STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: November 9, 2011)

DAWN L. HUNTLEY	:	
	:	
	:	
V.	:	**C.A. No. PC 2011-0558**
	:	
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, LINCOLN CHAFEE, GOVERNOR; RHODE ISLAND OFFICE OF THE ATTORNEY GENERAL, PETER KILMARTIN, ATTORNEY GENERAL; RHODE ISLAND OFFICE OF THE GENERAL TREASURER, GINA RAIMONDO, TREASURER; PATRICK LYNCH, IN HIS INDIVIDUAL CAPACITY; GERALD COYNE, IN HIS INDIVIDUAL CAPACITY; AND ALAN GOULART, IN HIS INDIVDUAL CAPACITY	:	

DECISION

GIBNEY, J. Before this Court is a Motion to Dismiss, pursuant to Super. R. Civ. P. 12(b)(6), and a Motion for Summary Judgment, pursuant to Super. R. Civ. P. 56, arising out of an employment discrimination claim brought by Plaintiff Dawn L. Huntley ("Plaintiff") against Defendants State of Rhode Island, Lincoln Chafee, Governor, Rhode Island Office of the Attorney General, Peter Kilmartin, Attorney General, Rhode Island Office of the General Treasurer, Gina Raimondo, Treasurer, and Patrick Lynch, Gerald Coyne, and Alan Goulart, in their individual capacities, (cumulatively, "Defendants").[1] Defendants seek a dismissal of

[1] Plaintiff's original Complaint named the State of Rhode Island and Providence Plantations, Rhode Island Office of the Attorney General, Rhode Island Office of the General Treasurer, and Attorney General Patrick Lynch, as parties to the underlying action. Plaintiff amended her Complaint on March 24, 2011, adding Lincoln Chafee, Governor, Peter Kilmartin, Attorney

Plaintiff's underlying Complaint or, in the alternative, judgment as a matter of law, based upon the doctrine of res judicata.

I

Facts & Travel

Plaintiff, a fifty-four year old African-American woman who resides in Cranston, Rhode Island, accepted a position as a prosecutor with the Rhode Island Office of the Attorney General in 1999. Plaintiff claims that while employed by the Office of the Attorney General, she was repeatedly given positive performance reviews and described as "honest and professional," "a reliable and trustworthy prosecutor," and a "rising star." Plaintiff claims that she received numerous commendations from judges and colleagues attesting to her exceptional professional abilities. However, Plaintiff alleges that she was subjected to a pattern and practice of unlawful and discriminatory treatment, that she was subjected to inappropriate and offensive remarks regarding her sex and race, and that she was denied promotions, raises, and training opportunities given to her colleagues.

Regarding her lack of promotions, pay raises, and training opportunities, Plaintiff alleges that she was given "absurd, contradictory, and transparently unlawful reasons for her treatment." One such example was being labeled by her supervisors as "antisocial." Plaintiff supports this contention by claiming that during a Christmas party in 2005, Defendant Goulart told her that she was antisocial because she refused to drink alcoholic beverages with several of her colleagues while she was supervising an intern during a time when court was in session. Plaintiff further states that after she refused to participate in the conduct of driving home while intoxicated, she was told by Defendant Goulart that her antisocial behavior was causing her career issues.

General, Gina Raimondo, Treasurer, and Gerald Coyne and Alan Goulart, in their individual capacities, and named Patrick Lynch in his individual capacity instead of as Attorney General.

Throughout her employment, Plaintiff claims that she was forced to endure various bigoted and offensive remarks by coworkers and supervisors. After discovering that she was being considered for a position as a Rhode Island District Court Judge, Plaintiff alleges that Defendant Goulart, her supervisor, stated that he believed the process for selecting judges was "fucked up and unfair" and that Plaintiff would probably get the position because "she is black." Plaintiff, who was raised in South Bronx, New York, also alleges that Defendant Goulart told her she lives "in the ghetto," and after Plaintiff introduced Defendant Goulart to an intern from an inner city school, Goulart asked whether the intern was going to teach Plaintiff how to "roll a joint." Plaintiff also alleges that Defendant Goulart told her that she was "just like [his] wife" because she always complained.

