

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

WARREN EASTERLING	:	
	:	Appellate Case No. 10-CA-39
Plaintiff-Appellant	:	
	:	Trial Court Case No. 10-CV-375
v.	:	
	:	
UNION SAVINGS BANK	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

.....

OPINION

Rendered on the 1st day of October, 2010.

.....

WARREN EASTERLING, 71 Arlington Avenue, Dayton, Ohio 45417
Plaintiff-Appellant, *pro se*

CAROLINE M. DiMAURO, Atty. Reg. #0071045, and JOSEPH L. BRUEMMER, Atty.
Reg. #0079120, Keating Muething & Klekamp, PLL, One East Fourth Street, Suite
1400, Cincinnati, Ohio 45202
Attorneys for Defendant-Appellee

.....

FAIN, J.

{¶ 1} Plaintiff-appellant Warren Easterling appeals from the dismissal of his complaint against defendant-appellee Union Savings Bank. Easterling contends that the trial court erred by dismissing his complaint.

{¶ 2} The trial court compared Easterling’s complaint in this case, filed April

1, 2010, with a complaint he filed against Union Savings bank on December 7, 2009, in a prior case. Easterling's 2009 complaint was dismissed, under Civ. R. 12(B)(6), for failure to state a claim upon which relief could be granted. The trial court determined that Easterling's 2010 complaint was indistinguishable from his 2009 complaint, applied the doctrine of res adjudicata, and ordered the 2010 complaint dismissed.

{¶ 3} We have now had an opportunity to review Easterling's 2009 and 2010 complaints. We agree with the trial court that they are indistinguishable. We conclude, therefore, that the trial court did not err in dismissing the 2010 complaint upon res adjudicata grounds. Therefore, the order from which this appeal is taken is Affirmed.

I

{¶ 4} Easterling filed a complaint against Union Savings Bank on December 7, 2009, seeking reinstatement to his position as a mortgage loan officer, with seniority, and compensatory damages in the amount of \$5,700,000. Upon motion, the trial court found that Easterling's complaint failed to state a claim upon which relief could be granted, and dismissed it under the authority of Civ. R. 12(B)(6). Nothing in our record suggests that an appeal was taken from that order, entered February 9, 2010.

{¶ 5} Easterling filed another complaint against Union Savings Bank on April 1, 2010, again seeking reinstatement to his position as a mortgage loan officer, with seniority, and compensatory damages in the amount of \$5,700,000. Union Savings

Bank moved to dismiss Easterling's 2010 complaint, with prejudice, "because the identical Complaint previously was dismissed by this Court with prejudice on February 9, 2010 for failure to state a claim under Ohio Civ. R. P. 12(B)(6) and thus *res judicata* bars Plaintiff's subsequent and virtually identical Complaint."

{¶ 6} The trial court dismissed Easterling's 2010 complaint both upon the ground that it failed to state a claim upon which relief could be granted, and upon *res judicata* grounds. From the order dismissing his 2010 complaint, Easterling appeals.

II

{¶ 7} Although Easterling's brief includes references to assignments of error, we find nothing therein laying out any express assignments of error, as required by App. R. 16(A)(3). Nevertheless, we infer his sole assignment of error to be as follows:

{¶ 8} THE TRIAL COURT ERRED WHEN IT DISMISSED THIS COMPLAINT WITH PREJUDICE.

{¶ 9} The trial court based its dismissal both upon *res judicata* grounds, and upon the conclusion that the complaint failed to set forth a claim upon which relief could be granted. The doctrine of *res judicata* bars all claims that have been litigated, or could have been litigated, in a prior action between the parties. *Hempstead v. Cleveland Board of Education*, Cuyahoga App. No. 90955, 2008-Ohio-5350, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331.

{¶ 10} In the prior action that Easterling brought against Union Savings Bank, the trial court determined that Easterling had failed to set forth a claim upon which relief could be granted. The trial court noted in its decision that Easterling had had an

opportunity to respond to Union Savings Bank's motion to dismiss, but had not filed a response. Thus, Easterling had a full opportunity, in the prior action, to litigate the legal issue whether his complaint set forth a claim upon which relief could be granted, the trial court found that he had not done so, as a matter of law, and no appeal was taken.

{¶ 11} In the action presently on appeal, the trial court then compared Easterling's 2009 complaint with his 2010 complaint, and found that the two were indistinguishable. The trial court concluded, therefore, that Easterling's 2010 complaint was barred by res judicata, it having already been determined, as a matter of law, that his 2009 complaint failed to state a claim upon which relief could be granted.

