STATE OF MICHIGAN

COURT OF APPEALS

MOSAICA EDUCATION INC., and MOSAICA ADVANTAGE INC.,

Plaintiffs-Appellants,

v

DIVINE INSPIRATION MISSIONARY BAPTIST CHURCH and JUANITA SIMMONS,

Defendants-Appellees.

UNPUBLISHED
December 22, 2009

No. 287546
Wayne Circuit Court
LC No. 2007-725034-CK

Before: Donofrio, P.J., and Sawyer and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting summary disposition in defendants' favor pursuant to MCR 2.116(C)(7). Because plaintiffs' claims are barred by res judicata, we affirm.

There is little dispute about the basic facts in this case. In June 2000, Advantage Schools, Inc. ("Advantage") entered into a contract with defendants whereby Advantage would lease a building and its surrounding property from defendants for the purpose of operating a charter school. The lease was operative for a term of five years, beginning August 15, 2000, with an option to extend the lease for two additional five-year periods. Plaintiffs, who are in the business of owning and operating charter schools, acquired Advantage shortly after the lease was signed.

In 2002, a dispute arose between plaintiffs and defendants concerning the leased premises. Defendants initiated a lawsuit against plaintiffs claiming that plaintiffs breached the lease agreements and that said breaches acted to terminate the lease under its express terms. Plaintiffs counter-claimed on various theories including breach of contract and tortious interference with a business relationship. The trial court dismissed defendants' claims in their entirety, with prejudice, on May 9, 2006, apparently as a sanction for failing to attend court-ordered facilitation and pay court-ordered sanctions. On the same date, the trial court entered an order of voluntary dismissal, with prejudice, with respect to plaintiffs' counterclaims.

Plaintiffs initiated the instant action in September 2007 after defendants refused plaintiffs access to the premises.[1] Plaintiffs asserted that the dismissal of defendants' claims in the prior lawsuit specifically related to possession of the premises and that defendants were thus prohibited from denying that the lease is operative or that plaintiffs are entitled to possession of the property. Defendants responded that plaintiffs failed to extend the lease, that it expired on August 15, 2005, and that plaintiffs therefore have no right to possession of the premises. The parties filed cross-motions for summary disposition and the trial court granted summary disposition in defendants' favor pursuant to MCR 2.116(C)(7), finding that res judicata barred litigation of plaintiffs' current claims. Plaintiffs now appeal that decision.

This Court reviews a trial court's decision to grant summary disposition under MCR 2.116(C)(7) de novo. *Schaendorf v Consumers Energy Co*, 275 Mich App 507, 509; 739 NW2d 402 (2007). In reviewing a motion under subrule (C)(7), we accept the plaintiffs' well-pleaded allegations as true and construe them in the plaintiffs' favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). In doing so, we consider any affidavits, depositions, admissions, and other documentary evidence submitted by the parties. *Id*. The application of a legal doctrine, such as res judicata, presents a question of law that this Court also reviews de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

On appeal, plaintiffs acknowledge that res judicata would generally bar their present claims because the prior action addressed the claim of possession of the premises and, according to plaintiffs, resolved in their favor. However, plaintiffs claim that after entry of the dismissal orders, defendants refused them access to the property, which represented a material change in circumstances sufficient to foreclose the application of res judicata.

Res judicata applies broadly in Michigan to bar subsequent actions between the same parties concerning issues that were, or reasonably should have been, addressed and decided in a prior action. *Pierson Sand and Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). Res judicata applies both to points on which the court was actually required by the parties to form an opinion and pronounce judgment, and to every point which properly belongs to the subject of the litigation and which the parties, exercising reasonable diligence, might have brought forward at the time. *Cogan v Cogan*, 119 Mich App 476, 478; 326 NW2d 414 (1982). "The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication." *Richards v Tibaldi*, 272 Mich App 522, 530; 726 NW2d 770 (2006).

Res judicata bars a second lawsuit when (1) the first action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matters contested in the second case were, or could have been, resolved in the first case. *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). Dismissal of a lawsuit with prejudice is considered an

[1] Plaintiffs assert that they filed a motion in the prior action to address the current issues, but that the trial court declined to hear the motion based on a lack of jurisdiction given that all claims in the prior matter had been dismissed with prejudice.

adjudication on the merits for res judicata purposes. *Wilson v Knight-Ridder Newspapers Inc.*, 190 Mich App 277, 279; 475 NW2d 388 (1991). To determine if the subject matter of a second action is the same as that in a prior action, one looks to whether the facts are identical in both actions, or whether the same evidence would sustain both actions. "If the same facts or evidence would sustain both, the two actions are considered the same for purposes of res judicata." *Matter of Estate of Koernke*, 169 Mich App 397, 399; 425 NW2d 795 (1988). It is fundamental, however, that if a material change in circumstances occurs after a judgment has been rendered, the doctrine of res judicata will not operate to bar a subsequent relitigation of issues affected by the altered conditions. *Cloverlanes Bowl, Inc v Gordon*, 46 Mich App 518, 524; 208 NW2d 598 (1973).