As a result of the alleged discrimination, Plaintiff, in the summer of 2006, inquired about the procedure for filing an internal grievance. In July 2006, after meeting with Defendant Coyne regarding the alleged discrimination, Plaintiff alleges that Defendant Coyne attempted to "intimidate" Plaintiff out of filing a grievance by warning her that such act would lead to an uncomfortable working environment at the Attorney General's Office. Plaintiff alleges that Defendant Coyne informed her that all past grievances were deemed unfounded and that people would become defensive if she accused them of discriminating. Defendant Coyne stated that the reason for Plaintiff's treatment was poor job performance, not discrimination.

After Plaintiff's meeting with Defendant Coyne, Plaintiff alleges that Defendant Goulart called her into his office and accused her of "attacking him" through the statements to Defendant Coyne and stated that he "did not like it." Thereafter, Plaintiff filed an internal grievance in August of 2006, which was deemed unfounded.

On or about March 24, 2008, Plaintiff was given a case scheduled for trial during what had previously been scheduled as her vacation. Plaintiff brought this matter to the attention of

Defendant Goulart. Plaintiff alleges that Defendant Goulart told her that she had no right to question him, threw his pen across the room, rushed toward Plaintiff, threateningly informed Plaintiff that she was "a bitch," and stated that this matter was "going nowhere just like the complaint [grievance]." Plaintiff claims that Defendant Goulart threatened her by stating that she was "all done," that he would "see to it," and that he was going to "get" her.

On July 7, 2008, after returning from a medical leave, Plaintiff was informed that she was being terminated and that she served at the pleasure of the Attorney General Patrick Lynch. Plaintiff filed a charge with the Rhode Island Commission for Human Rights on November 7, 2008 and received a Right to Sue from said agency on November 3, 2010, which provided that, if Plaintiff intended to sue, she must do so within ninety days from the date of the notice; otherwise, her right to sue would be lost. Prior to issuance of the Right to Sue letter, Plaintiff filed a Complaint in the United States District Court for the District of Rhode Island on April 30, 2010, naming as defendants Gerald Coyne, Alan Goulart, and the Rhode Island Attorney General's Office, among others. Four months later, Plaintiff filed an Amended Complaint against Attorney General Patrick Lynch, the Rhode Island Attorney General's Office, and the State of Rhode Island. The defendants filed a Motion to Dismiss this Amended Complaint, and it was granted with no objection by Plaintiff. Judgment was entered on October 4, 2010.

In the instant case, Plaintiff filed the underlying Complaint on January 31, 2011, alleging employment discrimination pursuant to the Fair Employment Practices Act, the Rhode Island Civil Rights Act, and the Rhode Island Whistleblowers' Protection Act. On March 24, 2011, Plaintiff filed an Amended Complaint to add Lincoln Chafee, Governor, Peter Kilmartin, Attorney General, Gina Raimondo, Treasurer, and Patrick Lynch, Gerald Coyne, and Alan Goulart, in their individual capacities, as parties to the action.

II

Standard of Review

12(b)(6), Motion to Dismiss

"The sole function of a motion to dismiss is to test the sufficiency of the complaint." Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). Current Rhode Island law simply requires that granting "a Rule 12(b)(6) motion to dismiss is appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Barrette, 966 A.2d at 1234. "But unless amendment could avail the plaintiff nothing, the order of dismissal should usually be with leave to amend." Robert B. Kent et al., Rhode Island Civil and Appellate Procedure, § 12:9 (West 2009). However, the Court may not look to matters outside the pleadings on a motion to dismiss, but if the Court does go outside the pleadings, it must automatically convert the motion into a motion for summary judgment with its distinct standard of review. See Coia v. Stephano, 511 A.2d 980 (R.I. 1986).

Thereafter, when a trial justice is ruling on a motion for summary judgment, the only question before him or her is whether there is a genuine issue as to any material fact which must be resolved. Rhode Island Hospital Trust National Bank v. Boiteau, 119 R.I. 64, 376 A.2d 323 (1977); O'Connor v. McKanna, 116 R.I. 627, 359 A.2d 350 (1976). If an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar matters, viewed in the light most favorable to the opposing party, reveals no such issue, then the suit is ripe for summary judgment. Rhode Island Hospital Trust National Bank, 119 R.I. at 66, 376 A.2d at 324; Harold W. Merrill Post. No. 16 American Legion v. Heirs-at-Law Next of Kin and Devisees of Smith, 116 R.I. 646, 360 A.2d 110 (1976).

