DISTRICT COURT OF THE COUNTY OF SUFFOLK
FIRST DISTRICT: RONKONKOMA
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ROBERT SIMPSON,

Index No.: SC-400-22/IS

Plaintiff,

-against-

DECISION FOLLOWING TRIAL

ISLIP TERRACE FIRE DISTRICT,

Defendant.
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This small claims action was commenced seeking to recover unpaid vacation time, sick days, and personal time (collectively, "Unused PTO") pursuant to an employment agreement with defendant. The *trial de novo* was conducted on March 14, 2023. Both parties were represented by counsel.

The salient facts are not in dispute. Plaintiff is a former district manager of defendant who resigned from the post on February 8, 2021. Following his resignation, on or about March 25, 2021, defendant paid plaintiff the sum of $4,403.84, minus applicable statutory deductions, for eighteen (18) days of 2021 Unused PTO (Defendant's Exhs. C - D). The number of PTO days are not in dispute. Rather, the gravamen of plaintiff's complaint is that defendant-employer miscalculated the amount owed because plaintiff's "normal work week was three days at eight hours per shift," and not the "5 days a week as [defendant] used to calculate [plaintiff's] remaining time" (Plaintiff's Exh. 4). As clarified by plaintiff's counsel at trial, plaintiff believes that he is still owed $2,935.84 for 2021 Unused PTO.

DISCUSSION

At trial, defendant orally moved to dismiss the proceeding due to plaintiff's failure to provide written notice pursuant to Town Law § 180 prior to commencement of this action and based upon the principle of *res judicata*. The Court reserved decision at the completion of the trial, and, initially, will address the arguments asserted at trial and in defendant's Trial Memorandum.

I. Verified Written Notice of Claim

Defendant's motion to dismiss the complaint due to plaintiff's failure to provide proper verified written notice of the claim in accordance with Town Law § 180 is granted.

Town Law § 180 provides that "[n]o action shall be maintained against a fire district upon or arising out of a contract entered into by the fire district, unless the same shall be commenced within eighteen months after the cause of action thereof shall have accrued, nor unless a written

verified claim shall have been filed with the fire district secretary within six months after the cause of action shall have accrued ...." (emphasis added).

It is well-established that the filing of the written verified claim with the secretary of the fire district is a condition precedent to filing an action against the fire district, and the Courts "have no authority to disregard lack of compliance with such a provision" (***Elmont Fire Dist. v. Lapeka Construct. Corp.***, 232 AD3d 636 [2d Dep't 1996]; *see* ***Perritano v. Mamaroneck***, 170 AD3d 443 [2d Dep't 1991]). Strict compliance with the statutory notice requirements has been consistently enforced (*see, e.g.*, ***Shade Tree Contr. v. Hicksville Fire Dep't***, 272 AD2d 603 [2d Dep't 2000]; ***Franza's Universal Scrap Metal, Inc. v. Islip***, 453 NYS2d 24 [2d Dep't 1982] [Town Law § 65]; ***Wa-Wa-Yanda, Inc. v. Islip***, 25 AD2d 762 [2d Dep't 1966]; ***Hartsdale Fire Dist. v. Eastland Constr., Inc.***, 65 A.D.3d 1345 [2d Dep't 2009]; ***Gill Constr. & Builders Inc. v. Bellmore Fire Dist.***, 2006 NYLJ LEXIS 4364 [Nassau Cnty. Sup. Ct. 2006]; ***Pepco Constr. Corp. v. East Meadow Fire Dep't***, 627 NYS2d 512 [NY Civ. Ct. Kings Cnty. 1995]).

Here, it is undisputed that plaintiff never sent defendant's secretary a "verified" notice of claim. Instead, plaintiff sent a letter, dated April 14, 2021, which was neither notarized nor sworn to, to the treasurer of the fire district (Plaintiff's Exh. 4). At minimum, a verified claim requires a notarized signature (***ADC Contr. & Constr., Inc. v. Town of Southampton***, 45 AD3d 614 [2d Dep't 2007]). In addition, no written communications from the parties between April 14, 2021 and September 24, 2021, six months following the payment by defendant, were introduced.[1]

