

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 15, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARCUS "MIKE" HARRIS, and
BETTY J. "BETS" HARRIS, husband
and wife,

Plaintiffs,

v.

CHELAN COUNTY SHERIFF'S
DEPARTMENT, A DIVISION OF
CHELAN COUNTY, A MUNICIPAL
ENTITY EXISTING UNDER THE
LAWS OF THE STATE OF
WASHINGTON,

Defendant.

No. 2:17-CV-0137-JTR

ORDER DENYING PLAINTIFFS'
MOTION TO ESTABLISH BINDING
EFFECT OF ARBITRATOR'S
RULING

BEFORE THE COURT is Plaintiffs' "Motion for Summary Judgment on Application of Arbitration Facts Decided, and to Exclude All Contrary Argument Under the Doctrine of Collateral Estoppel," ECF No. 51, which the Court has construed as a motion in limine, ECF No. 73. Scott M. Kane represents Plaintiffs Marcus "Mike" Harris ("Harris") and Betty J. "Bets" Harris; Defendant is represented by Heather C. Yakely. The parties have consented to proceed before a magistrate judge. ECF No. 9.

1 **DISCUSSION**

2 Plaintiffs’ instant motion asserts Defendant is collaterally estopped from re-
3 litigating issues previously decided by an arbitrator, James A. Lundberg.
4 Specifically, Plaintiffs seek the “offensive” application of collateral estoppel to
5 prohibit Defendant from presenting evidence or arguing any facts contrary to the
6 arbitrator’s ruling that no “just cause” existed for Harris’ termination from
7 employment with the Chelan County Sherriff’s Department.

8 Collateral estoppel, also known as issue preclusion, prevents relitigation of
9 an issue of fact or law in a subsequent proceeding involving the same parties. See
10 *San Remo Hotel, L.P. v. City & Cty. of San Francisco, Cal.*, 545 U.S. 323, 336-337
11 (2005). Pursuant to the Federal Full Faith and Credit Statute, 28 U.S.C. § 1738,
12 the Court is required to give full faith and credit to the records and judicial
13 proceedings of any state court. 28 U.S.C. § 1738. However, case law has
14 established that the plain language of 28 U.S.C. § 1738 does not require the Court
15 to give full faith and credit to arbitration proceedings. *McDonald v. City of W.*
16 *Branch, Mich.*, 466 U.S. 284, 287-288 (1984); *Kremer v. Chem. Constr. Corp.*, 456
17 U.S. 461, 477-478 (1982) (holding “[a]rbitration decisions, of course, are not
18 subject to the mandate of § 1738.”).

19 Unlike state administrative proceedings and state courts, the right to
20 arbitration is a contractual right, not a statutory right. *Kremer*, 456 U.S. at 477.
21 “The arbitrator’s specialized competence is ‘the law of the shop, not the law of the
22 land,’ and ‘the factfinding process in arbitration usually is not equivalent to judicial
23 factfinding.’” *Id.* at 478. Arbitration is not a “judicial proceeding” and, therefore,
24 Section 1738 does not apply to arbitration awards. *McDonald*, 466 U.S. at 288
25 (holding that “in a § 1983 action, a federal court should not afford *res judicata* or
26 collateral-estoppel to effect an award in an arbitration proceeding brought pursuant
27 to the terms of a collective-bargaining agreement.”); *Alexander v. Gardner-Denver*
28 *Co.*, 415 U.S. 36, 49, 59-60 (1974) (holding that arbitration of whether employee

1 was discharged for just cause was not preclusive of Title VII claims because
2 collective bargaining agreement did not cover statutory claims).

3 Even if the Court were to find the arbitration decision in this case was a
4 “judicial proceeding” and a “final judgment on the merits,” the issues raised in the
5 instant federal lawsuit are not identical to the issues raised in arbitration.¹ To be
6 given preclusive effect, all elements of collateral estoppel must exist. The
7 arbitration addressed only whether Harris was terminated with cause, while the
8 instant lawsuit raises numerous federal and state law challenges pertaining to
9 Harris’ employment and termination. Because the causes of action in this lawsuit
10 are not identical to the issues raised in arbitration, not all of the elements of
11 collateral estoppel are present. Therefore, Plaintiffs’ request for the Court to apply
12 collateral estoppel to the entirety of this case is denied.

13 Defendant, by way of its response brief to the instant motion, ECF No. 80 at
14 4-5, and in its motion for summary judgment, ECF No. 60 at 8-11, indicates
15 collateral estoppel is appropriate as a shield to preclude relitigation of Plaintiffs’
16 state law wrongful termination claim that was fully heard by the arbitrator and for
17 which Harris was fully compensated. The Court declines to discuss this assertion
18 until the pending cross motions for summary judgment are resolved and a
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21 ¹Washington law provides that collateral estoppel applies only when the
22 party seeking estoppel can show that 1) the issues between the first action and the
23 second are identical, 2) the parties to be estopped in the second action were parties
24 in the first suit, or are in privity with parties in the first suit, 3) the first suit resulted
25 in a final judgment on the merits, and 4) there would be no injustice if the parties
26 were estopped from relitigating the issues. See *Nielson v. Spanaway General*
27 *Medical Clinic, Inc.*, 135 Wash.2d 255, 262-263 (1998). All of the foregoing
28 elements must exist before collateral estoppel may be entered.

1 determination is made as to whether the Court will retain jurisdiction over any
2 remaining state law claims.

3 **CONCLUSION**

4 Based on the foregoing, the Court declines to give Arbitrator Lundberg's
5 findings binding effect. Accordingly, **IT IS HEREBY ORDERED** Plaintiffs'
6 motion under the doctrine of collateral estoppel to exclude all argument contrary to
7 the arbitrator's decision, **ECF No. 51**, is **DENIED**.

8 **IT IS SO ORDERED.**

9 DATED April 15, 2019.



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A handwritten signature in black ink, appearing to be "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE