

APPENDIX

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APPENDIX A

**SUPREME COURT, APPELLATE DIVISION,
FIRST DEPARTMENT**

Gische, J.P., Kapnick, Webber, Kern, González, JJ.

11825 David James Murphy, Index 156466/17
Plaintiff-Appellant,

-against-

Citigroup Global Markets,
Inc., et al.,
Defendants-Respondents.

David James Murphy, appellant pro se.

Proskauer Rose LLP, New York (Joseph Baumgarten of
counsel), for respondents.

(Filed Jul. 16, 2020)

Order, Supreme Court, New York County (Shlomo Hagler, J.), entered on or about April 12, 2019, which granted defendants' CPLR 3211 motion to dismiss the complaint and denied plaintiff's cross motion to compel arbitration, unanimously affirmed, without costs.

The motion court properly dismissed plaintiff's discrimination claims as precluded by res judicata (see *Matter of Hunter*, 4 NY3d 260, 269 [2005]; *Fajemirokun v Dresdner Kleinwort Wasserstein Ltd.*, 27 AD3d 320, 321-322 [1st Dept 2006], *lv denied* 7 NY3d 705 [2006]).

The discrimination claims which plaintiff seeks to assert in the first two causes of action of the instant complaint “aris[e] out of the same transaction or series of transactions” as the claims resolved in the prior arbitration between himself and the corporate defendants herein (*O'Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]; *Carol v Madison Plaza Apts. Corp.*, 137 AD3d 453, 453 [1st Dept 2016]). Plaintiff offers no response to the defense of res judicata, other than that his discrimination claims were not arbitrable. Plaintiff, however, has failed to make any showing in support of the non-arbitrability of those claims at the time they were decided¹ (see *Sphere Drake Ins. Ltd. v Clarendon Natl. Ins. Co.*, 263 F3d 26, 31 [2d Cir 2001]; *McCaddin v Southeastern Marine Inc.*, 567 F Supp 2d 373, 379 [ED NY 2008]).

Plaintiff’s third cause of action, against defendant Okan Pekin, fails to state a claim, as the conduct he complains of is simply not substantial enough to support a claim for hostile work environment, even under the maximally protective New York City Human Rights Law (see *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 26 [1st Dept 2014]).

¹ Effective October 11, 2019, well after the facts of plaintiff’s discrimination claims were adjudicated in arbitration, the New York State Discrimination Laws were amended to prospectively prohibit mandatory arbitration clauses, except where inconsistent with federal law (CPLR 7515). There was no such prohibition in effect at the time of plaintiff’s arbitration.

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We have considered plaintiff's remaining arguments, and find them unavailing.

THIS CONSTITUTES THE DECISION AND
ORDER OF THE SUPREME COURT, APPELLATE
DIVISION, FIRST DEPARTMENT.

ENTERED: JULY 16, 2020

/s/ Susanna M. Rojas
CLERK

APPENDIX B

***State of New York
Court of Appeals***

***Decided and Entered on the
twenty-second day of December, 2020***

Present, Hon. Janet DiFiore, Chief Judge, presiding.

Mo. No. 2020-741

David James Murphy,
Appellant,

v.

Citigroup Global Markets, Inc., et al.,
Respondents.

Appellant having moved for leave to appeal to the
Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied with one
hundred dollars costs and necessary reproduction dis-
bursements.

/s/ John P. Asiello

John P. Asiello
Clerk of the Court

APPENDIX C

**Supreme Court of the State of New York
Appellate Division, First Judicial Department**

Present – Hon. Judith J. Gische, Justice Presiding,
Barbara R. Kapnick
Troy K. Webber
Cynthia S. Kern
Lizbeth González, Justices.

David James Murphy,	Motion No.	2663
Plaintiff-Appellant,	Index No.	156466/17
-against-	Case No.	2019-21634
		SEALED

Citigroup Global Markets,
Inc., Citicorp Securities Ser-
vices, Inc. and Okan Pekin,
Defendants-Respondents.

Plaintiff-appellant having moved for reargument of, or in the alternative, for leave to appeal to the Court of Appeals, from the decision and order of this Court, entered on July 16, 2020 (Appeal No. 11825),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

6a

ENTERED: September 29, 2020

/s/ Susanna M. Rojas
Susanna Molina Rojas
Clerk of the Court

APPENDIX D

*State of New York
Court of Appeals*

*Decided and Entered on the
first day of April, 2021*

Present, Hon. Janet DiFiore, Chief Judge, presiding.

Mo. No. 2021-111

David James Murphy,
Appellant,

v.

Citigroup Global Markets, Inc., et al.,
Respondents.

Appellant having moved for reargument of motion for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/ John P. Asiello

John P. Asiello
Clerk of the Court
