

One Bite at the Apple Where State and Federal Jurisdiction Is Concurrent

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The US Court of Appeals for the Second Circuit upheld a federal district court's dismissal of a case on *res judicata* grounds after a state court issued a decision on different claims but had concurrent jurisdiction over the claims alleged in the federal case. *Beijing Neu Cloud Oriental Sys. Tech. Co. v. Int'l Bus. Machs. Corp.*, Case No. 22-3132 (2d Cir. July 25, 2024) (**Livingston**, Menashi, Kahn, JJ.)

Beijing Neu Cloud Oriental System Technology filed suit in federal district court against several International Business Machines companies (collectively, IBM defendants) asserting a single claim for trade secret misappropriation under the Defend Trade Secrets Act (DTSA). Shortly thereafter, Neu Cloud also sued the IBM defendants in New York state court, alleging state law causes of action for unfair competition, unjust enrichment, breach of fiduciary duty, breach of contract and tortious interference.

The state court dismissed the claims. After the state court issued its decision, the IBM defendants moved to dismiss the federal action, arguing that:

- Neu Cloud's claim was time-barred.
- Neu Cloud failed to state a plausible DTSA claim.
- The judgment of the New York Supreme Court precluded the instant DTSA claim under *res judicata*.

The district court granted the motion to dismiss, agreeing with the IBM defendants on the DTSA claims but not on the effect of *res judicata*. Neu Cloud appealed the dismissal of its complaint. The Second Circuit only considered the arguments related to the IBM defendants' *res judicata* defense.

Applying New York law to determine the preclusive effect of the state court's judgment, the Second Circuit explained that under New York preclusion law "a party may not litigate a claim where a judgment on the merits exists from a prior action between the same parties involving the same subject matter." This rule applies if the subsequent claim was "actually litigated" in the prior action or if it merely "could have been raised in the prior litigation."

The Second Circuit found that the district court's decision was on the merits and the trade secret claims could have been raised in the state court action. The Court held that the New York state court

would have been competent to adjudicate the DTSA claim since jurisdiction for DTSA actions is not exclusive to federal courts. The Court noted that the plain text of the DTSA is strong evidence that Congress intended for jurisdiction over DTSA claims to be federal and state concurrent. Moreover, the Second Circuit found that the legislative history revealed no evidence that Congress affirmatively intended to confer exclusive jurisdiction over DTSA claims on the federal courts. The Court noted that many other circuit courts had come to the same conclusion.

Since the parties were clearly the same, the state court case involved the same subject matter, and the claims alleged the same injury and arose out of the same or related facts, the Second Circuit stated that the relevant question was whether Neu Cloud should have sought recovery in state court for its claim of trade secret misappropriation under the DTSA. Resolving that issue, the Court found that both the federal and state complaints alleged the same facts and Neu Cloud's state-aw and DTSA claims should have been brought in a single proceeding.

The Second Circuit therefore affirmed the district court's dismissal of the case.

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