Moreover, a letter demanding payment, which is essentially what plaintiff's April 14, 2021 correspondence amounts to, "[c]annot be deemed the functional equivalent of a notice of claim" where it was not sent to the designated entity or individual as required by law (*see* ***Power Cooling v. Bd. of Educ. of City of New York***, 48 AD3d 536 [2d Dep't 2008] [*citing* ***Parochial Bus Sys. v. Board of Educ. of City of N.Y.***, 60 NY2d 539 [1983]). The Appellate Division, Second Department reasoned that under these circumstances, "[a]ny alleged lack of prejudice to the defendant[] or actual knowledge of the claim by the defendant[] is irrelevant (***Id.*** [*citing* ***Varsity Tr., Inc. v. Board of Educ. of City of N.Y.***, 5 NY3d 532 [2005]).

Notwithstanding the above standards, the Court is cognizant that this is a small claims action, and the standard of proof is lesser than in other civil actions. The standard here is "substantial justice" in accordance with substantive law. A review of relevant case law demonstrates that the general informality of small claims court does not ease plaintiff's burden because the verified claim constitutes a "substantive element of the plaintiff's cause of action ... rather than a mere procedural requirement (*see* ***Costa v. Town of Babylon***, 787 NYS2d 810 [App. Term, 9th & 10th Jud. Dists. 2004] [*citing* ***Cipriano v. City of New York***, 96 AD2d 817 [2d Dep't 1983]). In other words, the

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[1] It appears that the instant action was commenced three (3) days prior to the expiration of the eighteen-month statute of limitations period.

"[i]nformal and simplified" procedure rules of small claims court generally do not excuse a fatal deficiency in the plaintiff's substantive case, and the condition precedent "[m]ay not be ignored" (***Id.*** [*citing* ***Ragosto v Triborough Bridge & Tunnel Auth.***, 663 NYS2d 462 [App Term, 1st Dept 1997]).

In the instant matter, it is clear that plaintiff's April 14, 2021 letter was defective and contrary to the express requirements set forth within Town Law § 180. In ***Perritano***, *supra*, a case involving the notice provisions of Town Law § 65, which required service on the Town Clerk, the Appellate Division, Second Department held that service of "[u]nverified letters" upon alternative representatives of the Town, specifically, the Chief of Police and Town Board, were inadequate, and failed to substantially comply with the notice provisions (170 AD3d at 443). Here, plaintiff's letter was sent to the treasurer, and not the secretary as required by Town Law (***Town Law*** § 180).

It has further been held that unlike General Municipal Law § 50-e regarding notice of claims against municipal corporations, Town Law § 180, similar to Town Law § 65, "[c]ontains no provision allowing the court to excuse noncompliance with its requirements (***Id.***). As a result, the Court simply may not "disregard the lack of verification of a notice of claim" (***ADC Contr. & Constr., Inc.***, 45 AD3d at 614). The statute similarly does not "allow" for an extension of the statutory time period to serve the written verified claim (***Franza's Universal Scrap Metal, Inc.***, 453 NYS2d at 24). Moreover, with regard to small clams actions, the Appellate Term for the Ninth and Tenth Judicial Districts has held that "[i]n order that substantial justice ... [be] done between the parties according to the rules and principles of substantive law ... this additional condition precedent to bringing the action against defendant may not be ignored" (***Costa***, 787 NYS2d at 810).

The remaining criteria for consideration is whether an exception to the notice provisions exists. Here, there was no evidence that defendant misrepresented "[t]he need to file a verified claim with its secretary, or otherwise induced the plaintiff not to file a verified claim" (***Shade Tree Contr.***, 272 AD2d at 603 [*cf.* ***Bender v New York City Health & Hosps. Corp.***, 38 NY2d 662, 668 [1976]]). Moreover, there was no evidence that defendant had any prior written notice of the claim other than plaintiff's April 14, 2021 letter (*see* ***Costa***, 787 NYS2d at 810).

Accordingly, the complaint must be dismissed due to non-compliance with the notice requirements of Town Law § 180.