Here, the trial court dismissed defendants' action against plaintiffs with prejudice. Likewise, the trial court dismissed plaintiffs' counter-complaint against defendants with prejudice. The first actions were therefore decided on the merits, thus satisfying the first prong of the res judicata analysis. See *Wilson, supra.* The second prong is also satisfied because both actions involve the same parties or their privies—a fact undisputed by the parties. Interestingly, is also appears undisputed that the third prong is satisfied, i.e. that the matters contested in the second case were (or could have been) resolved in the first case. *Adair, supra*. What the parties dispute is *how* the dismissals in the first action actually resolved the issues.

Plaintiffs' entire complaint and appeal hinge on a conclusion that the dismissals in the prior action resulted in all of the issues raised in the prior lawsuit having been litigated and resolved in their favor. Relevant to the instant matter, plaintiffs specifically rely on the proposition that because the issue of whether the lease was extended beyond its initial August 2005 expiration date was raised in the lower court, the dismissals necessarily lead to a finding that the lease was, consistent with plaintiffs' position below, extended, and in fact is still in force, thus entitling them to continued and present possession.

Defendants' complaint in the prior lawsuit contained allegations that plaintiffs committed numerous material breaches of the lease including: making substantial alterations to the premises without defendants' prior review, approval, and consent; demolishing portions of the property; occupying the entire parking lot; and failing to maintain adequate insurance. Defendants asserted that they were entitled to possession of the property because the lease and tenancy were terminated due to the plaintiffs' breaches. Nowhere in defendants' complaint is there mention of an extension of the lease. Plaintiffs' assertion that defendants raised the issue as a basis for its eviction lacks merit and makes no logical sense because the prior lawsuit was initiated in 2002 and the lease was not set to expire until 2005. Obviously, whether the lease was extended became an issue during the litigation, but it appears that it was plaintiffs, in a counter-complaint, who formally asserted that the lease had been extended such that they were entitled to continued possession of the premises. Plaintiffs specifically amended their counter-complaint in the prior action to request a declaration that the lease had been extended. The order dismissing *defendants'* claims, then, resolved only whether plaintiffs breached the terms of the lease such that the lease was terminated, i.e. the claims actually raised by defendants.

Of note, a crossed out paragraph that appears at the bottom of the order reads:

> IT IS FURTHER ORDERED that Mosaica Advantage, Inc., is entitled to possess and enjoy the leased premises so long as it complies with the terms of the lease.

Again, this language was crossed out of the order. The deleted language in the order suggests that possession was in fact, not resolved in favor of plaintiffs, at least to the extent set forth in the deleted language. In any event, the dismissal did not constitute a determination that plaintiffs were entitled to possession of the premises or that the lease agreement had been extended.

The second order of dismissal likewise did not constitute a determination that plaintiffs were entitled to possession of the premises or that the lease agreement had been extended. This order was a voluntary order whereby plaintiffs agreed to dismiss their counter-claims against defendants, with prejudice. Plaintiffs thus did not "prevail" on their counter-claims, including the claim that the lease was extended, and have provided no authority suggesting so.

Because the parties continued to debate plaintiffs' claim of an extended lease even up to a few short days before entry of the dismissals, plaintiffs could, and perhaps should, have continued with their counterclaims so that the matter concerning the lease extension and their other claims could proceed to judgment. That they elected not to do so does not equate to a default on all of their counterclaims in their favor. To adopt plaintiffs' position would lead to an absurd result where plaintiffs could and likely would file their claims, then quickly and voluntarily dismiss them so they could simply assert that they had "won" and were entitled to a judgment in their favor.

Res judicata precludes relitigation of claims that were and reasonably could have been resolved in a prior action. That the lease was extended such that plaintiffs had continued possession of the property was a claim plaintiffs pursued in the first lawsuit and that claim could have been resolved in the prior action. The possession of the property was, after all, the crux of the entire first action, with defendant claiming plaintiffs no longer had possession due to contractual breaches and plaintiffs not only denying the breaches but also claiming possession due to an extension of the lease. The same facts and evidence that were presented to the lower court on this claim in the first case would be the same in this subsequent case. The third prong of res judicata having been met, it bars plaintiffs' claims in the instant matter.

Plaintiffs do argue, for the first time, that res judicata is inapplicable because there has been a material change in circumstances, to wit: that defendants no longer allowed them access to the property. However, plaintiffs stated several times that after entry of the dismissal orders, defendants "took back" control of the property and changed all of the locks to secure possession and custody of the property. From the above, it can be ascertained that defendants had been preventing plaintiffs from having control or possession of the premises during the prior litigation. There has thus been no material change in circumstances sufficient to foreclose the application of res judicata. Moreover, issues raised for the first time on appeal are not ordinarily subject to review. *Burns v City of Detroit* (On Remand), 253 Mich App 608, 614; 660 NW2d 85 (2002).

Plaintiffs next contend that the trial court erred in failing to apply collateral estoppel against defendants with respect to whether the lease agreement was extended. Plaintiffs have failed to cite a single authority on this issue. Plaintiffs claim the application of collateral estoppel, yet do not direct this Court to a case even providing a basic explanation of the

principle. It is not enough for an appellant to simply announce a position or assert an error in a brief and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Further, plaintiffs' argument on this issue is infected with the same fatal flaw as their first argument—that the dismissals necessarily serve as a pronouncement that the lease was extended. Having already determined that this is not the case, we need not address this argument further.

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Donald S. Owens