UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAURICIO LEON,

Plaintiff(s),

v.

IDX SYSTEMS CORPORATION,

Defendant(s).

No. C03-1158P

ORDER DENYING DEFENDANT'S MOTION TO ENJOIN ADMINISTRATIVE PROCEEDINGS PURSUANT TO THE ALL WRITS ACT, 28 U.S.C. §1651(a)

This motion comes before the Court on Defendant's motion to enjoin the Department of Labor's investigation into Plaintiff's claim that Defendant violated the Sarbanes-Oxley Act. Defendant argues that the Court's September 30, 2004 Order in case 03-1158 dismissing Leon's case before this Court for spoliation of evidence is a final adjudication of Plaintiff's case. Therefore, Defendant asserts, *res judicata* should now bar the Department of Labor's administrative proceedings in the *qui tam* action before this Court as case 02-2263. Defendant urges the Court to use its powers under the All Writs Act (28 U.S.C. §1651) to enjoin any further investigation into this matter by the government.

Plaintiff argues that *res judicata* cannot apply because: 1) Plaintiff was not required to join the alleged Sarbanes-Oxley (SOX) violation to the action that was before this Court and it should be treated as a separate claim; 2) Congress' intent was for the Department of Labor to adjudicate SOX claims; 3) the SOX claim and the claims that were before this Court are not identical; and 4) the

transactional nucleus of facts surrounding each claim and, therefore, the evidence pertaining to each claim is slightly different

The Department of Labor ("DOL" or "OSHA") has also filed a position letter in this matter. In this letter the government opposes the Court's use of the All Writs Act to enjoin its investigation. The government argues that OSHA and Dr. Leon are not parties in privity for the purposes of *res judicata*. The government also notes that if the administrative case proceeds to the point where unfavorable findings are entered against IDX, Defendant will have the chance to make the *res judicata* argument before an Administrative Law Judge.

The Court DENIES Defendants Motion to enjoin the Department of Labor's investigation into Defendant's alleged Sarbanes-Oxley offenses. As explained below, the Court finds that there is no identity or privity between Mauricio Leon and OSHA. Therefore, the Court's September 30, 2004 ruling is not *res judicata* as to the administrative proceeding.

Background

Case 03-1158 stems out of Dr. Leon's allegations against IDX for retaliation against him as a whistleblower in violation of the False Claims Act ("FCA") and the Americans with Disabilities Act ("ADA"). This case was consolidated with Defendant's earlier complaint seeking a declaratory judgment that IDX could fire Dr. Leon and not run afoul of the FCA or ADA. The two cases were joined, with Dr. Leon as the Plaintiff and Defendant's claims re-characterized as counter-claims. Concurrent with this action in Federal Court, Dr. Leon also filed an complaint with the Department of Labor making similar claims, but under the Sarbanes-Oxley statute. This case is numbered 02-2263 and is before the Court as a *qui tam* action, with portions of it still under seal.

On September 30, 2004, this Court issued an Order in case 03-1158 dismissing Plaintiff Mauricio Leon's claims against Defendant IDX. The Court dismissed the case because of Dr. Leon's intentional spoliation of evidence that had been stored on his IDX-issued laptop using a "wiping program" that he wrote himself. As a result of this Order, Defendant voluntarily dismissed its counter-claims against Dr. Leon. Nonetheless, Plaintiff's administrative action against Defendant

remains alive. Defendant now argues that the Order disposing of case 03-1158 is *res judicata* as to the underlying administrative investigation in case number 02-2263 and asks the Court to use its powers under the All Writs Act to issue an injunction stopping this investigation.

Analysis

I. Application of the All Writs Act

In relevant part, the All Writs Act provides:

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. . .

28 U.S.C. §1651. One way that courts have interpreted his language is to give courts the power to effectuate and prevent frustration of their orders in cases in which they have jurisdiction. U.S. v. New York Telephone Co., 434 U.S. 159, 172-3 (1977). To this end, the All Writs Act can be applied to enjoin administrative proceedings that interfere with a court's exercise of its jurisdiction. U.S. v. Norton, 640 F. Supp. 1257, 1261 (D. Colo. 1986). Under Norton, if the Court were to determine that the current Department of Labor investigation in case 02-2263 disturbs the *res judicata* effect of its Order in case 03-1158, then the All Writs Act will allow this Court to enjoin that investigation. For the reasons outlined below, application of the All Writs Act by this Court will not be necessary because the DOL investigation does not disturb the *res judicata* effect of this Court's Order.