II. ***Res Judicata***

On June 29, 2021, plaintiff commenced a prior small claims action against defendant seeking $4,566.88 for "compensation for unused personal time upon separation from employment at [defendant]" (Defendant's Exh. A). The prior small claims action, which is titled "*Robert S. Simpson v. Islip Terrace Fire District,*", bears Index No. SC-177-21/BR (the "Prior Action"). For reasons neither party was able to adequately explain, the Prior Action, which originally sought

plaintiff's 2020 and 2021 Unused PTO, was narrowed to the four (4) days representing the 2020 Unused PTO. The Transcript from the Prior Action was not introduced for consideration, and the parties did not represent or provide any evidence demonstrating that an agreement separating the 2021 Unused PTO claim and preserving the right to pursue such relief in a subsequent litigation had been reached. Incidentally, plaintiff prevailed in the Prior Action, and on April 1, 2022, he was awarded a judgment in the amount of $1,631.04 for four (4) unpaid sick days (Plaintiff's Exh. 2).

Approximately five (5) months following the conclusion of the Prior Action, on September 22, 2022, plaintiff commenced this small claims action against defendant seeking "wages owed for vacation time, overtime, sick time etc" (*see* Complaint). As clarified at the *trial de novo*, plaintiff seeks 2021 Unused PTO.

For the reasons set forth below, the 2021 Unused PTO claim is precluded by the Prior Action, and, as a result, the complaint must further be dismissed on the ground of *res judicata*.

The Courts perform a transactional analysis of the doctrine of *res judicata*. According to this principle, "[o]nce a claim is brought to final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or seeking a different remedy" (***LaPenna v. King***, 925 NYS2d 344 [App. Term, 9th & 10th Jud. Dists. 2011]). In other words, under the doctrine of *res judicata*, also referred to as claim preclusion, "[a] valid final judgment bars future actions between the same parties on the same cause of action" (***Jacobson Dev. Group, LLC v. Grossman***, 198 AD3d 956 [2d Dep't 2021]).

There are multiple aspects to claim preclusion. Most germane to this action, the doctrine of *res judicata* bars claims "[f]or different relief against the same party which arise out of the same factual grouping or transaction, and which *should have or could have been resolved in the prior proceeding*" (***Id.*** [*quoting* ***Mahler v. Campagna***, 60 AD3d 1009 [2d Dep't 2009]). The Court of Appeals has extended this approach to small claims actions (***Simmons v. Trans Express, Inc.***, 37 NY3d 107 [2021] ["[a] small claims judgment may preclude a subsequent claim between the same adversaries arising out of the same transaction or series of transactions as the prior action"]).

Here, it is undisputed that the claim for 2021 Unused PTO had accrued by no later than March 2021, and, further, plaintiff was aware of same. It is further uncontroverted that the Unused PTO claims for 2020 and 2021 arose from plaintiff's employment with defendant and had accrued prior to the commencement of the Prior Action. Plaintiff's knowledge of the claims, and their interconnectedness, is further evidenced by plaintiff's own letter, dated April 14, 2021, to defendant's treasurer where he specifically refers to defendant's miscalculation of payment of both the 2020 and 2021 Unused PTO (Plaintiff's Exh. 4). Since the claims arose from the same transaction, involved the same parties, and further could have been asserted (and apparently were, at least, initially) in the Prior Action, which was fully adjudicated prior to the commencement of this

action, the 2021 Unused PTO claim is barred (*see* ***Jacobson Dev. Group, LLC***, 198 AD3d at 956; *see also* ***Simmons***, 37 NY3d at 107 [small claims action]; ***LaPenna***, 926 NYS2d at 344 [small claims action]).

Accordingly, the complaint is dismissed on the ground of *res judicata*.

III. Consistency In Verdicts

In light of the foregoing, the Court need not address the outcome of the underlying herein dispute. However, since the Court completed the trial, and to avoid potential confusion due to different outcomes resulting from trials involving identical parties regarding claims arising from the same transaction or occurrence, the Court will posit a brief analysis of the merits.

The credible testimony and documentary evidence, in concurrence with the outcome of the Prior Action, demonstrated that plaintiff's Unused PTO was to be computed on the basis of a three-day work week, which is further consistent with the payment of his salary (Plaintiff's Exh. 4; Defendant's Exh. B). Notably, other than a generic introductory letter at the inception of his employment in 2018 (Defendant's Exh. B), no documentation was introduced detailing plaintiff's salary and computation of benefits. If defendant intended to use a five-day work week in determining benefits, when it was undisputed that plaintiff worked (3) days per week, then this condition should have been negotiated and, at minimum, memorialized in an employment agreement. There was no indication that this was done.

