

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of May, two thousand eighteen.

Present:

Barrington D. Parker,
Debra Ann Livingston,
Debra Chin,
Circuit Judges.

Subi Mehmeti,

Plaintiff-Appellant.

v.

18-477

Jofaz Transportation, Inc.,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis and to reverse the judgment. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see also 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


FILED
IN CLERKS OFFICE
US DISTRICT COURT E.D.N.Y.
★ FEB 09 2018 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SUBI MEHMETI.

BROOKLYN OFFICE

Plaintiff,

MEMORANDUM & ORDER

v.

18-CV-326 (WFK)(LB)

JOFAZ TRANSPORTATION, INC.

Defendant.

WILLIAM F. KUNTZ II, United States District Judge:

Plaintiff Subi Mehmeti ("Plaintiff"), proceeding *pro se*, filed the above-captioned complaint on January 16, 2018, against his former employer, Jofaz Transportation, Inc. ("Jofaz" or "Defendant"). His request to proceed *in forma pauperis* is granted for the limited purpose of this Order. However, as Plaintiff's previous lawsuits alleging the same facts and legal claims were dismissed, the instant action is dismissed under the doctrines of *res judicata* and collateral estoppel.

The instant Complaint alleges that Plaintiff was fired from his job as a bus driver with Defendant Jofaz Transportation, Inc. on October 3, 2012, after Plaintiff left his assigned bus parked at a public school near his home in Brooklyn. Compl. at 5, 166 n.1, ECF No. 1. Plaintiff alleges that he temporarily parked the bus at that location while he sought medical attention for a "serious health condition (incapacitation)." *Id.* at 6.¹ Plaintiff states that he explained these circumstances to his supervisor, but was nonetheless terminated from his employment. *Id.* at 7.

¹ The pages of the standard complaint form and the addenda are not consecutively paginated. The Court refers to the numbers assigned by the Electronic Case Filing ("ECF") System.

Plaintiff has twice previously litigated this issue. On November 28, 2012, while represented by counsel, he filed a lawsuit against Jofaz alleging violations of the Family and Medical Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601, et seq., and state law. On May 22, 2015, after discovery and an unsuccessful attempt at mediation, the Honorable I. Lee Glaser granted Defendant's motion for summary judgment, finding that Plaintiff was terminated for leaving the bus in an unauthorized location and that the FMLA did not apply. See *Mehmeti v. Jofaz Transp., Inc.*, 12CV5628, 2015 WL 2453499, at *2 (E.D.N.Y. May 22, 2015) (Glaser, J.), *aff'd*, 649 F. App'x 112 (2d Cir. 2016) (finding Mehmeti failed to establish that he gave notice to Jofaz of his intention to take leave, or as soon as practicable thereafter, thus he could not prevail on a claim of interference with his FMLA rights). On December 28, 2016, Plaintiff filed a new action, with the same factual allegations, pursuant to the Americans with Disabilities Act. That action was dismissed on March 7, 2017. See *Mehmeti v. Jofaz Transp., Inc.*, 16-CV-7085, 2017 WL 983192, at *2 (E.D.N.Y. Mar. 7, 2017) (Kantz, J.). A subsequent appeal and a motion for reconsideration were both denied. See 16-CV-7085, ECF Nos. 10, 13.

Plaintiff's claims in the instant action are barred under the doctrines of collateral estoppel (issue preclusion) and *res judicata* (claim preclusion), which "protect parties from having to relitigate identical claims or issues and . . . promote judicial economy." *Transmundo, Inc. v. La Fuerza Aerea Boliviana*, 162 F.3d 724, 731 (2d Cir. 1998). "Collateral estoppel bars a party from raising a specific factual or legal issue in a second action when the party had a full and fair opportunity to litigate the issue in a prior proceeding." *Id.* *Res judicata* bars subsequent litigation if: "(1) the previous action involved an adjudication on the merits; (2) the previous action involved the [parties] or those in privity with them; [and] (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." *Monsanto v. N.Y.C.*

Dep't of Corrs., 214 F.3d 275, 285 (2d Cir. 2000) (claims omitted). “Even claims based upon different legal theories are barred provided they arise from the same transaction or occurrence.”

L-Tec Elecs. Corp. v. Cooper Elec. Org., Inc., 198 F.3d 85, 88 (2d Cir. 1999) (claims omitted).

The instant Complaint’s factual allegations related to Plaintiff’s termination from employment at Jofaz—and legal argument, violation of the FMLA—were previously raised in Docket Numbers 12-CV-5880 and 16-CV-7085 and are thus precluded by *res judicata* and collateral estoppel.

CONCLUSION

The Complaint is dismissed under the doctrines of *res judicata* and collateral estoppel. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

S/WFK

HON. WILLIAM F. KUNYIK, II
United States District Judge

Dated: Brooklyn, New York
February 9, 2018