UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RAD NAIR,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:03CV1688 (SRU)
v.	:	
	:	
KIMBERLY CARMICHAEL OF ALLSTATE	:	
INSURANCE CO.,	:	
Defendant.	:	

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This action arises out of an alleged breach of contract by Allstate Insurance Territorial Manager Kimberly Carmichael. Plaintiff Rad Nair claims that Carmichael offered to terminate his employment with Allstate Insurance Company ("Allstate"), an offer that he accepted for consideration of $1,200,000. He alleges that Allstate confirmed their arrangement but failed to pay him pursuant to what he refers to as his termination contract. On October 2, 2003, Carmichael moved to dismiss the case on grounds of personal jurisdiction, *res judicata*, Nair's prior release of claims, and failure to state a claim for breach of contract (doc. # 7). Finding that Nair's claim could not be resolved without examination of matters extrinsic to the pleadings, the court converted the motion to dismiss into a motion for summary judgment on July 7, 2004 (doc. # 36). For the reasons that follow, Carmichael's motion for summary judgment is GRANTED.

I. Facts

On or about October 25, 2000, Carmichael wrote a letter to Nair informing him that Allstate would be terminating his independent contractor relationship with the company. The letter read: "Your

role as an agent of Allstate is terminated as of today. You must immediately cease to act or present yourself as an agent or representative of [Allstate]." (Notice of Removal at Exhibit A.) On or about November 10, 2000, Nair responded with a letter in which he agreed to be terminated in exchange for compensation in the amount of $1,200,000. Nair claims that on or about December 23, 2002, Allstate "confirmed their offer of termination," effective February 1, 2001. (Nair Complaint at ¶ 6.) As of August 4, 2003 Nair had not received the money in question.

II. Procedural History

Nair sued Allstate in a prior action removed to this court on April 24, 2002 (Nair v. Allstate Insurance Co., 3:02 cv 717 (SRU)) ("prior action"). In the prior action, Nair brought a nine-count complaint against Allstate raising claims arising out of his termination. In Count Four of that complaint, Nair alleged tortious interference with business expectancy, relying on his November 10, 2000 letter to Carmichael. In Count Six, Nair alleged breach of contract stemming from his termination. The prior action ended in settlement.

On January 3, 2003, Nair signed a Confidential Settlement Agreement and General Release ("General Release") in which he and Allstate agreed to "settle fully and finally all claims of Nair, including but not limited to claims of the Lawsuit [Civil Action No. 3:02 cv 717 (SRU)]." (Settlement Agreement at 1.) Nair received compensation for his agreement to "release and fully discharge Allstate . . . of and from any and all claims, demands, causes of action, and rights, known and unknown, whether in contract, tort or otherwise, including those arising from or relating to Nair's contractual affiliation or separation from Allstate." (Id. at 2.) The agreement defines "Allstate" as inclusive of ". . .

officers, agents, . . . plan administrators, employees or any person acting on its behalf . . . ." (Id. at 1.) On January 14, 2003, this court approved a stipulation of dismissal of the prior action. The case was dismissed with prejudice.

Notwithstanding the settlement, Nair filed the present complaint in August 2003, alleging breach of contract. Carmichael removed the case to federal court on October 2, 2003 and filed a motion to dismiss. Nair then filed a motion for default judgment (doc. # 11) and motion to remand (doc. # 12). Both of Nair's motions were denied on November 20, 2003. Nair filed an additional motion for default judgment (doc. # 18) and another for both default judgment and summary judgment (doc. # 19) on November 24, 2003 and December 9, 2003 respectively. Both motions were denied on December 19, 2003. Nair again filed a motion for default judgment (doc. # 23) on January 13, 2004. That motion was denied on January 15, 2004.

On May 7, 2004, the court heard oral argument on the motion to dismiss. Nair filed a response to the motion to dismiss (doc. # 35) on May 10, 2004. The motion to dismiss was converted to a motion for summary judgment on July 7, 2004. On August 11, 2004, Nair filed a memorandum in opposition to the motion for summary judgment (doc. # 37). That memorandum was entitled "Memorandum of Law in Support of Summary Judgment for Plaintiff," and was docketed as such. The name of the document is misleading because Nair's motion for summary judgment had been denied on December 19, 2003. Furthermore, the content of the memorandum makes clear that Nair intended to respond to the July 7, 2004 conversion to summary judgment, saying "[o]n July 7, 2004 this court issued an order converting defendant's motion to dismiss into a motion for summary judgment. . . . Plaintiff Rad Nair is filing his supplemental brief as ordered by the court [on July 7, 2004] within the

next 21 day time period allotted to him." (Plaintiff's Memorandum of Law at 1.) Carmichael subsequently filed a reply to Nair's memorandum in opposition along with a statement of material facts and supporting affidavit. Carmichael also notified Nair (doc. # 40) that he must submit affidavit materials to support his opposition to the motion for summary judgment. Nair then filed an affidavit on September 10, 2004 (doc. # 42).

III. Standard of Review

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56; Celotex v. Catrett, 477 U.S. 317, 322 (1985) (citation omitted). The burden is on the moving party to establish that there are no genuine issues of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1985).