Rule 56, Summary Judgment

In the face of summary judgment, the party opposing summary judgment cannot rest on mere allegations of pleadings alone but must submit specific, competent evidence. The party who opposes the motion "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586. Rather, Rule 56 "requires the non-moving party to go beyond the [unverified] pleadings" and present some type of evidentiary material in support of its position. Celotex, 477 U.S. at 324. Although inferences may be drawn from underlying facts contained in material before the trial court, neither vague allegations and conclusory statements, nor assertions of inferences not based on underlying facts will suffice. First Nat. Bank of Boston v. Slade, 379 Mass. 243, 246, 399 N.E.2d 1047, 1050 (Mass. 1979).

In the instant Motion, the non-moving party must set forth specific facts showing that there is a genuine issue of material fact for trial.[2] She "bears the burden of producing specific facts sufficient to deflect the swing of the summary judgment scythe." Mulvihill v. Top Flight Golf Co., 335 F.3d 15, 19 (1st Cir. 1991). Rule 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial; in such a situation, there can be no genuine issue as to

[2] An issue is "genuine" if the pertinent evidence is such that a rational fact finder could resolve the issue in favor of either party, and a fact is "material" if it has the capacity to sway the outcome of the litigation under the applicable law. Nat'l Amusements, Inc. v. Town of Dedham, 43 F.3d 731, 735 (1st Cir. 1995).

any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

III

Analysis

In support of their Motion to Dismiss and Motion for Summary Judgment, Defendants argue that Plaintiff's underlying claims are barred by the doctrine of res judicata. Specifically, they contend Plaintiff already sought relief from identical Defendants, and a final judgment in favor of Defendants was entered in the United States District Court based on the same set of operative facts. Defendants also contend that the claims against Defendant Goulart and Defendant Coyne should be dismissed because they are time barred.

A

Res Judicata

In order for res judicata to apply to bar a cause of action, there must be (1) identity of parties, (2) identity of issues, and (3) finality of judgment. DiSaia v. Capital Industries, Inc., 113 R.I. 292, 298, 320 A.2d 604, 607 (1974). The doctrine's effect is to bar relitigation of all issues that were tried or might have been tried in the original suit by any court of competent jurisdiction. Providence Teachers Union, Local 958 v. McGovern, 113 R.I. 169, 172, 319 A.2d 358, 361 (1974). Our Supreme Court has held that the Commission for Human Rights is a quasi-judicial agency of the state. Department of Corrections of State of R.I. v. Tucker, 657 A.2d 546, 549 (R.I. 1995). Relying on the Restatement (Second) Judgments, ch. 6, § 83 (1982), our Supreme Court has stated that "such an adjudicative determination will be conclusive as long as the administrative tribunal grants to the parties substantially the same rights that they would have

if the matter were presented to a court." Department of Corrections of State of R.I. v. Tucker, 657 A.2d 546, 549 (R.I. 1995).

1

Identity of Parties

Generally speaking, res judicata or claim preclusion relates to the effect of a final judgment between the parties to an action and those in privity with those parties. Lennon v. Dacomed Corp., 901 A.2d 582, 590 (R.I. 2006). Parties are in "privity" for res judicata purposes when there is a commonality of interest between the two entities and when they sufficiently represent each other's interests. A privity determination for res judicata purposes does not rise or fall on the distinction between direct and vicarious liability; privity is defined by a commonality of interests. Id. at 582.

Plaintiff's prior Amended Complaint, filed in the United States District Court on August 26, 2010, listed the State of Rhode Island, the Rhode Island Attorney General's Office, and Attorney General Patrick Lynch as defendants. Thus, no issue remains as to whether such defendants in the instant action were in privity with those from the prior action. Furthermore, the Plaintiff's original Complaint, filed April 30, 2010 in the prior action in the United States District Court, also listed current Co-Defendants Goulart and Coyne as defendants. However, the Amended Complaint (filed August 26, 2010) in the prior action removed such defendants. Although such parties were removed from the action, identity of parties still exists for res judicata purposes when parties in a present action have a commonality of interests with parties of a prior action. Lennon v. Dacomed Corp., 901 A.2d 582 (R.I. 2006). Here, Defendants Goulart and Coyne are employees of the State of Rhode Island, Co-Defendants in the instant claim, and are also involved in the same employment discrimination action arising out of Plaintiff's prior employment with the State of Rhode Island. Such parties have identical interests and are in

privity for the purposes of res judicata. Also, Defendants Lincoln Chafee, Governor, Peter Kilmartin, Attorney General, and Gina Raimondo, Treasurer, are employees of the State of Rhode Island. As such, they are members of the State government and/or members of the Department of the Attorney General, and they are in privity with an entity that unquestionably was a party, namely, Defendant State of Rhode Island. See Providence Teachers, 113 R.I. 169, 172 (1974). Thus, they have identical interests to the parties of the prior employment discrimination action and are in privity for the purposes of res judicata.

