

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Westchester County Correction Officers Benevolent Ass'n v. County
of Westchester

65 A.D.3d 1226 (2d Dep't 2009) · Decided September 22, 2009

SUMMARY

The court held that the plaintiffs were not required to exhaust the collective bargaining agreement's grievance procedure because retirement benefits were expressly excluded from the agreement's definition of a grievance. It also held that the defendants were collaterally estopped from relitigating the association's standing, the sufficiency of the complaint, and the complete statute-of-limitations defense. However, claims by individual plaintiffs for breaches accruing more than six years before the action commenced were time-barred under CPLR 213(2).

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Per Curiam; Spolzino, J.P.; Miller, J.; Angiolillo, J.; Dickerson, J.
JURISDICTION	New York
DECIDED	September 22, 2009
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from the portion of an order denying their motion to dismiss an action for breach of a collective bargaining agreement.
STANDARD OF REVIEW	Review of an order determining a motion to dismiss pursuant to CPLR 3211, including review of legal sufficiency, subject matter jurisdiction, collateral estoppel, and statute-of-limitations issues.
PRECEDENTIAL VALUE	published New York Appellate Division opinion
PARTIES	County of Westchester, defendants v. Westchester County Correction Officers Benevolent Association, Inc., Julian Fapp, David Barker

TOPICS

- breach of contract
- collective bargaining
- employee benefits
- statute of limitations
- civil procedure

PRACTICE AREAS

contract law

employment law

civil procedure

municipal law

QUESTIONS PRESENTED

1. Whether the plaintiffs were required to exhaust the collective bargaining agreement's grievance procedure before pursuing claims concerning retirement benefits.
2. Whether defendants were collaterally estopped from relitigating the WCCOBA's standing and whether the complaint stated a cause of action.
3. Whether defendants were collaterally estopped from asserting that the claims by the individual plaintiffs were entirely barred by the six-year statute of limitations.
4. Whether claims by the individual plaintiffs accruing more than six years before commencement of the action were time-barred.

HOLDINGS

1. The plaintiffs were not required to exhaust the grievance procedure because the agreement expressly excluded matters involving retirement benefits from the definition of a grievance.
2. Defendants were collaterally estopped from relitigating whether the WCCOBA lacked standing and whether the complaint failed to state a cause of action.
3. Defendants were collaterally estopped from relitigating whether the individual plaintiffs' claims were entirely barred by the six-year limitations period.
4. Claims by the individual plaintiffs accruing more than six years before commencement of the action were time-barred and had to be dismissed.

KEY QUOTATIONS

“Under the doctrine of collateral estoppel, or issue preclusion, ‘a party is precluded from relitigating an issue which has been previously decided against him [or her] in a prior proceeding where he [or she] had a full and fair opportunity to litigate such issue’” (1227)

“The two elements that must be satisfied to invoke the doctrine of collateral estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue” (1227)

“As a general rule in contract cases, the cause of action accrues and the Statute of Limitations begins to run from the time of the breach” (1228)

FACTUAL BACKGROUND

The plaintiffs brought an action alleging that the County breached a collective bargaining agreement by failing to provide certain retirement benefits. The agreement expressly excluded matters involving retirement benefits from the definition of a grievance. In a prior action involving the WCCOBA and correction officers, the Supreme Court had rejected defendants' challenges to the WCCOBA's standing and the sufficiency of the

complaint and had determined that the continuing alleged violations did not create a complete six-year limitations bar.

PROCEDURAL HISTORY

The Supreme Court, Westchester County, denied defendants' motion to dismiss for lack of subject matter jurisdiction and on collateral-estoppel and statute-of-limitations grounds. The Appellate Division modified the order to dismiss claims by Julian Fapp and David Barker accruing more than six years before commencement of the action, and otherwise affirmed the order insofar as appealed from.

DISPOSITION

other

CASES CITED

- Franklin Dev. Co., Inc. v. Atlantic Mut. Ins. Co., 60 A.D.3d 897 (2009)
- Luscher v. Arrua, 21 A.D.3d 1005 (2005)
- D'Arata v. New York Cent. Mut. Fire Ins. Co., 76 N.Y.2d 659, 664 (1990)
- Kaufman v. Eli Lilly & Co., 65 N.Y.2d 449, 455 (1985)
- CSEA Empl. Benefit Fund v. Warwick Val. Cent. Sch. Dist., 36 A.D.3d 582, 584 (2007)
- Matter of Prote Contr. Co. v. Board of Educ. of City of N.Y., 198 A.D.2d 418, 420 (1993)
- Matter of DeCintio v. Cohalan, 18 A.D.3d 872, 873 (2005)
- Matter of Condo Units v. New York State Div. of Hous. & Community Renewal, 4 A.D.3d 424, 425 (2004)
- State of New York v. CSRI Ltd. P'ship, 289 A.D.2d 394, 395 (2001)
- Scheg v. Agway, Inc., 229 A.D.2d 963 (1996)

OPINION

PER CURIAM.

