



Caution

As of: November 3, 2016 11:57 AM EDT

Salerno v. Lecia, Inc.

United States District Court for the Western District of New York

March 23, 1999, Decided ; March 23, 1999, Filed

97-CV-973S(H)

Reporter

1999 U.S. Dist. LEXIS 7169; 1999 WL 299306

WALTER A. SALERNO, Plaintiff, v. LECIA, INC., Defendant.

Disposition: [*1] Plaintiff's motion to compel discovery, GRANTED in part and DENIED in part. Plaintiff's motion for an extension of the discovery deadline GRANTED in part and DENIED in part.

Core Terms

documents, discovery, severance, collateral estoppel, employees, personnel, deadline, severance package, motion to compel, state court, tab

Case Summary

Procedural Posture

In plaintiff employee's discrimination suit against defendant employer, plaintiff moved to compel production of personnel documents of defendant's European employees and sought an extension to file the motions.

Overview

Plaintiff employee filed an employment discrimination claim against defendant employer corporation and moved to compel production of severance packages of defendant's employees who were European nationals. However, defendant argued that collateral estoppel applied to bar the motion. Reviewing the record, the court agreed, holding that prior litigation on the issue between the parties had been decided in favor of defendant. Because the issue was necessarily decided in the prior litigation and plaintiff had a full and fair

opportunity to present his argument in that proceeding, the court reasoned that relitigating the issue would serve no purpose. Nonetheless, the court noted that, even if collateral estoppel did not apply, the court would deny the motion because European law prevented the release of the personnel information that plaintiff sought. The court also noted that the request was overly burdensome and sought irrelevant information beyond defendant's control. Thus, the court denied the motion.

Outcome

In plaintiff employee's employment discrimination claim against defendant employer, plaintiff's motion for an extension to file his motion to compel was granted, but the motion to compel itself was denied because collateral estoppel barred the motion.

LexisNexis® Headnotes

Civil Procedure > Judgments > Preclusion of Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

Civil Procedure > ... > Preclusion of Judgments > Estoppel > Collateral Estoppel

HNI Under New York's application of the doctrine of collateral estoppel, or "issue preclusion," a question material and relevant to the resolution of a legal issue involved in one action may not be raised again in another action once the party against whom the estoppel is sought has been afforded a

full and fair opportunity to contest the decision. The doctrine applies only when (1) the issue in question was actually and necessarily decided in a prior proceeding, and (2) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding. The party asserting issue preclusion bears the burden of showing that the identical issue was previously decided, while the party against whom the doctrine is asserted bears the burden of showing the absence of a full and fair opportunity to litigate the issue in the prior proceeding.

Civil Procedure > Preliminary
 Considerations > Federal & State
 Interrelationships > Erie Doctrine

Civil Procedure > Judgments > Preclusion of
 Judgments > General Overview

Civil Procedure > ... > Preclusion of Judgments > Full
 Faith & Credit > General Overview

Civil Procedure > ... > Preclusion of Judgments > Full
 Faith & Credit > Full Faith & Credit Statutes

HN2 Federal courts give prior state court decisions the same preclusive effect that the courts of that state would give to them.

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For LEICA INC., defendant: Robert A. Doren, Bond, Schoeneck & King, LLP, Flaherty Cohen Office, Buffalo, NY.

Judges: CAROL E. HECKMAN, United States Magistrate Judge.

Opinion by: CAROL E. HECKMAN

Opinion

DECISION AND ORDER

This case has been referred to the undersigned for pretrial matters, in accordance with 28 U.S.C. § 636(B)(1)(A). Plaintiff has moved to compel discovery, and for an extension of the discovery deadline. Argument of plaintiff's motions took place before the undersigned on February 16, 1999. For the following reasons, and to the extent discussed herein, plaintiff's motion to extend the deadline is granted, and plaintiff's motion to compel is denied.

BACKGROUND

In his amended complaint filed on May 15, 1998, plaintiff claims that on December 2, 1996, defendant discharged him from his position as vice president of Leica, Inc. because of his [*2] age (52) and national origin (American), in violation of the Age Discrimination in Employment Act ("ADEA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), and the New York State Human Rights Law. On September 23, 1998, this court issued an amended scheduling order establishing January 15, 1999 as the discovery cutoff, and December 15, 1998 as the deadline for filing motions to compel discovery (Item 26).

On January 15, 1999, plaintiff moved to extend the deadline for discovery as to certain matters (Item 29), and to extend the time for filing discovery motions (Item 30-1). Plaintiff also moved to compel defendant to pay the expenses for taking the deposition of Sue McGrath, a former employee of defendant now residing in California (Item 30-2), and to compel the production of personnel and severance documents relating to European national employees of defendant (Item 30-3). The issues pertaining to the deposition of Ms. McGrath were resolved at oral argument on February 16, 1999, in defendant's favor. Accordingly, plaintiff's motion to compel defendant to pay the expenses for Ms. McGrath's deposition is denied (**Item 30-2**).

