

appeal of Weatherall, DHSS 84-0047 PC-52,  
10/7/87

S. J. 113T

CIRCUIT COURT  
STATE OF WISCONSIN      BRANCH I      OZAUKEE COUNTY

RECEIVED

DONALD M. WEATHERALL,  
  
Complainant,

SEP 19 1988

v.

Personnel  
Commission  
Memorandum Decision

PERSONNEL COMMISSION,  
STATE OF WISCONSIN,

Case No. 87-CV-481-B1

Respondent.

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This matter is before the court on a review of a decision of the Personnel Commission of the State of Wisconsin. The detailed facts are set forth in the various briefs submitted by the respective parties and will not be repeated herein at length. The petitioner, Donald M. Weatherall, initially filed a charge of discrimination with the Personnel Commission of the State of Wisconsin and following an initial determination of the commission requested that its proceedings be stayed until he could prosecute a civil action in federal court. The commission did stay its action and the petitioner pursued his claim pursuant to Section 1981 and 1983 to a jury and his Title VII claim to the court. The jury found that one of petitioner's supervisors was motivated by racial considerations

in discharging the petitioner from employment; however, the Federal District Court concluded that petitioner failed to prove that he would not have been discharged from employment in the absence of such discrimination. The question now before the court is whether the determination of the federal court is res judicata and precludes the petitioner from pursuing his claim before the Personnel Commission.

It is conceded that in both actions the parties are identical and that the plaintiff's claim arises out of the same set of circumstances. It is the position of the petitioner, however, that since the criteria or test for finding a violation is different under the federal law as compared to the state law that the federal court determination is not res judicata. Under Wisconsin law a complainant is only required to show that discrimination was a motivating factor in the employment decision. Under the federal law the complainant is required to prove that "but for" the discrimination the adverse personnel action would not have been taken. The complainant further points out that in the federal court action the jury did determine that the complainant's race was a substantial or motivating factor in the decision of one of his supervisors

to terminate his employment.

The court has reviewed the various authorities and arguments presented by both the petitioner and the respondent and finds that the doctrine of res judicata does apply in this case and precludes the petitioner from pursuing his complaint before the respondent Personnel Commission. The court relies on the following language in Juneau Square Corp. v. First Wisconsin National Bank, 122 Wis. 2d 673, 683 and 684; to-wit:

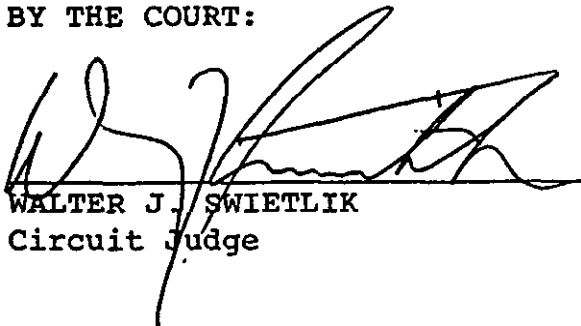
Juneau Square contends that res judicata does not bar the instant lawsuit because none of the asserted causes of action requires proof of the essential element (restraint upon competition) of the federal claim. Juneau Square apparently believes that, for purposes of res judicata, causes of action are not the same if one cause requires proof of an element that another cause does not. Harper Plastics plainly refutes that theory. The Harper court held that a state law breach of contract claim and a federal claim for violation of an antitrust statute were the same cause of action for purposes of the rule against claimsplitting. *Id.* at 942. For purposes of res judicata, a basic factual situation generally gives rise to only one cause of action, no matter how many different theories of relief may apply. Applying the transactional analysis to the instant case, all of Juneau Square's asserted state claims arise out of the same conduct of the defendants-respondents that was alleged in the federal suit. The facts set forth in both the federal and state complaints are essentially the same. The matters raised in the state action are matters which could, and should, have been raised in the previous litigation.

Based on the foregoing Memorandum Decision the petitioner's petition for review is hereby denied. Counsel

for the respondent is hereby directed to prepare a formal order for dismissal and submit it to the court for execution with a copy to petitioner's counsel under the five day rule.

Dated at Port Washington, Wisconsin, this 15th day of September, 1988.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Walter J. Swietlik', is written over a horizontal line. The signature is stylized and somewhat cursive.

WALTER J. SWIETLIK  
Circuit Judge