



STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
LINDA D. SLOAN ,	)		
	)		
Complainant,	)		
	)		
and	)	CHARGE NO:	2002SF0093
	)	EEOC NO:	21BA12002
	)	ALS NO:	S11895
	)		
MIMMO'S FAMILY	)		
RESTAURANT and,	)		
MIKE INTRAIVAIA	)		
	)		
Respondents.	)		

RECOMMENDED ORDER AND DISMISSAL

This matter comes to me on Respondent's Motion to Dismiss. Complainant has filed a response to the motion and Respondent has filed a reply. Thus, the motion is ripe for a ruling.

**Contentions of the Parties**

Respondent submits that this case should be dismissed because the federal bankruptcy court ruled after a dischargeability hearing that Complainant was terminated from Mimmo's Family Restaurant due to poor work performance and not because she refused to have sex with Respondent Mike Intravaia. Thus, Respondent argues that the bankruptcy court's decision bars Complainant from proceeding before the Commission under the doctrine of *res judicata*. Complainant disagrees and submits that the doctrine of *res judicata* does not apply here because the bankruptcy proceeding was limited to the issue of dischargeability under the bankruptcy code rather than discrimination under the Human Rights Act. However, Complainant agrees that some portions of the complaint may be barred by the legal doctrine of collateral estoppel, but argues the entire complaint should not be dismissed in Respondent's favor.

### **Findings of Fact**

The following facts were derived from the record in this matter and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. On September 17, 2001, Complainant Linda Sloan filed a charge of discrimination with the Illinois Department of Human Rights against Respondents Mimmo's Family Restaurant and Mike Intravaia.
2. On October 2, 2002, the Department filed on Complainant's behalf a three-count Complaint of Civil Rights Violation alleging that Respondents sexually harassed Complainant and terminated her in retaliation for her opposition to the sexual harassment.
3. Respondents filed a timely answer to the complaint on October 21, 2002.
4. On January 21, 2003, Michele Intravaia d/b/a Mimmo's Family Restaurant filed a Chapter 7 bankruptcy proceeding in the U.S. Bankruptcy Court for the Southern District of Illinois seeking relief from his business debts.
5. On April 22, 2003, Complainant filed a Complaint Under Section 523(a)(6) in the U.S. Bankruptcy Court for the Southern District of Illinois seeking a judgment against Respondents, along with attorney's fees, and further asking the court to determine the dischargeability of the debt incurred in her Human Rights Commission complaint.
6. On August 25, 2003, the court issued a Judgment Order that concluded Complainant's Human Rights claim was dischargeable because Complainant failed to prove by a preponderance of the evidence that she was terminated in retaliation for her opposition to sexual harassment.
7. The bankruptcy court also found that Complainant and Respondent Intravaia had a consensual sexual relationship that Complainant ended before Respondents fired her.

8. The court further concluded there was “substantial credible evidence that plaintiff was fired because of her poor work performance rather than because [Complainant] terminated the parties’ sexual relationship.” (Respondent’s Ex. B)

9. The U.S. Bankruptcy court discharged as debt the Human Rights Commission complaint and this motion to dismiss followed.

### **Determination**

This case should be dismissed under the legal doctrine of *res judicata* because the U.S. Bankruptcy Court for the Southern District of Illinois issued a final decision on the merits of this case after a hearing regarding the dischargeability of the instant complaint.

### **Conclusions of Law**

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.
2. Complainant is an "employee" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(A)(1)(a).**
3. Respondent is an "employer" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(B)(1)(a).**
4. The doctrine of *res judicata* bars relitigation of the issues raised in the instant Complaint of Civil Rights Violation.

