

JAN 10 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BOOKER T. WASHINGTON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>THE RITZ CARLTON HOTEL COMPANY, LLC,</p> <p>Defendant - Appellee.</p>

No. 10-56831

D.C. No. 2:10-cv-08261-UA-DUTY

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, Chief Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Booker T. Washington appeals pro se from the district court’s order denying his request for leave to proceed in forma pauperis in his Title VII action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the determination that a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

complaint lacks arguable substance in law or fact, and for an abuse of discretion the denial of leave to proceed in forma pauperis. *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1369 (9th Cir. 1987). We reverse and remand.

The district court concluded that Washington's proposed complaint was frivolous or without merit because Washington had alleged the same claim against the same defendant in an earlier action that was dismissed with prejudice.

However, a review of the record shows that in this action, Washington alleged a claim based on a retaliatory termination, while the prior action focused on alleged discrimination during Washington's employment. Accordingly, we reverse and remand to the district court for further proceedings.

Washington's remaining contentions are unpersuasive.

Washington shall bear his own costs on appeal.

REVERSED and REMANDED.