2

Identity of Issues

To determine whether there exists an identity of issues, Rhode Island courts use the "transactional rule governing the preclusive effect of the doctrine of res judicata. " Bossian v. Anderson, 991 A.2d 1025, 1027 (R.I. 2010) (omission in original) (quoting DiBattista v. State, 808 A.2d 1081, 1086 (R.I. 2002)) (citing Lennon v. Dacomend Corp., 901 A.2d 582, 592 (R.I. 2006); Ritter v. Mantissa Inv. Corp., 864 A.2d 601, 605 (R.I. 2005)). This rule provides that "all claims arising from the same transaction or series of transactions which could have properly been raised in a previous litigation are barred from a later action." DiBattista, 808 A.2d at 1086 (citing ElGabri, 681 A.2d at 276); see Restatement (Second) Judgments § 24 (1980) ("[T]he claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.").

To determine what facts constitute a transaction or series of transactions, a court will pragmatically give weight "to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations." Ritter, 864 A.2d at 605 (quoting ElGabri, 681 A.2d

at 276). In this sense, a transaction is a "common nucleus of operative facts," in which the relevant factors include whether the facts are related "in time, space, origin, or motivation, and whether taken together, they form a convenient unit for trial purposes." Restatement (Second) Judgments § 24 (1980).

The facts surrounding Plaintiff's instant claim for employment discrimination were the same as those in Plaintiff's prior Complaint filed on April 30, 2010. The facts from the prior action, which are based on allegations and facts that arose during Plaintiff's employment at the Department of the Attorney General and her eventual termination, are related in time, space, origin, and motivation to the facts of the instant action, as each set of facts revolves around the same alleged discrimination against Plaintiff while she was employed at the Rhode Island Office of the Attorney General. Such facts form a convenient unit for trial purposes and satisfy the identity of the issues element for res judicata purposes between Plaintiff's prior discrimination claim filed in the United States District Court for the District of Rhode Island and the current, underlying action.

3

Final Judgment on the Merits

Under the Rhode Island doctrine of res judicata, a final judgment on the merits precludes later litigation of the same claim by the same parties. Lennon, 901 A.2d at 592. A judgment on the merits precluding the relitigation of the same cause of action is one based on the legal rights and liabilities of the parties. Am. Jur. 2d. Judgments § 541 (2006). As such, a dismissal, with prejudice, constitutes a final judgment on the merits. Lennon, 901 A.2d at 592. However, to support a defense of res judicata, it must be clear that the court, by the previous dismissal, intended that the disposition was to be without a right to further proceedings by the plaintiff. Am. Jur. 2d. Judgments § 546 (2006). Also, a dismissal for reasons not stated, as exists in this

case, is not considered to be on the merits for purposes of the application of the doctrine of res judicata. Am. Jur. 2d. Judgments § 545; Costello v. U. S., 365 U.S. 265, 287 (U.S. 1961).

Defendants State of Rhode Island, Rhode Island Attorney General's Office, and Attorney General Patrick Lynch filed a Motion to Dismiss Plaintiff's prior Amended Complaint in the federal court case, filed on August 26, 2010. The Motion was granted, and Judgment was entered on October 4, 2010. Such Judgment did not state the grounds for dismissal, and such dismissal did not state whether it was with prejudice, as such would constitute a final judgment on the merits. Generally, "the party asserting res judicata or collateral estoppel must plead and prove that the prior judgment on which it is relying was final. Failure to prove a final judgment generally will defeat a plea of res judicata or collateral estoppel." Am. Jur. 2d. Judgments § 648 (2006). In the instant case, Defendants fail to prove that such prior judgment was final or that it was dismissed with prejudice.