### **Discussion**

For purposes of this motion, the issue is whether the findings of the federal bankruptcy court in an adversary proceeding to determine the dischargeability of debt operate as a bar under the doctrine of *res judicata* in a proceeding before the Commission. In order to apply the doctrine of *res judicata* to this case, three elements must be satisfied: 1) there must be a common identity of the parties or their privies; 2) there must be a common identity of the cause of action; and, 3) there must be a final

judgment on the merits rendered by a court of competent jurisdiction. **Schilhavy and Board of Governors of State Colleges and Universities**, \_\_\_ Ill. HRC. Rep \_\_\_, (1992SF0474, August 22, 2002). Here, Complainant's resistance to the application of *res judicata* to her claim lies only in the notion that the first and second elements are not satisfied.

Complainant argues that the threshold element of identity of parties is not satisfied with respect to Respondent Mimmo's Family Restaurant because the restaurant was not specifically named in the bankruptcy action. Thus, Complainant argues that *res judicata* cannot apply to Mimmo's Family Restaurant. Complainant concedes that the bankruptcy court's Judgment Order lists Mimmo's Family Restaurant in the caption, but argues that it is listed erroneously and that its interests cannot be discharged because Respondent Intravia's wife holds a business interest in the restaurant. Respondent conversely argues that Mimmo's Family Restaurant was properly before the bankruptcy court because Respondent Intravaia owned the restaurant in a sole proprietorship and listed the debtor in the bankruptcy petition as "Michele Intravaia d/b/a Mimmo's Family Restaurant." (See Comp. Ex. 1)

Indeed, my review of the bankruptcy petition reveals that both Respondents were listed as debtors before the bankruptcy court and there is evidence in the record of the ownership status of Mimmo's Family Restaurant as a sole proprietorship. It is also clear that Complainant intended the court to render judgment upon the merits of her claim and against both the Respondent restaurant and Respondent Intravaia because she too lists the restaurant in the caption of her Complaint Under Section 523(a)(6) which she filed with the bankruptcy court. I am hard pressed to find that both the court and Complainant made a mistake in captioning both Respondents in the underlying complaint and subsequent Judgment Order. Therefore, even in viewing the facts in the light most favorable to the Complainant, I must find that the Judgment Order applies to both

Respondents before the Commission and that the parties have a common identity for purposes of *res judicata*.

Next, Complainant argues the second element necessary to apply the doctrine of *res judicata* to her claim is not present. Specifically, Complainant asserts that there is no common identity to the cause of action here because the only issue before the bankruptcy court was the dischargeability of the instant case in the bankruptcy proceeding, and not the underlying issues raised in the Complaint filed with the Commission. Respondent conversely argues that a common identity exists with the bankruptcy action and cites two tests traditionally employed by the Illinois courts to determine whether the doctrine of *res judicata* operates as a bar to relitigating a claim in a subsequent forum. Respondent asserts that there is a common identity between the causes of action under the Illinois “same evidence test” and the “transactional test.” However, the Illinois Supreme Court has rejected the “same evidence test” in favor of the “transactional test,” so Complainant’s claim will only be analyzed under the “transactional test.” See, ***Bagnola v. SmithKline Beecham Clinical Labs et al***, 333 Ill.App.3d 711, 267 Ill.Dec. 358, 776 N.E.2d 730 (2002).

The Illinois Supreme Court has held that “[u]nder the transactional test, separate claims will be considered the same cause of action...if they arise from a single group of operative facts, regardless of whether they assert different theories of relief.” ***Bagnola*** at 719, citing, ***River Park, Inc. v. City of Highland Park***, 184 Ill.2d 290, 302, 234 Ill.Dec. 783, 703 N.E.2d 883 (1998). Here, as Respondent correctly observes, the complaint that Complainant filed with the bankruptcy court to determine dischargeability arises from the same set of facts as the Human Rights Complaint. In the bankruptcy complaint, Complainant identified the instant case, asked the court to find it meritorious and, thus, a non-dischargeable debt. In other words, Complainant’s request that the court render a “judgment against Defendants” by its nature required the court to determine the merits of

her Human rights claim to determine the non-dischargeability of the debt owed to Complainant, should she succeed on in this case. (See, Ex. A of Motion to Dismiss Complaint of Civil Rights Violation). To that end, the court made a finding in its Judgment Order that Complainant's termination was due to poor work performance and not the result of retaliation for a refusal to engage in sexual intercourse with Respondent Intravaia. This finding addresses the exact issue raised in count III of the Complainant of Civil Rights Violation currently pending before the Commission. Thus, there is a common identity between the two causes of action, arising out of the same set of operative facts, and satisfying the second element of *res judicata*.<sup>1</sup>

