IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2856
Summary Calendar

WILLIAM JUSTIN DELEONARDIS,

Plaintiff-Appellant,

versus

U. S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Defendant-Appellee.

Appeal from the United States District Court for
the Southern District of Texas
(CA H 91 3479)

(August 22, 1994)

Before REAVLEY, DAVIS and DeMOSS, Circuit Judges.

REAVLEY, Circuit Judge:*

William DeLeonardis complains that the district court erred in granting summary judgment in favor of the Department of Health and Human Services ("HHS"), and denying leave to file a supplemental complaint. We affirm.

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BACKGROUND

In June of 1990, administrative law judge Richard Mueller demoted DeLeonardis from his position as a supervisory staff attorney with the Social Security Administration, a part of HHS. DeLeonardis, who has cerebral palsy, claimed that the demotion resulted from discrimination on the basis of his handicapping condition. He filed a formal administrative complaint with HHS, which has its own Office of Civil Rights and Equal Opportunity to handle such claims. His case was given the cause number "SSA-736-90." He also requested that the Office of Special Counsel ("OSC"), a federal office independent of HHS, investigate his claim. In July of 1991 DeLeonardis and HHS reached a settlement and entered into a written settlement agreement. The agreement required HHS to change the demotion of DeLeonardis to a "voluntary change to a lower grade," increase his pay and provide back pay, purge his personnel file, pay his attorney's fees, and provide certain personal accommodations.

The agreement also contains a waiver of claims. It states, in pertinent part:

> Mr. DeLeonardis does waive any and all causes of action against the Department of Health and Human Services, or any component thereof, arising from the facts that are the subject of his counselling inquiry and SA-736-90. . . . This settlement agreement is in full satisfaction of all claims complainant may have with regard to this counselling inquiry and SA-736-90. . . . [T]he Agency expressly does not admit discrimination or retaliation nor the presence or practice of any other prohibited personnel practice(s) . . . . By signing this agreement, the Agency neither admits nor implies any act of illegal discrimination or other prohibited personnel practices.

The only claims expressly preserved by the settlement agreement were those DeLeonardis had asserted in a then-pending federal suit against the OSC and relating to its investigation of his claim.[1] DeLeonardis later brought this separate federal district court action against HHS, alleging violations of the Privacy Act, 5 U.S.C. § 552a.

DISCUSSION

A. *Summary Judgment on Privacy Act Claims*

The district court concluded that the Privacy Act claims had been released by the settlement agreement.[2] DeLeonardis, himself an attorney, was represented by counsel in the course of the administrative proceeding and the settlement agreement resulting therefrom. He offered no evidence of overreaching or deception by HHS in negotiating the agreement. We have long held in such circumstances that settlement agreements are favored by the courts and should be encouraged and upheld whenever possible.[3]

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[1] This suit was also dismissed by a summary judgment, which we affirmed. *DeLeonardis v. Weiseman*, 986 F.2d 725 (5th Cir.), *cert. denied*, 114 S. Ct. 69 (1993).

[2] HHS filed a motion to dismiss, but both sides submitted materials outside of the pleadings, and the district court properly treated the motion as one for summary judgment. *See* FED. R. CIV. P. 12(b).

[3] *See Bass v. Phoenix Seadrill/78, Ltd.*, 749 F.2d 1154, 1164 (5th Cir. 1985) ("[P]ublic policy favors voluntary settlements which obviate the need for expensive and time-consuming litigation."); *Insurance Concepts, Inc. v. Western Life Ins. Co.*, 639 F.2d 1108, 1111 (5th Cir. 1981) ("Without a doubt, public policy favors the settlement of claims brought before the courts. `Settlement agreements have always been a favored means of resolving disputes. When fairly arrived at and properly entered into, they are generally viewed as binding, final, and as conclusive of rights as a judgment.'") (citation omitted); *United*

DeLeonardis argues that the agreement was intended only to release discrimination claims and therefore did not release his Privacy Act claims. The settlement agreement on its face contradicts this position. It releases "*all causes of action* against [HHS] arising from the facts that are the subject of" the administrative proceeding. It further states that "the Agency neither admits nor implies any act of illegal discrimination *or other prohibited personnel practices*."