{¶ 12} In our review of the propriety of the order from which this appeal is taken, we were initially hampered by the fact that Easterling's 2009 complaint was not in our record, although the trial court had obviously taken judicial notice of it, and had compared it with Easterling's 2010 complaint. At the oral argument of this appeal, we proposed to enlarge the record to include Easterling's 2009 complaint, and neither party had any objection. By entry of this court filed herein on September 2, 2010, the record was so enlarged, and we now have Easterling's 2009 complaint before us.

{¶ 13} We will now compare every part of the text of Easterling's 2010 complaint with the counterpart text of Easterling's 2009 complaint.

{¶ 14} 1-(2010) "On April 24, 2009 the plaintiff, Warren Easterling, was hired as a mortgage loan officer at the Fairborn Location Of Union savings bank [sic], 2794 colonel Glen Hwy. [sic] by Lending Manager, Joyce Womacks and subsequently discharged without cause On [sic] May 14, 2009 (approximately 14 business days)."

{¶ 15} 1-(2009) "On April 24th, 2009, the plaintiff, Warren Easterling, was hired as

a mortgage loan officer at the Fairborn location of Union Savings Bank, 2794 Colonel Glen [sic] Hwy. By [sic] Lending Manager Joyce Womacks and subsequently discharged without cause on May 14, 2009 (approximately 14 business days) because plaintiff asked about his having a key to the workplace as most or all other employees were issued.”

{¶ 16} The only substantive difference between these two texts is that the 2009 complaint specifies a reason proffered for Easterling’s discharge, which is omitted from the 2010 complaint. Both texts assert that Easterling was discharged without cause, which is the essential allegation.

{¶ 17} 2-(2010) “Plaintiff was never introduced to anyone of higher authority to whom plaintiff could complain regarding being discharged.”

{¶ 18} 2-(2009) “Plaintiff was never introduced to anyone of higher authority to whom plaintiff could complain regarding being discharged.”

{¶ 19} 3-(2010) “Laura Wueste from human resources phoned plaintiff on the morning of may [sic] 15. 2009 to summon plaintiff to return to the Fairborn, OH. location to remove his personal belongings.”

{¶ 20} 3-(2009) “Laura Wueste, from human resources phoned plaintiff on the morning of May 15, 2009 to summon plaintiff to return to the Fairborn, Ohio worksite to remove his personal belongings.”

{¶ 21} 4-(2010) “Plaintiff exceeded all qualifications set forth by defendant and was extremely eager to accept the challenge of being a loan officer.”

{¶ 22} 4-(2009) “Plaintiff exceeded all qualifications set forth by plaintiff and was extremely eager to accept the challenge of being a mortgage loan officer.”

{¶ 23} 5-(2010) “Plaintiff originated 4 mortgage loans during this period and was discharged before an appraisal could be performed on his first deal.”

{¶ 24} 5-(2009) “Plaintiff originated 4 mortgage loans during this period and was discharged before an appraisal could be performed on his first deal.”

{¶ 25} 6-(2010) “Plaintiff asserts, the time period of his employment was not long enough to allow him to be successful and therefore asserts he was hired strictly to afford the defendant the opportunity to destroy his mortgage career, destroy his competitive spirit and destroy plaintiffs [sic] clients [sic] belief in his ability to get mortgage loans approved and closed.” (This passage has been highlighted in yellow highlighter in the original.)

{¶ 26} 6-(2009) “Plaintiff asserts, the time period of his employment was not long enough to allow him to be successful and therefore asserts he was hired strictly to afford the defendant the opportunity to destroy his mortgage career, destroy his competitive spirit and destroy his clients belief in his getting mortgage loans approved and closed.” (Underlining in original.)

{¶ 27} 7-(2010) “Plaintiff illustrated the ability to be a producer and a long term player in the industry; Plaintiffs [sic] career was severed before plaintiff could earn a paycheck and enjoy the opportunity to be a leader at defendants [sic] place of employment.”

{¶ 28} 7-(2009) “Plaintiff illustrated his ability to be a producer and a long term player in the industry; Plaintiffs [sic] career was severed before plaintiff could earn a paycheck and enjoy the opportunity to be a leader at defendants [sic] place of employment.”

{¶ 29} 8-(2010) "Plaintiff is filing charges of Harassment" (Highlighted in yellow highlighter in original)

{¶ 30} 8-(2009) "Plaintiff is filing charges of Harassment"

{¶ 31} 9-(2010) "1. Plaintiff eagerly sought employment with defendant on multiple occasions [sic] evidenced his employment application, w-4, I-9, background investigation form, new hire form, employee acknowledgment forms dated 10/23/08, and repetitive check of defendants [sic] website for the loan officer position on 2/20/09 and 4/13/09 (exhibits A1-A9)."