As to plaintiff's motion to compel the production [*3] of European nationals' personnel and severance documents, defendant makes the following arguments:

1. The motion is untimely;
2. Plaintiff is precluded by the doctrine of collateral estoppel from seeking production of documents from defendant's European national employees, since the same issues raised in this motion were decided against plaintiff in a related state court action;
3. Even if collateral estoppel does not apply, European data protection and privacy laws preclude production of the documents sought; and,
4. The request is overly burdensome, and seeks irrelevant information beyond defendant's corporate control.

Each of these arguments is discussed in turn below.

DISCUSSION

1. Timeliness.

Plaintiff claims that he could not file his motion to compel prior to January 15, 1999 because he did not receive defendant's responses to his document requests until after the December 15, 1998 motion deadline. The record suggests otherwise. For example, on September 11, 1998, defendant responded to plaintiff's first set of document requests and set forth in detail its grounds for objecting to the production of European nationals' severance [*4] documents (Item 32, Ex. A). In addition, it is clear that plaintiff was aware of defendant's objections at a much earlier date, as indicated by New York State Supreme Court Justice Thomas P. Flaherty's January 5, 1998 order denying plaintiff's request for production of those same documents in the related state court action (*id.*, Ex. D).

However, as discussed below, the court has considered and ruled on the substantive legal arguments raised by the parties on this motion. Accordingly, I decline to decide the motion on the procedural ground of timeliness.

2. Collateral Estoppel.

Defendant argues that this court should give collateral estoppel effect to Justice Flaherty's order denying plaintiff's request for production of the European severance documents in the related state court action. ¹ In that case, brought in New York State Supreme Court, Erie County, in March, 1997, plaintiff sued Leica, Inc. for "breach of contract, failure to provide severance and benefits, and failure to continue employment," based on the December 2, 1996 discharge (Item 10, Answer to Defendant's Interrogatory # 4. Plaintiff sought the identical documents in discovery. Justice Flaherty at [*5] first granted plaintiff's request, but reconsidered and reversed his decision upon receiving information from defense counsel that the employment and severance documents pertaining to Leica's European national employees could not be produced because they were subject to protection under European National Data Protection Laws (see Item 38, Exs. B, C (side tabs)).

HNI Under New York's ² application of the doctrine of collateral estoppel, or "issue preclusion," a question material and relevant to the resolution of a legal issue involved in one action may not be raised again in another action once the party against whom the estoppel is sought has been afforded a full and fair opportunity to contest the decision. *FMA/Construction* [*6] [Management Corp. v. Yaabetz](#), 158 A.D.2d 664, 665, 552 N.Y.S.2d 41, 42 (2nd Dep't 1990), *appeal dismissed*, 77 N.Y.2d 830, 566 N.Y.S.2d 583, 567 N.E.2d 977 (1991); *see also Allied Chemical v. Niagara Mohawk Power Corp.*, 72 N.Y.2d 271,

¹ Defendant has not addressed on this motion jurisdictional questions raised by the existence of concurrent state and federal lawsuits based on the same transactions or occurrences. In the absence of dispositive motion referral authority, this court will not address those questions *sua sponte*.

² *HN2* Since federal courts give prior state court decisions the same preclusive effect that the courts of that state would give to them, this court must look to New York law to determine the effect of Justice Flaherty's discovery ruling in plaintiff's state court proceeding. 28 U.S.C. § 1738; *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 466, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982); *Colon v. Coughlin*, 58 F.3d 865, 869 n. 2 (2d Cir. 1995).

276, 532 N.Y.S.2d 230, 528 N.E.2d 153 (1988). The doctrine applies only when (1) the issue in question was actually and necessarily decided in a prior proceeding, and (2) the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding. Colon v. Coughlin, 58 F.3d 865, 869 (2d Cir. 1995); see also Hill v. Coca Cola Bottling Co., 786 F.2d 550, 552-53 (2d Cir. 1986); Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449, 455, 492 N.Y.S.2d 584, 482 N.E.2d 63 (1985). Thus, collateral estoppel will apply to bar relitigation of an issue "only if it is quite clear that these requirements have been satisfied, lest a party be precluded from obtaining at least one full hearing on his or her claim." Colon, supra (quoting Gramatan Home Investors Corp. v. Lopez, 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 386 N.E.2d 1328 (1979)). The party asserting issue preclusion bears the burden of showing [*7] that the identical issue was previously decided, while the party against whom the doctrine is asserted bears the burden of showing the absence of a full and fair opportunity to litigate the issue in the prior proceeding. Kaufman, supra, 65 N.Y.2d at 456.

