



Circuit Certifies Question in Employment Case

August 18, 2011

Joseph v. HDMJ Restaurant Inc., 10-1366-cv (2nd Cir. August 2011)

In a case demonstrating either relentless perseverance or merely a Sisyphean expedition through the state and federal judicial systems, the Second Circuit has asked New York Court of Appeals to examine a question of state law concerning res judicata in an employment discrimination case. In *Joseph v. HDMJ Restaurant Inc.*, 10-1366-cv, plaintiff claimed sexual harassment, racial discrimination and retaliation in violation of Title VII and the ADA. Plaintiff claimed that her employer sexually harassed her by demanding sexual favors and discriminated against her based on her race and Haitian origin through the use of racial slurs. Plaintiff's ADA claim stems from the allegation that her supervisor pulled her down a flight of stairs, exacerbating a prior injury to her knee. She claimed she was fired the following day.

In 2008, the NYS Division of Human Rights dismissed the case based on plaintiff's lack of credibility. Plaintiff thereafter brought an Article 78 proceeding challenging that determination. In 2009, the Supreme Court found that the proceeding was untimely and granted the motion to dismiss. Covering all bases, plaintiff had simultaneously brought an action in federal court but that was also dismissed. Not easily discouraged, she then appealed that dismissal decision to the Second Circuit, which has now certified the following question: "Does a New York court's judgment dismissing on timeliness grounds a plaintiff's Article 78 petition seeking review of an adverse determination of her employment discrimination claims preclude a plaintiff from bringing federal discrimination claims in federal court?" Stay tuned to see if plaintiff finally pushes her rock over the hill of justice or if it falls back upon her.