Assuming, arguendo, that the prior judgment was dismissed on the grounds argued in the brief filed by the State of Rhode Island, Rhode Island Attorney General's Office, and Attorney General Patrick Lynch in federal court, such judgment did not go to the merits of the action and will not bar the instant action. "If the first suit was dismissed for defect of pleadings, or parties, or a misconception of the form of proceeding, or the want of jurisdiction, or was disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar to another suit." Costello v. U. S., 365 U.S. 265, 287 (U.S. 1961); see Swift v. McPherson, 232 U.S. 51, 56 (U.S. 1914); St. Romes v. Levee Steam Cotton Press Co., 127 U.S. 614, 619 (U.S. 1888).

In the federal brief, it was argued that (1) Plaintiff is not an employee under Title VII thus, she is not protected under the statute; (2) Plaintiff failed to adequately allege discrimination under Title VII; (3) Title VII does not apply to age discrimination; (4) the State of Rhode Island

and Patrick Lynch are not persons within the meaning of 42 U.S.C. § 1983 thus, the suit is barred; (5) Plaintiff failed to articulate a constitutional violation under § 1983; (6) defamation claims are barred by statute of limitations; (7) Plaintiff failed to articulate breach of contract claims; and (8) the State of Rhode has not waived sovereign immunity in breach of contract actions. Subsequently, Plaintiff did not object to the Motion to Dismiss. There were no arguments and no discovery, so such motion was granted. The dismissal did not go to the merits of the action. Thus, the judgment rendered is not a bar to the current suit.

B

Motion to Amend

Defendants assert that, despite the instructions in the Right to Sue letter obtained by Plaintiff on November 3, 2010, Plaintiff failed to bring any claims against Defendant Coyne or Defendant Goulart within the appropriate time period. On March 24, 2011, Plaintiff filed an Amended Complaint in order to add Lincoln Chafee, Governor, Peter Kilmartin, Attorney General, Gina Raimondo, Treasurer, and Patrick Lynch, Gerald Coyne, and Alan Goulart, in their individual capacities, as parties to the action. Defendants contend that Plaintiff's failure to add Defendants Coyne and Goulart prior to the expiration of the time period allows for dismissal of the counts permitted by the Right to Sue letter.

When a plaintiff amends a Complaint to add another party or change the defendant, the change or amendment relates back to the original date of the filing of the Complaint in order to fall within the period provided by Rule 4(1) for service of the summons and complaint. Rhode Island Super. R. Civ. P. Rule 15(a). In Rhode Island, in order for an amendment to relate back, the party sought to be added to the suit must (1) have received such notice of the institution of the action that the party would not be prejudiced in maintaining a defense on the merits, and (2) have known or should have known that, but for a mistake, the action would have been brought

against the Defendant to be added. Rhode Island Super. R. Civ. P. Rule 15(a). The Supreme Court of Rhode Island has added a requirement of due diligence by the plaintiff in ascertaining the identity of the party to be added. Robert B. Kent et al., Rhode Island Civil and Appellate Procedure, § 15.6.

The final decision of whether to allow the amendment rests with the discretion of the trial justice. Order of St. Benedict v. Gordon, 417 A.2d 881, 883 (R.I. 1980). In this case, Plaintiff's amendment, granted by this Court, to add Defendants Coyne and Goulart, relates back to the original date of the filing of the Complaint, January 31, 2011, which is within the ninety day period provided by the Right to Sue letter. Thus, Plaintiff's claims against Defendants Coyne and Goulart are not time barred.

C

Conclusion

With respect to the instant Motion to Dismiss, this Court finds that under the doctrine of res judicata, Plaintiff is not precluded from litigating the claims alleged in the underlying Amended Complaint against Defendants as such claims were not barred from the prior judgment. Plaintiff's Amended Complaint adequately states a claim upon which relief may be granted because it is not clear beyond a reasonable doubt that Plaintiff would not be entitled to relief from Defendants under any set of facts that could be proven in support of Plaintiff's claims. See Barrette v. Yakavonis, 966 A.2d at 1234. Accordingly, Defendants' Motion to Dismiss is denied.

With respect to the instant Motion for Summary Judgment, as material issues of fact remain as to Plaintiff's claims, Defendants fail to demonstrate that they are presently entitled to judgment as a matter of law on Plaintiff's Amended Complaint. Accordingly, Defendants'

Motion for Summary Judgment is also denied. Counsel shall submit the appropriate judgment for entry.