

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TONY MCMILLIAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 05-2127 (JR)
	:	
DISTRICT OF COLUMBIA, <i>et al.</i> ,	:	
	:	
Defendants.	:	

MEMORANDUM

Plaintiff, a member of the D.C. Fire Department, was demoted from supervisory paramedic to safety compliance officer in 2000. On November 19, 2004, he sued the District of Columbia, the fire department, and the interim fire chief under Title VII of the Civil Rights Act of 1964, alleging racial discrimination and retaliation. That suit, Civil Action No. 04-2036, was dismissed as to the District of Columbia and the fire department by Judge Urbina on May 2, 2005 [No. 04-2036 dkt.# 5] upon the defendants' motion to dismiss, which was treated as conceded pursuant to LCvR 7(b). The dismissal "operates an adjudication upon the merits" of the claims made against those parties in that suit, Fed.R.Civ.P. 41(b), and plaintiff's identical claims against the District of Columbia and the fire department in this case are accordingly barred by the doctrine of *res judicata*, which "binds parties from litigating or relitigating any [claim] that was or could have been litigated in a prior adjudication."

Consolidated Edison Co. of New York v. Bodman, 445 F.3d 438, 450 (D.C. Cir. 2006).

Res judicata does not operate as to the claim plaintiff brings here against defendant Thomas N. Tippet, who is sued individually and in his former official capacity as fire chief of the D.C. Fire and EMS Bureau, because the claims against Chief Tippet were not dismissed by Judge Urbina in the earlier action and in fact are still pending before Judge Urbina.¹ Since only the claims against Chief Tippet remain pending in the instant case, the case has become a "related case" that should technically be transferred to Judge Urbina. Since the claims against Chief Tippet in the two cases are identical, however, transfer would succeed only in a merger of the two cases. The better course, as the District suggests, is to dismiss the claims in this case against Chief Tippet as "duplicative" of the claims already pending against him in No. 04-2036.

An appropriate order accompanies this memorandum.

JAMES ROBERTSON
United States District Judge

¹ The procedural posture of the case before Judge Urbina is unclear: Chief Tippet was granted leave to file a motion to dismiss out of time on April 12, 2006. The motion to dismiss was attached to Chief Tippet's motion for leave to file but it was never separately docketed, and it has never been answered.