In an action to recover damages for breach of a collective bargaining agreement, the defendants appeal from so much of an order of the Supreme Court, Westchester County (Nastasi, J.), entered February 27, 2008, as denied their motion to dismiss the complaint pursuant to CFLR 3211. Ordered that the order is modified, on the law, by deleting the provision thereof denying those branches of the defendants' motion which were to dismiss so much of those causes of action asserted by the plaintiffs Julian Fapp and David Barker as accrued more than six years prior to the commencement of the action and substituting therefor a provision granting those branches of the motion; as so modified, the order is affirmed insofar as appealed from, with costs payable by the defendants.

The Supreme Court properly denied that branch of the *1227defendants' motion which was to dismiss the complaint for lack of subject matter jurisdiction. Article XI, section 5, of the collective

bargaining agreement at issue expressly excludes, from its definition of the term “grievance,” any “matter involving... retirement benefits.” Accordingly, contrary to the defendants’ contention, the plaintiffs were not obligated to exhaust the grievance procedure prior to commencing this action, which advances claims pertaining to their alleged right to certain retirement benefits. “Under the doctrine of collateral estoppel, or issue preclusion, ‘a party is precluded from relitigating an issue which has been previously decided against him [or her] in a prior proceeding where he [or she] had a full and fair opportunity to litigate such issue’ ” (Franklin Dev.

Co., Inc. v Atlantic Mut. Ins. Co., 60 AD3d 897, 899 [2009], quoting *Luscher v Arrua*, 21 AD3d 1005, 1007 [2005]; see *D’Arata v New York Cent. Mut. Fire Ins. Co.*, 76 NY2d 659, 664 [1990]). “The doctrine of collateral estoppel is ‘intended to reduce litigation and conserve the resources of the court and litigants and it is based upon the general notion that it is not fair to permit a party to relitigate an issue that has already been decided against it’ ” (Franklin Dev.

Co., Inc. v Atlantic Mut. Ins. Co., 60 AD3d at 899, quoting *Kaufman v Eli Lilly & Co.*, 65 NY2d 449, 455 [1985]). “ ‘The two elements that must be satisfied to invoke the doctrine of collateral estoppel are that (1) the identical issue was decided in the prior action and is decisive in the present action, and (2) the party to be precluded from relitigating the issue had a full and fair opportunity to contest the prior issue’ ” (Franklin Dev.

Co., Inc. v Atlantic Mut. Ins. Co., 60 AD3d at 899, quoting *Luscher v Arrua*, 21 AD3d at 1007; see *Kaufman v Eli Lilly & Co.*, 65 NY2d at 455). Here, the Supreme Court correctly determined that the defendants were collaterally estopped from relitigating the issues of whether the plaintiff Westchester County Correction Officers Benevolent Association, Inc. (hereinafter the WCCOBA), lacked standing to maintain this action, and whether the complaint failed to state a cause of action.

These arguments were previously raised by the defendants in a motion to dismiss the complaint in a prior action commenced against them by the WCCOBA and 15 correction officers, in which the causes of action were largely identical in substance to those asserted here.

The Supreme Court ruled against the defendants on that motion, finding both that the WCCOBA had standing to maintain the action, and that the complaint adequately stated causes of action. The defendants are, therefore, precluded from relitigating these issues, as they previously had a full and fair opportunity to litigate them (see generally *Franklin Dev. Co., Inc. v Atlantic Mut.*

Ins. Co., 60 AD3d 897 [2009]). *1228The defendants are also precluded from relitigating the issue of whether the causes of action advanced by the plaintiffs Julian Papp and David Parker were barred entirely by the applicable six-year limitations period (see CPLR 213 [2]), as the Supreme Court previously found that the continuing nature of the alleged violations obviates such a complete bar based on the statute of limitations.

Conversely, to the extent that the defendants argue that those claims by Papp and Parker accruing more than six years prior to the commencement of this action should be dismissed, and that these plaintiffs may only assert claims for damages accruing up to six years prior to the commencement of this action, the defendants are not barred from litigating this issue, as it was not raised in the earlier action. “ ‘As a general rule in contract cases, the cause of action accrues and the Statute of Limitations begins to run from the time of the breach’ ” (CSEA Empl.

Benefit Fund v Warwick Val. Cent. School Dist., 36 AD3d 582, 584 [2007], quoting Matter of Prote Contr. Co. v Board of Educ. of City of N.Y., 198 AD2d 418, 420 [1993]). “ ‘[W]here a duty imposed prior to a limitations period is a continuing one, the statute of limitations is not a defense to actions based on breaches of that duty occurring within the limitations period’ ” (Matter of DeCintio v Cohalan, 18 AD3d 872, 873 [2005], quoting Matter of Condo Units v New York State Div. of Hous. & Community Renewal, 4 AD3d 424, 425 [2004]).

While a new breach occurred for statute of limitations purposes each time that the County failed to make an allegedly required payment to Papp and Parker (see CSEA Empl. Benefit Fund v Warwick Val. Cent. School Dist., 36 AD3d at 584), so much of the causes of action asserted by Papp and Parker as accrued more than six years prior to the commencement of the instant action must be dismissed as time-barred (see State of New York v CSRI Ltd. Partnership, 289 AD2d 394, 395 [2001]; Scheg v Agway, Inc., 229 AD2d 963 [1996]).

Spolzino, J.P, Miller, Angiolillo and Dickerson, JJ., concur.