UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Judge Thomas J. Tucker Chapter 9

CITY OF DETROIT'S REPLY IN SUPPORT OF MOTION FOR THE ENTRY OF AN ORDER ENFORCING THE BAR DATE ORDER AND CONFIRMATION ORDER AGAINST RICHARD CADOURA

The City of Detroit, Michigan ("City") files this Reply in support of its Motion[1] and in response to Richard Cadoura's ("Cadoura") Response.[2]

I. Introduction

Cadoura makes four (incorrect) arguments. First, he denies that the *Young* and *Yinger* cases cited by the City are analogous to his own, though he identifies no facts to distinguish them. Second, because the District Court commented that Cadoura "is not bringing a claim based on any conduct that occurred outside the statute of limitations," Cadoura maintains (incorrectly) that his claim cannot be based on the City's pre-petition conduct. Third, Cadoura states that he could not have fairly contemplated having a claim against the City because he never received

[1] *Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Richard Cadoura* (Doc. No. 13713).

[2] *Richard Cadoura's Response to the City of Detroit's Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Richard Cadoura* (Doc. No. 13773).

an "exit interview," despite admitting he was well aware of his disciplinary record at the time. Finally, Cadoura hints that the City waited too long to file its Motion. None of these assertions change the fact that Cadoura's claims are based on pre-petition acts which should have led him to fairly contemplate that he might have a claim against the City. He did not file a proof of claim and his claim is now barred.

II. Argument

A. Cadoura does not distinguish *Young* and *Yinger*, which show that his claim arose when he was placed on the "do not hire" list pre-petition.

Cadoura's sole attempt to distinguish these cases from his own is to state that the City has made "a completely unfounded logical jump . . . to state that the situation in *Young* is analogous to Mr. Cadoura's situation . . . ." Response, p. 34. He identifies no distinguishing facts, but only repeats that he believes that the "operative decision" for him was the City's decision not to rehire him. *Id.* To borrow the Sixth Circuit's phrase, "this is […] insufficient to distinguish *Yinger*." *Young v. Twp. of Green Oak*, 471 F.3d 674, 679-80 (6th Cir. 2006). Like Cadoura, "Yinger failed to recognize that 'a discrimination claim accrues when the operative decision is made, not when [a plaintiff] experiences the consequences of that decision.'" *Id.* at 679 (quoting *Yinger v. City of Dearborn*, 1997 WL 735323 at *4 (6th Cir. Nov. 18, 1997)).

"[T]he heart of Yinger's claims in each lawsuit was his disagreement with the defendants' determination that he was unfit to serve as a police officer because of his psychological condition." *Id.* (citing *Yinger*). Likewise, Young's later claim

arose from an earlier determination by his police department that he was not fit to be returned to duty. *Id.* For Cadoura, the issue was the City's decision was to place him on the "no hire list." Like *Yinger* and *Young*, the "operative decision" was that Cadoura was determined to be unfit for rehire,[3] and Cadoura cannot wave away the similarity simply by denying it. Cadoura should have known or, at the very least, suspected he would have a problem if he reapplied for work with the City because (1) the policy is noted on the Resignation Form[4] he signed and (2) he knew he was resigning to avoid disciplinary consequences. Motion, ¶¶ 15-17; Response, ¶¶ 15-17. If he disagreed with that, he should have filed a proof of claim; he knew enough to do so with respect to a related claim. Motion, ¶ 13; Response, ¶ 13. He did not, and his claim is now barred.

B. Cadoura quotes the District Court summary judgment out of context in regard to the effect of the statute of limitations

Because Cadoura repeatedly asserts that the District Court "found" that he is not bringing any claims outside of the statute of limitations, the City takes a moment to correct this assertion. Response, ¶¶ 16, 21, 22, 24, 25, 27, 32, 24, 37. The District Court was directing its comment to the City's reply in support of summary judgment, not the issue presented before this Court now. Read in context, the District Court

[3] Cadoura also implies that the Sixth Circuit *Young* case may be wrongly decided. *See* Response, ¶ 34. If so, that is a matter to take up with the Sixth Circuit on appeal.

[4] Capitalized terms have the meanings ascribed to them in the Motion.

was noting that Cadoura's right to sue was based on the 2017 refusal to hire; *i.e.*, his claim matured when that occurred. But, bankruptcy uses the fair contemplation test, not the accrual test for determining when a claim arose for bankruptcy purposes.

In his response to the City's Summary Judgment Motion in the District Court, Cadoura introduced the testimony of Joseph Barney, who discussed conditions in the City's EMT system at the time Cadoura was placed on the "do not hire" list. Summary Judgment Response (attached as Ex. 6D to Motion), Doc. No. 13713-4, pp. 7-8, 13-16, and 18 of 125. Indeed, Mr. Barney's testimony was used to bolster Cadoura's assertion that he was improperly placed on the "do not hire" list:

> Thus, it is clear that decision makers were aware of this lawsuit when they disciplined Mr. Cadoura, placed him on the "do not rehire list," and denied his reinstatement. Importantly, around the time of Mr. Cadoura's resignation, there was a surge of disciplinary issues, as Mr. Barney stated. […] His statement, from a non-interested party, shows that the Administration used discipline as a means to suppress employees from promotion. Thus, a leap in logic is not required for a jury to find such actions were also undertaken when Mr. Cadoura was placed on the "do not rehire list" and denied reinstatement.