The subject matter of our case involves the same facts that were the subject of the HHS administrative proceeding. The amended complaint in our case alleges the following facts as forming the relevant subject matter of the suit: (1) in January of 1990 DeLeonardis recommended that a subordinate, William Comeaux, be terminated for dishonest conduct; (2) Comeaux, in retaliation, "alleged sexual harassment by [DeLeonardis] for the sole purpose of exposing the fact that [DeLeonardis] is homosexual and had written a short story which appeared in a gay publication," and alleged that DeLeonardis "was a practicing sadist"; (3) in response to the alleged sexual harassment HHS deployed special counsel Donald Pryzbylinski to conduct an investigation; (4) the investigation exceeded legitimate management concerns, violated DeLeonardis' privacy rights, and

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States v. City of Miami, 614 F.2d 1322, 1334 (5th Cir. 1980) ("Settlement of lawsuits by agreement has always been favored."), *modified*, 664 F.2d 435 (5th Cir. 1981) (en banc); *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428 (5th Cir. 1977) ("Settlement agreements are `highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.'") (citation omitted).

focused on gathering information about his outside associations and activities protected by the First Amendment; (5) Pryzbylinski illegally collected and maintained records on how DeLeonardis exercised his First Amendment rights; (6) regional chief ALJ Richard Mueller had a hostile reaction to DeLeonardis' homosexuality; (7) DeLeonardis requested records collected by Pryzbylinski "under the provisions of the Freedom of Information Act and/or Privacy Act," and was told that no records existed; (8) Mueller demoted DeLeonardis as a result of his alleged associations and activities uncovered by the investigation; and (9) Comeaux filed a formal discrimination complaint based on the alleged sexual harassment by DeLeonardis, which was investigated, even though "EEO guidelines specifically state that complaints alleging discrimination based on homosexuality not be accepted for investigation" and DeLeonardis complained to HHS that there was no jurisdictional basis for the investigation. The complaint then asserts claims for relief under the Privacy Act.

The formal complaint in the administrative hearing alleged the same nucleus of relevant facts. In it DeLeonardis alleged that: (1) he recommended the dismissal of Comeaux in January of 1990 for falsifying work reports; (2) "Comeaux had threatened to reveal to ALJ Mueller the fact I am gay and wrote a short story for a gay magazine"; (3) in February 1990, Pryzbylinski "visited the Houston office to investigate allegations by Comeaux that I am a practicing sadist"; (4) Mueller was "outraged by the story I wrote under a pen name for a gay magazine"; (5) through his

attorney DeLeonardis asked "for any documents or reports pertaining to me [under the Freedom of Information Act/Privacy Act]," and was told that no such documents existed; and (6) Mueller, relating to another ALJ his decision to demote DeLeonardis, "gave no reason but spoke in disgust for the short story." Other materials from the administrative complaint file further confirm that that proceeding and the present lawsuit are based on the same subject matter and course of events.[4]

DeLeonardis argues that the settlement agreement should not be interpreted to bar his Privacy Act claims because the administrative proceeding was only authorized to consider and redress discrimination claims.[5] We find no merit to this

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[4] The file contains an April 23, 1990 letter from DeLeonardis to Mueller stating that "Pryzbylinski may have violated the provisions of the Privacy Act . . . ." It then asserts three possible violations under subsections (e)(3), (e)(7) and (b)(1) of the Act. These same violations are asserted in the amended complaint in our suit. DeLeonardis concludes the letter by stating that "[m]y primary concern is that I be allowed to work without harassment or further intrusions into my private affairs unrelated to my performance or the functioning of this office." In March of 1991, several months before he signed the settlement agreement, DeLeonardis submitted an affidavit in response to the Comeaux sexual discrimination claim. It states that "[h]omosexual persons are not a protected class under title VII" and that "[n]either this agency, nor the EEOC, has jurisdiction to investigate or to consider the merits of [Comeaux's] complaint." He made the same argument in an April 1, 1991 letter to the investigations division of HHS.

[5] The administrative proceeding was conducted pursuant to federal regulations governing discrimination claims by federal employees. *See* 29 C.F.R. §§ 1613.211-.222 (1993). They allow for "adjustment of the complaint on an informal basis," and provide that "[a]ny settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties." *Id.* § 1613.217.

position. The settlement agreement was signed by HHS personnel on behalf of the agency. By its terms it did not limit the release only to those claims which could be brought in the administrative proceeding. Settlement agreements frequently, indeed typically, result in a waiver of claims that otherwise could be brought in a forum other that the one where the dispute is pending. Furthermore, many settlements are reached before the parties find it necessary to resort to the courts or another tribunal. Extending DeLeonardis' reasoning, such pre-litigation settlement agreements would have no binding effect on the parties. In addition, construing the settlement agreement as only releasing discrimination claims within the jurisdiction of the administrative proceeding would be inconsistent with the express language in the agreement preserving the claims asserted by DeLeonardis in the suit against the OSC. In that suit DeLeonardis asserted violations of his First Amendment rights, and sought relief against the OSC that was beyond the jurisdiction of the internal HHS administrative proceeding. *DeLeonardis*, 986 F.2d at 726. This reservation of rights would be superfluous if we were to adopt DeLeonardis' interpretation of the agreement.