Notwithstanding the Court's analysis of the evidence, for the reasons previously stated, defendant's motion to dismiss the complaint is granted.

Based upon the foregoing, the complaint is dismissed.

This constitutes the Decision and Order of the Court.

Dated: Ronkonkoma, New York
March 22, 2023

HON. STEPHEN L. UKEILEY, J.D.C.

Entered
MAR 28 2023

MAILED
MAR 30 2023

STATE OF NEW YORK UNIFIED COURT SYSTEM
Suffolk County District Court - Fifth District
3105 Veterans Memorial Highway, Ronkonkoma, NY 11779
Phone: (631) 381-6005 Fax: (631) 854-9681
Website: www.nycourts.gov/SuffolkDistrict

Hon. Karen Kerr
Supervising Judge

Leonard Badia Esq.
Chief Clerk

March 28, 2023

SC-000400-22/IS
Miller Law Offices, PLLC
23 Langdon Place
Lynbrook, NY 11563

re: Robert Simpson
-against-
Islip Terrace Fire District

Index Number: **SC-000400-22/IS**

TO ALL PARTIES: EVIDENCE

All parties are entitled to the return of their evidence submitted by them. Any party requesting the return of evidence must do so in person with identification.

Evidence will be destroyed if not claimed by May 1, 2023.

NOTE: Evidence needs to be preserved during and if an appeal is filed. The filing of an appeal is within 30 days of the Court's decision. Therefore, it is your responsibility to ensure the integrity of the evidence for at least 40 days.

Suffolk County District Court - 5th District
Small Claims Judgment

Claimant(s):
Robert Simpson

vs.

Defendant(s):
Islip Terrace Fire District

Index Number: SC-000400-22/IS

Judgment issued: After Hearing

On Motion of:

Denny Adam Brown
Po Box 780, Bayport, NY 11705-0780

Amount claimed	$0.00	Index Number Fee	$0.00	Transcript Fee	$0.00
Less Payments made	$0.00	Consumer Credit Fee	$0.00	County Clerk Fee	$0.00
Less Counterclaim Offset	$0.00	Service Fee	$0.00	Enforcement Fee	$0.00
Interest	$0.00	Non-Military Fee	$0.00	Other Disbursements	$0.00
Attorney Fees	$0.00	Notice of Trial Fee	$0.00	Other Costs	$0.00
Cost By Statute	$0.00	Jury Demand Fee	$0.00		
Total Damages	$0.00	**Total Costs & Disbursements**	$0.00	**Judgment Total**	$0.00

The 9% post-judgment interest rate pursuant to NY CPLR §5004(a) applies.

The following named parties, addressed and identified as creditors below:

Claimant creditor(s) and address

(1) Robert Simpson
156 Phyllis Drive, Patchogue, NY 11772

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Islip Terrace Fire District
264 Beaverdam Road, Islip Terrace, NY 11752

Judgment entered at the Suffolk County District Court - 5th District, 3105 Veterans Memorial Highway, Ronkonkoma, NY 11779, in the STATE OF NEW YORK in the total amount of **$0.00 on 03/28/2023 at 12:36 PM.**

Judgment sequence 1

D. P.

Doreen Pembroke

DISTRICT COURT - COUNTY OF SUFFOLK

AFTER JUDGMENT HAS BEEN AWARDED

You are advised to wait thirty days to allow the defendant time to pay you. If you do not receive payment, you may request that the clerk issue you a transcript of judgment to be filed with the Suffolk County Clerk. The request for a transcript must state that you have not received payment, or must state the amount of any partial payment that you have received since the award was granted. Enclose a stamped, self-addressed envelope, along with a check or money order payable to THE CLERK OF THE COURT in the amount of $6.00. When you receive the transcript from the court, it will include instructions on how to proceed.

RIGHT AND TIME TO APPEAL

Any party to an action, who is not in default, may appeal the judgment.
An appeal from judgment must be taken no later than the earliest of the following dates: (i)thirty days after receipt in court of a copy of the judgment by the appealing party, (ii) thirty days after personal delivery of a copy of the judgment by another party to the action to the appealing party (or by appealing party to another party), or (iii) thirty-five days after the mailing of a copy of the judgment to the appealing party by the clerk of the court or by another party to the action.

Copy of judgment mailed on: MAR 28 2023