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Spencer Tatum & others¹ v. Commonwealth of Massachusetts & another²

Suffolk Superior Court Civil Action No. 2009-00576-A

Endorsement regarding "Defendants' Motion for Judgment on the Pleadings" (Docket No. 51):

The Plaintiffs are Hispanic and African-American police officers in the Commonwealth of Massachusetts who have taken the Commonwealth's promotional examinations for the position of police sergeant (hereinafter, "sergeant's promotional examinations") in 2005, 2006, 2007, 2008, 2010 and 2012. They allege that although they were qualified for the promotion, they have not received such a promotion. The Plaintiffs bring this action against the Commonwealth and Paul Dietl as Personnel Administrator for the Commonwealth's Human Resources Division ("HRD"), alleging that the sergeant's promotional examinations had a disparate impact on minority test takers and cannot be shown to be job-related under G. L. c. 151B, § 4.

This matter is before the Court on the Defendants' motion for judgment on the pleadings. As grounds for their argument, they contend that the Plaintiffs' discrimination claim is barred under the doctrine of issue preclusion by virtue of a prior decision in the United States District Court for the District of Massachusetts, Lopez v. Lawrence, No. 07-11693-GAO, 2014 U.S. Dist. LEXIS 124139 (D. Mass. Sept. 2014) (hereinafter, "Lopez"), aff'd, 823 F.3d 102 (1st Cir. 2016), that involved the same parties and issues. In that case, the plaintiffs included Hispanic and African-American police officers in the Commonwealth, some of whom are named in the instant action, who had taken the sergeant's promotional examinations between 2005 and 2008. The Lopez plaintiffs filed suit against the Commonwealth's municipalities, arguing that the sergeant's promotional examinations were discriminatory because they had a disparate impact on Hispanic and African-American police officers. Id. at * 1. After a lengthy bench trial, the District Court in Lopez ultimately determined that the only municipality with a statistically significant adverse impact was Boston, and even there, the plaintiffs were unable to succeed on their claim where they could not offer an equally valid, less discriminatory alternative to Boston's 2005 or 2008 sergeant's promotional examinations under Title VII of the Civil Rights Act of 1964 or G. L. c. 151B, § 4. Id. at *47.

The doctrine of issue preclusion provides that "[a] party is precluded from relitigating an issue where (1) there was a final judgment on the merits in the prior adjudication; (2) the party against whom preclusion is asserted was a party (or in privity with a party) to the prior adjudication; and (3) the issue in the prior adjudication was identical to the issue in the current adjudication, was essential to the earlier judgment, and was actually litigated in the prior action." Degiacomo v. Quincy, 476 Mass. 38, 42 (2016) (internal quotations and citations omitted).

¹ Gwendolyn Brown, Louis Rosario Jr. and Francisco Baez, individually and on behalf of a class of individuals similarly situated.

² Paul Dietl, in his capacity as Personnel Administrator for the Commonwealth of Massachusetts, Human Resources Division.

The parties do not dispute that the first prong is met where Lopez included a final judgment on the merits. With respect to the second prong, this Court is satisfied that the plaintiffs are either identical or in privity with each other. Tatum, Brown, Rosario Jr. and Lopez are named plaintiffs in both actions. Although the instant action includes Baez and a certified class of similarly situated individuals who are not named in Lopez, the parties were in privity with each other where the Lopez plaintiffs sufficiently represented the instant Plaintiffs' interests, and binding the instant Plaintiffs to the Lopez decision does not violate due process or common-law principles of fairness. See Degiacomo, 476 Mass. at 43-44.

Turning next to the third prong, both actions challenge the sergeant's promotion examinations that were administered by HRD on the basis that they had a disparate impact on African-American and Hispanic applicants. The Plaintiffs represented to this Court in a joint motion to stay proceedings in this case pending resolution of Lopez that "[t]he sergeants promotional test at issue in the state action is the same test that is at issue in [Lopez]" and that "[w]hether the test had a disparate impact on black and Hispanic test takers is an operative issue in both the state and federal actions." Indeed, that motion described the actions as having "identical issues of fact and law." Upon review of the instant pleadings and the Lopez decision, this Court agrees that the issues in this case are the same as those in Lopez, and further, the issues in Lopez were essential to the court's decision and were actually litigated. See Degiacomo, 476 Mass. at 42. Accordingly, the doctrine of issue preclusion prevents the Plaintiffs from raising their disparate impact claim in the instant case against the Defendants.

It is therefore **ORDERED** that the Defendants' motion be **ALLOWED**, and that judgment shall enter in favor of the Defendants on both counts of the Plaintiffs' Third Amended Complaint.

Robert N. Tochka, J.

Date: January 7, 2019.