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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

SELENA MARQUEZ,	*	
	*	4:03-cv-90271
Plaintiff,	*	
	*	
v.	*	
	*	
BRIDGESTONE/FIRESTONE, INC.,	*	MEMORANDUM OPINION
	*	AND ORDER
Defendant	*	
	*	

Before the Court is Defendant Bridgestone/Firestone, Inc.'s ("Firestone") Motion to Dismiss (Clerk's No. 3). Defendant argues that Plaintiff's claim in this suit is barred by the doctrine of res judicata. Plaintiff Selena Marquez ("Marquez") has resisted the motion, and the matter is fully submitted. For the reasons explained below, Defendant's motion is **granted**.

I. BACKGROUND

Marquez first filed suit against Firestone on June 6, 2001 in the Iowa District Court for Polk County. The matter was removed to the United States District Court for the Southern District of Iowa because Plaintiff's claim represents a matter over which this Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. (Case No. 4:01-cv-90392). In her original lawsuit, Marquez alleged that Firestone violated her rights under 42 U.S.C. §§ 1981 and 1988. Specifically, Marquez claimed that, while working at Firestone, she was subjected to disparate treatment and increased scrutiny because of her racial or ethnic background. Firestone moved for summary judgment, and the Court granted the motion in a February 14, 2003 Memorandum Opinion and Order. Plaintiff appealed the Court's decision, and the appeal is currently pending before the United States Court of Appeals for the

Eighth Circuit. (Appeal No. 03-1824)

Plaintiff filed the present lawsuit in the Iowa District Court for Polk County on April 11, 2003, and Defendant again removed the case to this Court because Plaintiff's claim is premised on federal law. As in her first lawsuit, Plaintiff alleges that Firestone violated her rights under 42 U.S.C. § 1981 and 1988, but in the current lawsuit, Plaintiff alleges that she was discharged in retaliation for having complained about discriminatory treatment. The same set of operative facts apply to both cases. Defendant moves to dismiss this second lawsuit, arguing that Plaintiff's retaliation claim is barred by the doctrine of res judicata.

II. DISCUSSION

"Res judicata prevents the splitting of a single cause of action and the use of several theories of recovery as the basis for separate lawsuits." *Friez v. First Am. Bank & Trust*, 324 F.3d 580, 581 (8th Cir. 2003) (citation omitted). "[R]es judicata, also known as claim preclusion, prevents the relitigation of claims or issues that were raised or could have been raised in an earlier action between the same parties." *Id.* The doctrine of res judicata operates to preclude a subsequent lawsuit when: "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involved the same cause of action; and (4) both suits involved the same parties or their privies." *In re Anderberg-Lund Printing Co.*,109 F.3d 1343, 1346 (8th Cir. 1997) (quoting *Lovell v. Mixon*, 719 F.2d 1373, 1376 (8th Cir.1983)). Furthermore, the party defending against a claim of res judicata must have had a "full and fair opportunity to litigate the matter in the proceeding that is to be given preclusive effect." *Id.*

Plaintiff disputes neither jurisdiction nor that both suits involve the same parties. As well, Plaintiff does not question whether she had a full and fair opportunity to litigate her previous lawsuit.

The Court's inquiry, therefore, is limited to the first and third elements of the res judicata analysis.

Although Plaintiff acknowledges that the Court granted summary judgment in favor of Defendant in Plaintiff's first action, Plaintiff contends that there has been no final judgment on the merits of that case because the Eighth Circuit has not yet ruled on Plaintiff's appeal. Plaintiff argues that the Court's previous Order will have preclusive effect only if it is affirmed by the court of appeals. Plaintiff is correct that the Court's February 14, 2003 Order will have no preclusive effect if reversed by the Eighth Circuit. This point, however, is of no relevance to the present question.

Plaintiff appealed the Court's previous Order pursuant to 28 U.S.C. § 1291, which states in part: "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States." Had the Court's prior Order not been a final decision, Plaintiff would not have been able to appeal the decision. Thus, unless and until the Eighth Circuit reverses the Court's February 14, 2003 Order, that decision is a final judgment for purposes of res judicata.

Plaintiff next argues that her claim of retaliation in the instant suit is not the same cause of action as the claims she alleged in her original suit. When determining whether two suits involve the same cause of action, the Eighth Circuit advises:

> if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, that the two cases are really the same "claim" or "cause of action" for purposes of res judicata. Since the form of action have been abolished, the joinder of claims and amendment of pleadings are liberally permitted in both federal and state courts, there is no reason to give a claimant more than one fair chance to present the substance of his or her case.

Ruple v. Vermillion, 714 F.2d 860, 861 (8th Cir. 1999).

Here, Plaintiff admits that both suits appear to arise out of the same nucleus of operative facts, but Plaintiff contends that the claims in the two suits differ. The problem for Plaintiff is that the standard

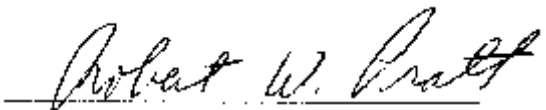
for res judicata is not whether the claims differ by name, but whether they arise out of the same cause of action or nucleus of operative facts. As well, res judicata acts to bar not only those claims that a plaintiff has previously litigated, but those that she could have previously litigated. Plaintiff had every opportunity to include a claim for retaliation in her original suit, yet failed to do so. As quoted above, "there is no reason to give a claimant more than one fair chance to present the substance of his or her case." *Id.* Because both of Plaintiff's lawsuits involve the same nucleus of operative facts, the Court finds that both suits arise out of the same cause of action. As such, Plaintiff's second lawsuit is barred by the doctrine of res judicata.

III. ORDER

The res judicata effect of the Court's final order in Plaintiff's first lawsuit, 4:01-cv-90392 precludes Plaintiff from maintaining her claim in the present suit. Defendant's Motion to Dismiss is hereby **granted**, and Plaintiff's Petition is dismissed.

IT IS SO ORDERED.

Dated this ___3rd___ day of November, 2003.



ROBERT W. PRATT
U.S. DISTRICT JUDGE