The burden on the moving party "may be discharged by 'showing' . . . that there is an absence of evidence to support the non-moving party's case." Celotex, 477 U.S. at 325. Once this burden has been met, "the burden shifts to the non-moving party to raise triable issues of fact." Larson v. The Prudential Insurance Company of America, 151 F. Supp. 2d 167, 171 (D. Conn. 2001). If the non-moving party then fails "to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment should be granted. Celotex, 477 U.S. at 322.

IV. Discussion

A. Res Judicata

As Carmichael suggests, to the extent Nair sues Carmichael as an agent of Allstate, the "most fundamental reason" that Nair's claim cannot survive a motion for summary judgment is the bar created by the doctrine of *res judicata* (Memorandum of Law in Support of Defendant's Motion to Dismiss at 10). *Res judicata,* or claim preclusion, provides that "once a final judgment has been entered on the merits of a case, that judgment will bar any subsequent litigation by the same parties or those in privity with them concerning the transaction, or series of connected transactions, out of which the [first] action arose." Cieszkowska v. Gray Line New York, 295 F.3d 204, 205 (2d Cir. 2002) (quoting Maharaj v. BankAmerica Corp., 128 F.3d 94, 97 (2d Cir. 1997) (internal quotation marks omitted)).

Res judicata contemplates the need to prevent plaintiffs from bringing further litigation that was or could have been filed in a prior action. L-Tec Electronics Corporation v. Cougar Electronic Organization, Inc., 198 F.3d 85, 87-88 (2d Cir. 1999). It precludes subsequent litigation when a prior decision was: "(1) a final judgment on the merits; (2) by a Court of competent jurisdiction; (3) in a case involving the same parties or their privities; and (4) involving the same cause of action." N.L.R.B. v. United Technologies Corporation, 706 F.2d 1254, 1259 (2d Cir. 1983). This doctrine applies to litigation stemming from the same transaction or occurrence even when the plaintiff relies on a new legal theory or, as a rule, where the plaintiff relies on newly discovered evidence. Saud v. Bank of New York, 929 F.2d 916, 920 (2d Cir. 1991).

In the present case, Nair alleges that on or about October 25, 2000, Carmichael "as agent of her principal Allstate Insurance Company offered termination of my independent contractor relationship

with Allstate Insurance Company." (Complaint at ¶ 4.) Nair notes that "[o]n or about November 10, 2000, [he] accepted this offer of termination for a consideration of U.S. $1,200,000." (Id. at ¶ 5.) Although he goes on to say that the "offer of termination" was reiterated on or about December 23, 2002, the contract he refers to in his complaint was allegedly entered into as of November 10, 2000.

Res judicata in this case is appropriate because the four prerequisites have been met. Settlements can serve as a final judgment on the merits for purposes of *res judicata* if the settlement expresses the parties' intent to preclude future litigation on this issue. Greenberg v. Board of Governors of Fed. Reserve System, 968 F.2d 164, 168 (2d Cir. 1992). The terms of the settlement are clear. As previously suggested, Nair "freely, knowingly and voluntarily release[d] and fully discharge[d] Allstate . . . of and from any and all claims, demands, causes of action, and rights, known and unknown . . . including those arising from or relating to Nair's contractual affiliation or separation from Allstate." (Settlement Agreement at 1.) Again, Allstate is defined broadly as suggested above. The terms of the settlement agreement suggest an intent by the parties to prevent further litigation so that a dismissal of the case should serve as a decision on the merits.

The prior action was filed in state court but properly removed to federal court on grounds of diversity. The United States District Court for the District of Connecticut was a court of competent jurisdiction to rule on the prior action. The present case involves Carmichael as an agent of Allstate, with whom she is in privity. The present action alleges breach of contract in connection with Nair's termination. Although the prior complaint made no mention of the alleged $1,200,000 agreement, all behavior alleged to have formed the $1,200,000 contract would have occurred by the time the prior

complaint was filed. That claim could have been brought in the prior action. The claims made in the present complaint arise out of the same transaction: Nair's termination.

B. General Release

To the extent Nair's lawsuit names Carmichael in her individual capacity, the General Release Nair entered into on January 3, 2003 creates a bar to the present claim. Pursuant to the General Release, Nair agreed to "settle fully and finally all claims of Nair, including but not limited to claims of the Lawsuit [Civil Action No. 3:02 cv 717 (SRU)]." (Settlement Agreement at 1.) Nair accepted payment to "release and fully discharge Allstate . . . of and from any and all claims, demands, causes of action, and rights, known and unknown, whether in contract, tort or otherwise, including those arising from or relating to Nair's contractual affiliation or separation from Allstate." (Id. at 2.)

Again, under the terms of the General Release, "Allstate" includes ". . . officers, agents, . . . plan administrators, employees or any person acting on its behalf . . . ." (Id. at 1.) Nair's present complaint raises claims that arose prior to the General Release and that are brought against an officer, agent or employee or Allstate. Thus, the present complaint falls within the parameters of those claims barred by the General Release.

The court need not address Carmichael's additional arguments for summary judgment. For the aforementioned reasons, the motion for summary judgment must be granted.

V. Conclusion

For all the reasons stated above, Carmichael's motion for summary judgment (doc. # 7) is

GRANTED. The clerk shall close this file.

It is so ordered.

Dated at Bridgeport, Connecticut, this 30th day of September 2004.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge