

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CAROL RENEE SUTTON,	§	
	§	No. 297, 2007
Plaintiff Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
CHRISTOPHER COONS, ROBERT	§	C.A. No. 07C-03-045
WEINER, and NEW CASTLE	§	
COUNTY,	§	
	§	
Defendants Below-	§	
Appellees.	§	
	§	

Submitted: October 2, 2007
Decided: December 7, 2007

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

ORDER

This 7th day of December 2007, it appears to the Court that:

(1) Plaintiff-Appellant Carole Renee Sutton appeals the Superior Court's dismissal of her complaint against Defendants-Appellees, New Castle County Executive Christopher Coons, New Castle County Councilman Robert Weiner, and New Castle County (collectively, "Defendants") on the ground that the complaint is barred by *res judicata*. Sutton argues that the Superior Court erred as a matter of law. We find no merit to the appeal and affirm.

(2) On March 28, 2006 Sutton filed a complaint in Superior Court against Defendants (the “First Complaint”). In this complaint, Sutton made five claims: (1) wrongful termination under 19 *Del. C.* § 1703; (2) wrongful termination under New Castle County (“NCC”) Code § 26.01.018; (3) breach of contract; (4) breach of contract based upon breach of the duty of good faith and fair dealing; and (5) punitive damages for intentional, malicious, and wanton behavior of defendants. The complaint contained factual allegations relating to the various merit positions Sutton held with New Castle County before leaving to accept an appointed executive position. It also contained factual allegations relating to the circumstances which led to her attempts to leave this position and return to a merit position with New Castle County.

(3) Defendants filed a Motion to Dismiss the First Complaint. The Superior Court dismissed claims 1, 2, 3, and 5 with prejudice, and dismissed claim 4 without prejudice, granting Sutton leave to amend the complaint with respect to that claim. Sutton amended the complaint, and Defendants moved to dismiss once again.

(4) On November 27, 2006, the Superior Court granted the Motion to Dismiss the Amended Complaint for Sutton’s failure to adequately plead a breach of good faith and fair dealing. Sutton filed a notice of appeal on January 3, 2007.

This Court issued a Notice to Show Cause pursuant to Supreme Court Rule 29(b) on January 4, 2007. On February 1, 2007, Sutton voluntarily dismissed her appeal.

(5) On March 6, 2007 Sutton filed another complaint (the “Second Complaint”) against Defendants. In this complaint, she made six claims: (1) Tortious Interference with Contract; (2) violation of NCC Code § 26.01.018; (3) violation of NCC Code § 26.01.12; (4) violation of NCC Code § 26.01.021; (5) violation of NCC Code § 26.01.021(A); and (6) punitive damages for intentional, malicious, and wanton behavior of defendants. The factual allegations set forth in the First and Second Complaints are virtually identical, and the only paragraph that contains a new fact relevant to this appeal is found in Paragraph 30 of the second complaint. The differences between the paragraphs in the two complaints are italicized below:

On October 14, 2005, Ms. Sutton hand-delivered to the New Castle County Government Center an application for the position of Administrative Aide. The closing date for that position was October 17, 2005. *She has not received any correspondence from NCC regarding her application, within the normal response time set by County per its policy.*¹

On *or about* October 14, 2005, Ms. Sutton hand-delivered to the New Castle County Government Center an application for the position of Administrative Aide. The closing date for that position was October 17, 2005. *Ms. Sutton was finally given an interview for that position*

¹ First Complaint ¶ 37 (emphasis added).

*one year later on September 26, 2006. She was not offered a position as a result of that interview.*²

Defendants moved to dismiss the Second Complaint because it was barred by *res judicata*. The Superior Court granted Defendants' motion, and this appeal followed.

(6) Sutton argues that the claims in the Second Complaint “turn on the defendants’ conduct with respect to that interview and denial” and that the Superior Court erred in applying *res judicata*. We review judgments on a motion to dismiss *de novo*.³

(7) “*Res judicata* operates to bar a claim where the following five-part test is satisfied: (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree.”⁴ We have also held that this doctrine “extends to all

² Second Complaint ¶ 30 (emphasis added).

³ *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 610 (Del. 2003).

⁴ *Dover Historical Soc., Inc. v. City of Dover Planning Comm’n*, 902 A.2d 1084, 1092 (Del. 2006).

claims which a party asserted, or could have asserted, in a prior proceeding between the same parties.”⁵

(8) The parties only dispute the application of the third factor in this case. The original cause of action related to Sutton’s job situation and her belief that Defendants were thwarting her efforts to regain a merit position through a variety of illegal tactics. The Superior Court dismissed the first four claims relating to these facts with prejudice, and eventually dismissed the fifth claim as well. The timing of Sutton’s interview as alleged in the Second Complaint preceded the date the Superior Court granted Defendants’ motion to dismiss the Amended Complaint. Although the fact of the interview was not previously alleged, it could have been asserted in that proceeding.

(9) Although the Second Complaint alleges for the first time a claim for Tortious Interference with Contract, this claim could have been asserted in the prior proceeding. Sutton’s employment contract with New Castle County (“NCC”)

⁵ *Gooch v. Eaby*, 1996 WL 554232, at *1 (Del. Supr.) (citing *Bradley v. Div. of Child Support Enforcement*, 582 A.2d 478, 480 (Del. 1990)). See also *Hendry v. Hendry*, 2006 WL 1565254, at *8 (Del. Ch.) (“*Res judicata* constitutes an absolute bar on all claims that were litigated or which could have been litigated in the earlier proceeding.”). See generally *Ezzes v. Ackerman*, 234 A.2d 444, 445-46 (Del. 1967) (suggesting that beyond the class action context, “the defense of *res judicata* is no longer confined to a second attempt to re-assert the same ‘cause of action’ asserted in the first suit, but is available if the pleadings framing the issues in the first action would have permitted the raising of the issue sought to be raised in the second action, and if the facts were known, or could have been known to the plaintiff in the second action at the time of the first action”); *Maldonado v. Flynn*, 417 A.2d 378, 381 (Del. Ch. 1980) (“The determination . . . whether the [*res judicata*] doctrine shall be invoked is now based on the underlying transaction and not on the substantive legal theories or types of relief which are sought.”).

ended well before she interviewed for the Administrative Aide position, and her Tortious Interference claim arose from facts which occurred before the filing of the First Complaint. Additionally, her prior claims in the First Complaint under NCC § 26.01.018, including her punitive damages claim, were dismissed with prejudice. The Superior Court did not err in concluding that the Second Complaint was barred by *res judicata*.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely
Justice