Defendant has met its burden here. The identical legal issue presented by this motion as to the discoverability of the severance packages of Leica's European national employees was fully, fairly and necessarily decided by Justice Flaherty. While the January 5, 1998 order does not contain a discussion of the legal [*8] principles relied upon in reaching the decision, the affidavits submitted to the state court advised Justice Flaherty of the discovery problems posed by the restrictive European National Data Protection Laws (see Item 38, Ex. B (side tab)). Plaintiff's counsel vigorously sought disclosure of the documents (*id.*), and argued against reconsideration of the state court's initial order (*id.*, Ex. 5 (bottom tab)). It would serve no purpose to allow plaintiff to relitigate this issue in this court, other than to review the state court's ruling which, of course, this court cannot do. See, e.g., Gentner v. Shulman, 55 F.3d 87, (2d Cir. 1995) (discussing application of "Rooker-Feldman doctrine," derived from Rooker v. Fidelity Trust

Co., 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983), under which federal district courts lack jurisdiction to review final or interlocutory state court decisions).

Accordingly, I find that plaintiff is precluded from relitigating the issue of discoverability of "documents comprising or concerning separation or severance packages [*9] prepared for European national executive employees of Leica" (Item 32, Ex. A, Request No. 4).

3. European Data Protection and Privacy Laws.

As argued by defendant in the state court action, the production of severance package information and personnel files of Leica's European nationals is restricted both by Directive 95/46/EC, adopted by the European Union on July 24, 1995 (Item 37, Ex. A), and by the German Act on Data Protection (see Item 38, Doren Aff. in Support of Motion to Reargue). Under Directive 95/46/EC, the type of information sought by plaintiff is considered "personal data" which cannot be disclosed to third parties located within the United States absent consent of the employee or assurances that the information will be subject to the same level of confidentiality protection (*id.*, P 15). According to an advisory opinion rendered by defendant's European counsel Torsten Bartsch, the severance and personnel documents cannot be disclosed for three reasons: (1) safeguards for the maintenance of personal data within the United States are viewed by courts in European Union countries as insufficient when compared to the level of protection provided by European [*10] law, (2) the non-party European Leica entities have no legal obligation to comply with defendant's request to produce severance and personnel documents, and (3) there are serious legal ramifications for those entities that disclose personal information in contravention of European Union and German data protection laws (*id.*, P 16 and Ex. C (bottom tab)).

In the absence of any persuasive argument or

authority to the contrary, I find this to be a reasonable interpretation of the European data protection and privacy laws at issue. Accordingly, even if collateral estoppel does not bar this court's reconsideration of the matters decided by Judge Flaherty in the state court case, the document production sought by plaintiff is precluded by Directive 95/46/EC and by the German Act on Data Protection.

4. The Document Request Is Overly Burdensome and Seeks Irrelevant Information Beyond Defendant's Corporate Control.

Finally, as explained in the affidavit of Susan McGrath, defendant's Corporate Human Resources Director, submitted in support of the motion to reargue in state court (Item 38, Ex. B (side tab)), there are over 50 separate non-party Leica divisions in 22 countries [*11] other than the United States, all of which maintain separate document repositories. Beyond the difficulties presented by foreign document protection laws, each of these entities would face the expenses of procuring advisory opinions by legal counsel as to the effect of such laws, searching document repositories and compiling responsive documents, and translation costs.

In addition, as explained by Ms. McGrath, information about European executives' severance packages would have little relevance to plaintiff's claim that he was treated differently from other Leica employees, since the types of benefits offered

to high-level executives varies significantly depending on services rendered, years with the company, and other individual qualifications, as well as differences in severance requirements from one division or country to another (McGrath Aff., PP 13-15).

Accordingly, I find that plaintiff's request for production of documents pertaining to European nationals' personnel files and severance packages is overly burdensome, and seeks irrelevant information beyond defendant's corporate control.

CONCLUSION

For the reasons set forth above, and as discussed herein and at oral [*12] argument on February 16, 1999, plaintiff's motion (**Item 30-1**) is GRANTED to the extent that it seeks to extend the time for filing motions to compel until January 15, 1999, and DENIED in all other respects (**Item 30-2, 30-3**). Plaintiff's motion for an extension of the discovery deadline (**Item 29**) is GRANTED to the extent that it seeks an extension for the purpose of deposing Susan McGrath, and DENIED in all other respects.

SO ORDERED.

DATED: Buffalo, New York

March 23, 1999

CAROL E. HECKMAN

United States Magistrate Judge