in a protected activity known to the defendant; (2) an employment action disadvantaging the plaintiff; and (3) a causal connection between the protected activity and the adverse action" (*Feingold v. New York*, 366 F.3d 138, 156 [2nd Cir, 2004]). Once plaintiff has made this showing, the burden then shifts to defendants to state a legitimate non-discriminatory reason for the complained-of adverse employment actions. Under this rubric, Judge Caproni's prior determinations necessarily warrant dismissal of plaintiff's NYCHRL claims herein under the doctrine of collateral estoppel.

Accordingly, it is hereby

ORDERED that defendant's motion for summary judgment dismissing plaintiff's complaint is granted and plaintiff's cross-motion for discovery is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby expressly rejected and this constitutes the decision and order of the court.

Dated: 11/26/24
New York, New York

So Ordered:

Hon. Lynn R. Kotler, J.S.C.