{¶ 32} 9-(2009) "1. Plaintiff eagerly sought employment with defendant on multiple occasions evidenced his employment application, w-4, I-9, background investigation form, new hire form, employee acknowledgment forms dated 10/23/08, and repetitive check of defendants [sic] website for the loan officer position on 2/20/09 and 4/13/09 (exhibits A1-A9)."

{¶ 33} 10-(2010) "2. Plaintiff exceeded qualifications for hire. (plaintiff's resume -exhibit B- 2 pgs.) Plaintiff has 12 yrs. Experience [sic] while defendant only required 1 to 2 years experience. Plaintiff has a website, newsletters and existing relationships with industry professionals and his own clientele."

{¶ 34} 10-(2009) "2. Plaintiff exceeded qualifications for hire. (plaintiff's resume -exhibit B- 2 pgs.) Plaintiff has 12 yrs. Experience [sic] while defendant only required 1 to 2 years experience. Plaintiff has a website, newsletters and existing relationships with industry professionals and his own clientele."

{¶ 35} 11-(2010) "3. Plaintiff had need for an Office key (May 2009 phone schedule exhibit C)"

{¶ 36} 11-(2009) “3. Plaintiff had need for an Office key (May 2009 phone schedule exhibit C)”

{¶ 37} 12-(2010) “4. Plaintiff was not set up on company e-mail for rates etc. until 4/30/09 Exhibit D. (An entire week after start date)”

{¶ 38} 12-(2009) “4. Plaintiff was not set up on company e-mail for rates etc. until 4/30/09 Exhibit D. (An entire week after start date)”

{¶ 39} 13-(2010) “5. Plaintiff was ‘stone-walled’ when he request [sic] pre-approvals from Joyce Womacks and underwriter Judd Gallus. Customer had extra high scores, received an automated accept and had reserves. Mr. Gallus commented on high ratios but refused to offer plaintiff a company guideline to avoid the occurrence [sic] or appearance of discrimination to the client and clarification of what an approvable loan at Union Savings Bank consist [sic] of to the plaintiff. Plaintiff was being intimidated by Womacks and Gallus, in order to reduce or eliminate [sic] plaintiffs [sic] confidence in the performance of plaintiffs [sic] duties. Pre-approval was requested on May 1, 2009 and was never received by plaintiff by the time plaintiff was discharged on May 14, 2009. Exhibit E-1-E5”

{¶ 40} 13-(2009) “5. Plaintiff was ‘stone-walled’ when he request [sic] pre-approvals from Joyce Womacks and underwriter Judd Gallus. Customer had extra high scores, received an automated accept and had reserves. Mr. Gallus commented on high ratios but refused to offer plaintiff a company guideline to avoid the occurrence [sic] or appearance of discrimination to the client and clarification of what an approvable loan at Union Savings Bank consist [sic] of to the plaintiff. Plaintiff was being intimidated by Womacks and Gallus, in order to reduce or eliminate [sic] plaintiffs [sic]

confidence in the performance of plaintiffs [sic] duties. Pre-approval was requested on May 1, 2009 and was never received by plaintiff by the time plaintiff was discharged on May 14, 2009.”

{¶ 41} The 2010 text adds reference to “Exhibits E1-E5” to support this allegation, but that does not change the nature of the identical allegations contained in the two texts.

{¶ 42} 14-(2010) “Wherefore plaintiff demands judgement against defendant requiring:”

{¶ 43} 14-(2009) “Wherefore plaintiff demands judgement against defendant requiring:”

{¶ 44} 15-(2010) “1. Re-instatement of Plaintiffs [sic] position and seniority as Mortgage Loan Officer at a location suitable to plaintiff.”

{¶ 45} 15-(2009) “1. Re-instatement of Plaintiffs [sic] position and seniority as Mortgage Loan Officer at a location suitable to plaintiff.”

{¶ 46} 16-(2010) “2. Compensatory damages of \$5,700,000.00”

{¶ 47} 16-(2009) “2. Compensatory damages of \$5,700,000.00”

{¶ 48} The foregoing review confirms the conclusion of the trial court. Easterling’s 2009 and 2010 complaints against Union Savings Bank are indistinguishable in any material way. The trial court had found, as a matter of law, that the 2009 complaint did not set forth a claim upon which relief could be granted. That decision became final when Easterling failed to appeal from it. When the trial court was confronted with a new complaint, by the same plaintiff against the same defendant, setting forth identical claims, it properly applied the doctrine of res judicata to decline to

revisit the same legal judgment it had already rendered.

{¶ 49} Easterling's sole assignment of error is overruled.

III

{¶ 50} Easterling's sole assignment of error having been overruled, the order of the trial court from which this appeal is taken is Affirmed.

.....

DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

Warren Easterling
Caroline M. DiMauro
Joseph L. Bruemmer
Hon. J. Timothy Campbell