

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS

CASE NO.: 2011-LCA-00040

In the Matter Of:

SANDEEP GANDOTRA,
Complainant

v.

RAPID GLOBAL BUSINESS SOLUTIONS, INC.,
Respondent

Before: Jonathan C. Calianos, Administrative Law Judge

Appearances:

Sandeep Gandotra, *pro se*, Prosecuting Party

Michael E. Piston, Esq. (TransNational Legal Services, P.C.)
Rochester Hills, Michigan, for Respondent

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION TO
DISMISS AND CANCELLING HEARING**

I. BACKGROUND

This case arises from a request for hearing filed by Sandeep Gandotra (“Gandotra” or “Complainant”), involving the enforcement of an H-1B Labor Condition Application by the Administrator, Wage & Hour Division, United States Department of Labor (“Administrator”)

against Rapid Global Business Solutions, Inc., (“RGBS”) under section 212(n) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1101(a)(15)(H)(I)(b) and § 1182(n), and the regulations promulgated there under at 20 C.F.R. Part 655, Subparts H and I, 20 C.F.R. § 655.700 *et seq.* On April 21, 2011, the Administrator found, *inter alia*, that RGBS failed to pay required wages to various H-1B employees pursuant to 20 C.F.R. § 655.731. Gandotra was not included in the Administrator’s decision as an employee who is owed wages from RGBS. On May 3, 2011, Gandotra filed by facsimile a request for hearing to review the Administrator’s determinations. *See* 20 C.F.R. § 655.820. The evidentiary hearing pursuant to 20 C.F.R §§ 655.825, 655.835 is set for November 7, 2011, in Detroit, Michigan. On August 22, 2011, the Respondent filed a motion to dismiss, arguing, *inter alia*, that Gandotra already litigated the instant matter in the state court of Michigan and his claims were dismissed with prejudice under a settlement with RGBS in the state forum. RGBS argues that the principles of *res judicata* should apply and the instant proceeding should be dismissed. On September 7, 2011, Gandotra filed a response to the motion to dismiss, essentially admitting that the same issues were litigated in state court and settled, but arguing that pursuant to a judgment from the Supreme Court of India in an unrelated case, he should be permitted to re-litigate whether he is owed back wages because he worked afternoon shifts, entitling him to a 3.5% shift premium which he was never paid. On September 14, 2011, I held a telephonic hearing on the record on the motion to dismiss. I indicated that I was inclined to grant the motion but I wanted to see the state court complaint before making a final decision. On September 22, 2011, the parties filed a copy of the state court complaint.

II. DISCUSSION

In describing the principles of *res judicata*, the United States Supreme Court has stated:

A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. *Commissioner v. Sunnen*, 333 U.S. 591, 597 . . . (1948); *Cromwell v. County of Sac*, 94 U.S. 351, 352-353 . . . (1877). Nor are the *res judicata* consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. *Angel v. Bullington*, 330 U.S. 183, 187 . . . (1947); *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 . . . (1940); *Wilson's Executor v. Deen*, 121 U.S. 525, 534... (1887). As this Court explained in *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316, 325 . . . (1927), an “erroneous conclusion” reached by the court in the first suit does not deprive the defendants in the second action “of their right to rely upon the plea of *res judicata* A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action].” We have observed that “[t]he indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert.” *Reed v. Allen*, 286 U.S. 191, 201 . . . (1932).

Federated Dept. Stores v. Moitie, 452 U.S. 394, 398-99 (1981). “The elements of a *res judicata* defense are (1) a final judgment on the merits in an earlier proceeding, (2) sufficient identity between the causes of action asserted in the earlier and later suits, and (3) sufficient identity between the parties in the two actions.” *In re Colonial Mortgage Bankers Corp.*, 324 F.3d 12, 16 (1st Cir. 2003).

Here, all of the elements of *res judicata* are present and dismissal is required. In reviewing the state court complaint that Gandotra filed in the Michigan District Court, 43rd District, the parties are identical, as are the general allegations and causes of action listed in the Amended Complaint filed in my office on August 5, 2011. In the state court complaint, Count 1 alleged breach of contract stating Gandotra was not paid a 3.5% shift premium he claims he was

owed for working afternoon shifts at Ford Motor Company, the company which contracted for Gandotra's labor through RGSB. Count 2 alleged that RGSB failed to pay all costs associated with obtaining Gandotra's employment visa, and Count 3 alleged that RGSB wrongfully required Gandotra to reimburse RGSB for some of the costs incurred in obtaining his H-1B visa. It appears that the judge in the state court proceeding initially dismissed Count 1 of Gandotra's complaint, granting RGSB's motion for partial summary judgment. Subsequently, on June 16, 2009, the parties entered into a "Stipulation to Dismiss Complaint." Under the Stipulation, the parties stated the following:

Now comes Plaintiff Sandeep Gandotra, by and through his attorney, Stanley J. Szot and Defendant, Rapid Global Solutions, Inc., by and through its attorney, Blake P. Lipman and they having amicably settled the issues remaining between them with regard to the pending litigation do hereby stipulate to the dismissal of the Complaint in this matter with prejudice and without costs.

On June 26, 2009, after receipt of the stipulation, the state court judge issued an order dismissing Gandotra's complaint with prejudice.

In looking at the complaint before me, Gandotra essentially copied his state court complaint, made some minor modifications, and presses Counts 1 and 3 in this forum. In arguing against the application of *res judicata*, Gandotra states that his settlement in state court did not include Count 1 (the 3.5% shift premium allegations) because that count was dismissed by the judge before the parties reached a settlement. Unfortunately for Gandotra, the settlement papers and final order of the court did not preserve any issues for litigation, and to the extent Gandotra is aggrieved by an order of the state court, the proper avenue is appeal in the state court system, not a collateral attack in this forum. *See Federated Dept. Stores*, 452 U.S. at 398-99.¹

¹ Gandotra also seeks an affirmative order allowing him to testify in the Administrator's case against RGSB pending before me. The Administrator is the prosecuting party in that case and it is not within my purview to direct how the Administrator (or any party for that matter) prepares and presents their case before me. I am certain the

For the reasons stated on the record during the hearing on September 14, 2011, which are adopted and incorporated herein by reference, and for the reasons stated herein, RGBS's Motion to Dismiss is GRANTED. Accordingly, it is hereby ORDERED that:

- (1) Gandotra's Amended Complaint is DISMISSED; and
- (2) The evidentiary hearing scheduled for November 7, 2011, in Detroit, Michigan is CANCELLED.

SO ORDERED.

A

JONATHAN C. CALIANOS
Administrative Law Judge

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") that is received by the Administrative Review Board ("Board") within thirty (30) calendar days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 655.845(a). The Board's address is: Administrative Review Board, U.S. Department of Labor, Room S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Once an appeal is filed, all inquiries and correspondence should be directed to the Board.

At the time you file the Petition with the Board, you must serve it on all parties as well as the administrative law judge. *See* 20 C.F.R. § 655.845(a).

If no Petition is timely filed, then the administrative law judge's decision becomes the final order of the Secretary of Labor. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 655.840(a).

Administrator is aware of Mr. Gandotra and if she chooses to call him as a witness in that case, that is entirely her decision.