Summary Judgment Response, p. 13 of 125. In response, the City wrote

> Mr. Barney's testimony regarding disciplinary issues that occurred prior to 2013 is not evidence that Plaintiff was discriminated against when he attempted to be rehired in 2017. First, these alleged disciplinary issues are time barred and also likely barred by the bankruptcy court. Second, if they show anything, it is that the alleged disciplinary issues were widespread, not targeted at Plaintiff.

Reply in Support of Summary Judgment (attached as Ex. 6E to Motion), Doc. No. 13713-5, p. 5 of 20. Taking these together, the District Court wrote

> In its Reply, Defendant contends that Barney's testimony regarding Plaintiff's disciplinary issues are time barred and possibly barred by the bankruptcy discharge. ECF No. 38, PageID.512. However, Defendant also asserts that it solely based its decision not to rehire Plaintiff on the recommendation not to reinstate, which was itself based on his pending discipline and poor work behavior. *See* ECF No. 33, PageID.258. Defendant cannot have it both ways. Plaintiff is not bringing a claim based on any conduct that occurred outside of the statute of limitations or that was alleged in the claim that was discharged in the bankruptcy proceedings. **However, as Defendant implicitly notes in its own arguments, that conduct from that period is relevant to the factual basis for Plaintiff's current claims.** Thus, they are properly considered at this time.

Summary Judgment Opinion (attached as Ex. 6C to Motion), Doc. No. 13713-3, p. 20 of 23 (emphasis supplied); *see also* Response, ¶ 24 (same, omitting last two sentences). The District Court stated that Cadoura is basing his claim on the City's refusal to rehire him in 2017, and noted that the situation that led to him being placed on the "do not hire" list is relevant to that claim. Put another way, Cadoura's right to sue did not accrue until Cadoura "experience[d] the consequences" of the City placing him on the "do not hire" list; his cause of action remained contingent until that occurred. This is confirmation, however, that placement of Cadoura on the "do not rehire" list, <u>is</u> relevant to whether Cadoura fairly contemplated that he held a

contingent claim against the City. He did (or should have) contemplated a claim for the reasons noted previously. Motion, ¶¶ 15-17; Response, ¶¶ 15-17.

C. Cadoura's claim that he never received an exit interview does not justify his failure to file a proof of claim

Cadoura's claim that he and others were unaware that the City had a "no hire" policy for people who did not resign in good standing (*see* Response, ¶¶ 26-27) is belied by his admissions that the policy is stated on the Resignation Form and that he resigned because he was about to be fired. Motion, ¶¶ 15-17; Response, ¶¶ 15-17. The District Court even noted that Cadoura testified that "he expressed surprise that he was being considered for reinstatement given his disciplinary history." Summary Judgment Opinion, p. 6, Doc. 13713-3, p. 7 of 23. His claim that he never received an exit interview or a show cause hearing does not change this.[5] Response, ¶¶ 26-27. In any event, given that the requirement of being in good standing is stated on the form that Cadoura signed, and given that he knew of his disciplinary issues at the time of his resignation, he had to have fairly contemplated that he would have difficulty being reinstated, and that he should have filed a proof of claim in the City's bankruptcy case if he wanted to pursue a claim regarding that difficulty.

[5] Cadoura suggests that an exit interview or show cause hearing is mandatory when someone resigns. The City is not aware of any such policy. Cadoura only points to an alleged comment from a City employee for this belief. Response, ¶¶ 26, 27, 35.

D. It is never too late to assert that a claim is barred by discharge.

Cadoura complains that the City should have informed him sooner that his Complaint was barred by the City's discharge. Response, ¶ 23, 23 n.2. Of course, Cadoura knew of the City's bankruptcy case and could have sought this Court's permission before launching a lawsuit in District Court; it is audacious for Cadoura to file his lawsuit in violation of the discharge, then complain that the City took too long to protest that this was inappropriate. And, though it did not need to do so, the City raised the issue of its bankruptcy filing as an affirmative defense in its answer. (Case No. 20-cv-12986, Doc. No. 25, Aff. Def. #3). The City need not have done anything differently. *In re City of Detroit, Mich.*, 642 B.R. 807, 812-13 (Bankr. E.D. Mich. 2022) *(citing Hamilton v. Herr (In re Hamilton)*, 540 F.3d 367, 373-76 (6th Cir. 2008)). Cadoura's protest that the City should have acted sooner is incorrect.

III. Conclusion

For the reasons stated above, the City asks that its Motion be GRANTED.

Dated: November 9, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 9, 2023, he served a copy of the foregoing *City of Detroit's Reply in Support of Motion for the Entry of an Order Enforcing the Bar Date Order and Confirmation Order Against Richard Cadoura* with the court using the Court's ECF system which will provide notice of the filing to all counsel of record, and also served the Reply upon Richard Cadoura and counsel for Richard Cadoura, in the manner described below:

Via email: conner@aikenslawfirm.com, carla@aikenslawfirm.com

Via First Class Mail:

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DATED: November 9, 2023