II. *Res Judicata*

Res judicata prevents parties from making the same complaint over and over again against an adverse party. The principle of *res judicata* bars relitigation of claims that were raised or could have been raised in a prior legal action. Western Radio Servs. Co. v. Glickman, 123 F. 3d 1189, 1192 (9th Cir. 1997). Normally, a cause of action is considered identical to a prior cause of action for *res judicata* purposes if the new complaint stems from the same transaction or series of transactions as the old complaint. Havercombe v. Dept. of Education, 250 F. 3d 1, 4 (1st Cir. 2001). In order to

determine if *res judicata* applies, courts have established a three-part test that asks: if there has been a final judgment on the merits in the first cause of action; if the parties to the causes of action are identical or there is privity among them; and, if the claims involved in the subsequent action are identical to those in the first. Western Radio Servs. Co., 123 F. 3d at 1192. If the answer to all of these questions is affirmative, then *res judicata* applies. Conversely, if any one of these questions can be answered in the negative, then it does not.

A. Applying the *Res Judicata* Test

1. Final Judgment on the Merits

Plaintiff argues that there is no final judgment on the merits that would result in claim preclusion under the unique facts of this case because the Court declined to address many outstanding issues that were briefed and before the Court when it decided to dismiss the case due to Plaintiff's intentional spoliation of evidence. In the Ninth Circuit, however, a sanction dismissal constitutes a judgment on the merits within the meaning of Fed. R. Civ. P. 41(b) and operates as *res judicata* to prevent another suit. United States v. $149, 345 United States Currency, 747 F. 2d 1278, 1280 (9th Cir. 2000). The only way, then, that this Court could find that there had not been a final judgment on the merits that would apply as *res judicata* to the administrative action would be to decide that the parties to the administrative proceeding are different from those in the proceeding that was before this Court, or not in privity with those parties, or if the claims were altogether different.

2. Identity or Privity between 2 parties.

Neither Plaintiff nor Defendant raise identity or privity of parties as a matter for dispute in their briefs. The Department of Labor, on the other hand, points out that although Dr. Leon brought the case to OSHA, he and the agency are not the same party and are not in privity because their interests in this litigation is completely different. To support this view, the Department of Labor cites to a Seventh Circuit decision that held that Plaintiff Secretary of Labor's claim against an employer was not barred by *res judicata* where a settlement had been reached between the private parties to a suit, but the government's intervening claim against the employer had not been settled. Secretary of

Labor v. Fitzsimmons, 805 F. 2d 682, 699 (7th Cir. 1986), (cited by EEOC v. Goodyear Aerospace Corp., 813 F. 2d 1539, 1543 (9th Cir. 1987)). The Fitzsimmons and Goodyear courts grounded their holdings in the duty of government agencies to represent a broad public interest that is oftentimes different from the motivation of a private party bringing a suit.

In the case at hand, the OSHA is not a "mere proxy" for Dr. Leon's interest in the litigation. Goodyear, 813 F. 2d at 1542. Dr. Leon originally brought this suit against IDX because he felt that he'd been wronged by his employer for speaking up about allegedly illegal practices he said he had witnessed in the workplace. In case 03-1158 Dr. Leon sought damages for infliction of emotional distress, in addition to other monetary damages. In case 02-2263 OSHA, by contrast, is charged with investigating Dr. Leon's claims of illegal practices under Sarbanes-Oxley and determining whether or not to pursue prosecution of IDX's alleged wrongdoing vis-a-vis the interests of the American public. As far as OSHA's investigation is concerned, it is immaterial whether or not Dr. Leon suffered emotional distress while working for IDX. This is just one example of why the interests of the Department of Labor and Dr. Leon differ in this litigation.

Because OSHA and Dr. Leon do not have the same interests in the litigation at hand and are not the same party, *res judicata* will not bar the Government from pursuing its *qui tam* investigation, even where the Court has already disposed of the private action brought by the Government's relator. Based on this decision, the Court need not reach the issue of whether or not the claims involved in these two actions are identical.

Conclusion

A lack of identity or privity between the parties to cases 03-1158 and 02-2263 prevents *res judicata* from taking effect to preclude OSHA's *qui tam* suit against IDX. For this reason Defendant's motion for this Court to use its powers under the All Writs Act to enjoin that investigation is DENIED.

The Clerk is directed to send copies of this order to all counsel of record.

Dated: this 15th day of February, 2005.

/s/ Marsha J. Pechman
Marsha J. Pechman
United States District Judge