DeLeonardis also argues that HHS conducted an investigation in March of 1991 of a charge by Comeaux that DeLeonardis had sexually harassed him. He points out that this investigation occurred after his demotion and after he had filed his discrimination complaint, and contends that he was unaware of a

wrongful disclosure to Comeaux of investigative materials until after he signed the settlement agreement. Citing *Rogers v. General Elec. Co.*, 781 F.2d 452 (5th Cir. 1986), he argues that federal law does not permit a prospective waiver of claims.[6] This argument is misplaced because DeLeonardis offered no evidence that HHS made a wrongful disclosure after the execution of the settlement agreement. Further, over a year before he signed the settlement agreement, he specifically complained to HHS in his April 23, 1990 letter[7] that the agency (through Pryzbylinski) had "apparently disseminated information about my stories and private affairs to components outside of [the Office of Hearings and Appeals] who have no need for such information in the performance of their official duties." He cites no authority that federal law prohibits a settlement of claims where the facts supporting those claims have not been fully discovered. Again, settlement agreements are reached sometimes before litigation has even commenced, and often before exhaustive pretrial discovery has been completed. Adopting DeLeonardis' position would run directly counter to the policy of promoting settlements as a means of avoiding time-consuming and costly litigation.

B. *Denial of Leave to Amend*

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[6] *Rogers* states that "an employee may validly release only those Title VII claims arising from `discriminatory acts or practices which antedate the execution of the release.'" *Id.* at 454 (citation omitted). *Rogers* does not hold, however, that public policy prohibits a release of claims based on events that occurred before the date of the release but have not yet been fully discovered.

[7] *See* note 5, *supra*.

DeLeonardis also complains that the district court erred in denying him leave to file a supplemental complaint. The proposed supplemental complaint attempted to add a direct claim under the Constitution (i.e. a *Bivens*[8] claim) for alleged violations of Deleonardis' First Amendment rights.

We conclude that the First Amendment claim was also released by the settlement agreement. This claim arose from the same facts that were the subject of the administrative proceeding. The factual basis of the supplemental complaint consists of allegations that: (1) DeLeonardis "wrote a short story under a pen name during offduty hours for a gay magazine;" (2) "Mueller had a homophobic reaction when he learned of this story and demoted" DeLeonardis; and (3) "[a]s a result of the demotion and publication of the demotion, [DeLeonardis] was stigmatized as an undesirable management employee." These same alleged events were part of the factual basis of the administrative proceeding. In his formal complaint in that proceeding DeLeonardis alleged that "Comeaux had threatened to reveal to ALJ Mueller the fact I am gay and wrote a short story for a gay magazine," that "[t]he story was not written on government time or with government equipment," and that Mueller was "outraged by the story I wrote under a pen name for a gay magazine." Other materials from the administrative proceeding further confirm that the short story

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[8] *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

and Mueller's reaction to it were a part of the subject matter of the proceeding.[9]

Further, because of the comprehensive scheme of regulation embodied in the Civil Service Reform Act of 1978 ("CSRA"), Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended in various sections of 5 U.S.C.), federal district courts have no jurisdiction to entertain *Bivens* claims brought by civil servants complaining of adverse personnel actions by the federal government *qua* employer. *Rollins v. Marsh*, 937 F.2d 134, 137-39 (5th Cir. 1991).[10] Therefore, the district court did not err in denying leave to supplement the complaint.

AFFIRMED.

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[9] An affidavit by Mueller submitted in the proceeding states: "Deleonardis suggests that his problems began only with the discovery of a sexually explicit article he wrote for a Gay magazine. This is incorrect and the article had nothing to do with my action except to the extent it was a sexually explicit article which he had shared, obviously, with one of his subordinates." In his April 23, 1990 letter to Mueller, DeLeonardis complains that the Pryzbylinski investigation resulted in the gathering of "information about my associations and other rights protected by the First Amendment," and that the proposed adverse personnel actions "are sanctions against my freedoms of expression and association protected under the First Amendment." In a written grievance presentation DeLeonardis complained that his demotion "is a sanction against my freedom of expression (i.e. writing of a short story) protected by the First Amendment" and that "[t]he demotion is a penalty for offduty conduct which does not affect my performance."

[10] This limitation on federal district court jurisdiction applies even though Deleonardis, as a member of the excepted service, had limited remedies under the CSRA at the time of his demotion. *See United States v. Fausto*, 484 U.S. 439, 443, 455 (1988) (holding that CSRA bars judicial review of suspension of member of excepted service even though CSRA provided for no administrative or judicial review).