Furthermore, the decision rendered by the bankruptcy court operates as a bar to Complainant proceeding on counts I and II of her case because *res judicata* broadly precludes not only those issues that were litigated in the bankruptcy court, but it is also preclusive of those issues that could have been raised before the court. See, ***Bagnola v. SmithKline Beecham Clinical Labs et al***, 333 Ill.App.3d 711, 267 Ill.Dec. 358. 776 N.E.2d 730 (2002). Therefore, even though the Judgment Order of the bankruptcy court does not specifically address the sexual harassment and pretext claims raised in counts I and II of the compliant, Complainant had an opportunity to raise those issues during the dischargeability proceeding. The fact that she failed to do so does not permit her to now raise those claims before the Commission.

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<sup>1</sup> However, assuming *arguendo* that Complainant was successful in her argument that no common identity of cause existed between the bankruptcy case and the case before the Commission, her claims would still be barred by the doctrine of *res judicata* with respect to economic damages. This is so because the Human Rights Commission Complaint was discharged as a potential "debt" by the bankruptcy court. The Commission previously visited this issue and held that "if a claim is submitted to, and rejected by, a bankruptcy court and no appeal is taken, the bankruptcy's decision is *res judicata*" with respect to economic damages because the respondents' debts have been discharged. ***Turner and Clark Oil & Refining Corporation***, \_\_ Ill. HRC. \_\_, (1986CF1180 November 22, 1993) slip op. at 4. However, the Commission left the door open to the possibility of a complainant pursuing equitable damages, such as a cease and desist order, since that type of relief is not considered "debt" under the federal bankruptcy code. ***Turner***, slip op. at 3.

I must also note that Complainant's argument is without merit that her claim should not be barred by *res judicata* because the bankruptcy court applied a "willful and malicious conduct" standard to her complaint, instead of the "preponderance of the evidence" standard employed by the Commission. Again, the test in applying *res judicata* is not a legal standard of review, rather it is a factual test, which precludes subsequent litigation of issues even if Complainant: 1) seeks to introduce additional evidence or theories, or 2) seeks "remedies or forms of relief not demanded in the first action." ***Bagnola*** at 719.

Finally, even though Complainant conceded that collateral estoppel would preclude her from proceeding on certain allegations in her complaint, I have not addressed that argument in this decision because I found the broader doctrine of *res judicata* barred her entire claim. It is true that the doctrine of collateral estoppel is similar to *res judicata*, but that it has a "more limited preclusive effect" than that of *res judicata*. ***Id*** at 717. However, Respondents relied on the doctrine of *res judicata* in seeking dismissal of this case and have made sound legal arguments that the doctrine operates as a bar to the Commission's proceeding. While collateral estoppel may have been a higher burden for Respondent's to meet, unfortunately for Complainant, all of the elements of *res judicata* are present and now operate as bar to proceeding on her Complaint of Civil Rights Violation. It is unfortunate that Complainant was unsuccessful before the bankruptcy court, but her claim must now be dismissed.

### **Recommendation**

Based on the above findings of fact and conclusions of law, I recommend that the

underlying charge of discrimination and the Complaint of Civil Rights Violation be dismissed with prejudice.

ILLINOIS HUMAN RIGHTS COMMISSION

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KELLI L. GIDCUMB  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 25TH DAY OF MARCH, 2004.