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United States District Court,
S.D. New York.

LATINO OFFICERS ASSOCIATION, INC., et al.,
Plaintiffs,
v.
THE CITY OF NEW YORK, et al. Defendants.

No. 99 Civ. 9568(LAK). | July 14, 2003.

Following jury verdict in favor of city in action brought by police officer alleging unevenhanded law enforcement against various ethnic segments, in violation of First and Fourteenth Amendment rights, police officer initiated action against city, arising from events subsequent to filing of original complaint. City moved for summary judgment. The District Court, Kaplan, J., held that: (1) *res judicata* did not bar claims relating to events after filing of complaint in prior action, and (2) doctrine of issue preclusion did not apply to officer's claims, absent evidence that facts upon which claims were based had been decided by jury.

Motion denied.

Opinion

ORDER

KAPLAN, J.

*1 Defendants move for summary judgment dismissing the complaint of plaintiff Hector Ariza on the grounds of collateral estoppel and *res judicata*. As the general nature of this action is abundantly clear from prior reported decisions,¹ familiarity with which is assumed, the Court turns directly to the issues regarding these plaintiffs and the prior actions.

¹ E.g., *Latino Officers Ass'n, Inc. v. City of New York*, No. 99 Civ. 9568(LAK), 253 F.Supp.2d 771 (S.D.N.Y.2003); *id.*, 209 F.R.D. 79 (S.D.N.Y.2002).

On or about November 20, 1993, Ariza brought an action in the Eastern District of New York alleging violations of his First and Fourteenth Amendment rights based on the alleged "unevenhanded law enforcement against various ethnic segments of the community served by the [90th]

precinct and favoritism toward [another]." The case was tried to a jury commencing on March 19, 1997 and resulted in a verdict and judgment in favor of the defendants. Although Ariza is said to have offered evidence at the trial in support of his contentions that he had been the victim of retaliation and subjected to a hostile work environment, there is no suggestion that the complaint in that case was supplemented to include allegations with respect to events following its filing. Subsequent to the filing of the motion, the parties stipulated that Ariza will not assert any individual claims concerning incidents that occurred prior to November 20, 1993; that his claims concerning (i) incidents that occurred after the jury verdict, (ii) charges and specifications dated June 24, 1997 and July 1, 1997, and (iii) that led to his termination are not barred; and that the sole remaining issue is whether and to what extent his claims for incidents that occurred after November 20, 1993 and before the March 1997 verdict and that do not relate specifically to the aforementioned charges and specifications are barred. [Docket item 136]

^[1] Defendants, in order to prevail on their *res judicata* contention, must establish that (1) the prior action upon which they rely was adjudicated on the merits, (2) it involved the same parties or their privies, and (3) the claims asserted in the present case were or could have been raised in the prior action. E.g., *Monahan v. New York City Dep't of Corr.*, 214 F.3d 275, 284–85 (2d Cir.), *cert. denied*, 531 U.S. 1035, 121 S.Ct. 623, 148 L.Ed.2d 533 (2000). "Whether or not the first judgment will have preclusive effect depends in part on whether the same transaction or connected series of transactions is at issue, whether the same evidence is needed to support both claims, and whether the facts essential to the second were present in the first." *Id.* at 285 (quoting *NLRB v. United Technologies Corp.*, 706 F.2d 1254, 1260 (2d Cir.1983) (internal quotation marks omitted)). See also RESTATEMENT (SECOND) OF JUDGMENTS § 24(2) (1982). Controlling for present purposes, however, the critical date for *res judicata* purposes is the date of the complaint in the prior action. E.g., *Curtis v. Citibank, N.A.*, 226 F.3d 133, 139 (2d Cir.2000). Accordingly, *res judicata* does not bar claims relating to events that occurred after November 20, 1993.

*2 ^[2] The standards governing collateral estoppel are equally clear:

"Litigants who have had a full and fair opportunity to litigate ordinarily will not be heard to relitigate an issue actually, finally and necessarily decided against them in a prior action. In order for this doctrine of issue preclusion to apply, four requirements must be satisfied:

" '(1) the issues in both proceedings must be identical (2) the issue in the prior proceeding must

have been actually litigated and actually decided, (3) there must have been a full and fair opportunity for litigation in the prior proceeding, and (4) the issue previously litigated must have been necessary to support a final judgment on the merits.”²

² *ICD Holdings S.A. v. Frankel*, 976 F.Supp. 234, 239 (S.D.N.Y.1997) (quoting *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 44 (2d Cir.1986), *cert. denied*, 480 U.S. 948, 107 S.Ct. 1608, 94 L.Ed.2d 794 (1987)).

While it may well be that Ariza testified in the Eastern District trial to facts upon which he relies here as well, defendants have failed to demonstrate which, if any, of

those facts were actually and necessarily decided by the jury. The City has submitted only a copy of the final judgment indicating that Ariza lost. In consequence, defendants have failed to demonstrate that issue preclusion has any bearing on the remaining issue.

For the foregoing reasons, defendants' motion for summary judgment dismissing the claim of plaintiff Hector Ariza [docket item 88], as modified by stipulation, is denied in all respects.

SO ORDERED.