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Res Judicata Diluted: Plaintiff May Pursue Title VII Remedies In Federal Court That Were Unavailable In Successful State Agency Proceeding

The United States Court of Appeals for the Second Circuit recently held that *res judicata* did not preclude a former employee from seeking damages under Title VII that were unavailable in her prior successful action before a state agency under Connecticut's anti-discrimination law. *Nestor v. Pratt & Whitney*, 2006 WL 2827236 (2d Cir. Oct. 4, 2006). The plaintiff, Gale Nestor ("Nestor"), originally filed a charge with the Connecticut Commission on Human Rights and Opportunities ("CCHRO") alleging that her former employer, Pratt & Whitney ("Pratt") terminated her because of her gender, in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, and the Connecticut Fair Employment Practices Act, Conn. Gen. Stat. § 46a-60 *et seq.* Nestor chose to pursue her claims before the CCHRO rather than in court, even though her relief would be more limited and not include emotional distress or punitive damages or attorneys' fees, because proceeding before the CCHRO had the advantages of relatively low-cost CCHRO-provided counsel, flexible evidentiary rules, no required discovery and speedier proceedings. *Nestor*, 2006 WL 2827236, at *1.

The CCHRO found that Pratt terminated Nestor because of her gender and awarded her back pay. Pratt unsuccessfully appealed the CCHRO's decision in the Connecticut courts. The EEOC subsequently issued Nestor a right to sue letter and she sued Pratt

in the District of Connecticut, solely seeking the Title VII remedies that were unavailable to her in the CCHRO proceeding: compensatory damages besides the back pay already awarded, punitive damages and attorneys' fees. The District of Connecticut granted summary judgment to Pratt, holding that *res judicata* precluded the suit. *Id.* at *1-2. (In this context, *res judicata* means that a prior judgment forecloses subsequent litigation of a matter that could or should have been, but was not, litigated in the original action. *Id.* at *3 n.5.)

The Second Circuit vacated summary judgment, rejecting Pratt's arguments that (1) the district court lacked subject matter jurisdiction to hear what Pratt viewed as Nestor's "damages-only" action and (2) *res judicata* barred the suit. *Id.* at 2. The Court quickly rebuffed Pratt's jurisdiction argument. Pratt relied on *North Carolina Dep't of Transp. v. Crest Street Cmty. Council, Inc.*, 479 U.S. 6 (1986), which deprives the federal courts of subject matter jurisdiction to hear Title VI plaintiffs' "attorneys' fees-only" claims after they have prevailed in administrative proceedings. The Second Circuit held that regardless of whether *Crest* applies to Title VII (which it did not decide), Nestor's federal complaint also sought compensatory and punitive damages, which required litigation of substantive issues not decided below (*e.g.*, whether Nestor suffered emotional distress). *Nestor*, 2006 WL 2827236, at *3.

The Second Circuit analyzed and rejected Pratt's *res judicata* argument under both federal and Connecticut law, without deciding which of the two applied. *See id.* at *3-6. Under federal precedent, the Court found that *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54 (1980), and *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461 (1982), may be read together to hold that a state court's decision on the merits of a discrimination claim is entitled to full faith and credit (*i.e.*, that it would not be subject to re-litigation in federal court), but that Title VII permits a claimant to seek "supplemental" relief in federal court to which she was not entitled in state court. *Nestor*, 2006 WL

2827236, at *4. Under that logic, the District of Connecticut could entertain Nestor's federal court action, which sought nothing more than the "supplemental" Title VII relief not available to her in the state proceedings, and still give full faith and credit to the determination of the Connecticut agency and courts. *Id.* at *5.

The Court also considered and rejected three other arguments Pratt made under federal law: (1) that the district court was bound by comity principles (*i.e.*, the duty of one jurisdiction's courts to recognize and not contradict the decisions of another) to dismiss Nestor's claim; (2) that Nestor's federal action improperly duplicated the state proceedings; and (3) that allowing the federal action to proceed would simply be unfair because Pratt would be forced to litigate claims for remedies in federal court based upon a liability determination that was made under state agency procedures that did not afford even the most basic discovery. *Id.* at *5. The Court quickly rejected the first two arguments, but was somewhat compelled by the third. *Id.* However, the Court still rejected Pratt's fairness argument. It concluded that the Supreme Court sanctioned an analogous detriment to the employer in *Carey*, and the only arguable distinction between *Carey* and the present case — that the plaintiff in *Carey* instituted the federal action before the state judgment was final, but Nestor waited until after final state judgment — was unavailing. Thus, the Second Circuit concluded that federal *res judicata* law did not preclude Nestor's district court complaint. *Id.*

The result was the same under Connecticut *res judicata* law. Under Connecticut law, a former judgment on the merits of a claim bars a subsequent action between the same parties on that claim, or any other claim based on the same facts that "might have been made" in the first action. *Id.* (citations omitted). However, if a party was unable to seek certain remedies in the original action because of the rules of the forum hearing that case, the subsequent action seeking those

remedies is not precluded. *Id.* at *5-6 (citing *Connecticut Water Co. v. Beausoleil*, 526 A.2d 1329 (Conn. 1987)). The Second Circuit held that Nestor's federal claims seeking the "supplemental" Title VII remedies that she was unable to seek before the CCHRO qualified for that exception. *See id.* at *6. Moreover, *res judicata* rules should sometimes yield to social policies such as, in Nestor's case, Title VII's policy of affording plaintiffs the opportunity to seek supplemental relief that may not be available in state proceedings. To hold otherwise, the Court reasoned, would deter plaintiffs from choosing the faster and less expensive CCHRO proceedings. *Id.* Accordingly, the Second Circuit concluded, Nestor's Title VII remedy claims should be allowed to proceed in federal court despite the CCHRO's earlier decision that Pratt was liable under Title VII. *Id.* at *7.

IMPLICATIONS: As the court in *Nestor* noted, the federal courts are split on the issue of whether a Title VII plaintiff who prevailed on her discrimination claims before a state agency and in subsequent state court appeals may subsequently seek relief in federal court that was unavailable in the state proceedings. The Seventh and Eighth Circuits have held that such actions may proceed, while the Fourth Circuit has held that they are barred. This split, which the *Nestor* court deepened, will have to be resolved — if at all — by the Supreme Court. In the meantime, employers in the Second Circuit must not assume that the resolution of a former employee's Title VII claims in state agency proceedings and state court appeals means the case is gone, never to return. If the rules of the state agency barred the employee from seeking any of the relief to which the employee may be entitled under Title VII, that employee remains free to sue the employer for those supplemental Title VII remedies. Employers in the Second Circuit who are faced with defending such a state agency action should consult with counsel to factor the ruling in *Nestor* into their defense strategy.

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