

STATE OF MICHIGAN
COURT OF APPEALS

PIERSON SAND & GRAVEL, INC. and CENTRAL
SANITARY LANDFILL,

UNPUBLISHED
February 7, 1997

Plaintiffs/Appellees/
Cross-Appellees,

v

No. 185124
LC No. 94-077812-CE

KEELER BRASS COMPANY,

Defendant/Appellant/
Cross-Appellee,

and

PIERSON TOWNSHIP and CHEMETRON
INVESTMENTS, INC.,

Defendants/Cross-Appellants.

Before: Wahls, P.J., and Young and J.H. Fisher,* JJ.

PER CURIAM.

Defendant Keeler Brass Company appeals by leave from the trial court's denial of its motion for summary disposition, which was brought pursuant to MCR 2.116(C)(7) (*res judicata*). Defendants Pierson Township and Chemetron Investments, Inc. subsequently filed claims of cross-appeal. We affirm.

Plaintiffs discovered toxic chemical contamination at a site currently owned by them but allegedly contaminated by defendants in the 1970s and earlier. Plaintiffs incurred large response costs in addressing this contamination and alleged an expectation of incurring even greater response costs in the future. Plaintiffs had filed a federal suit prior to the instant state action, seeking response costs from defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

* Circuit judge, sitting on the Court of Appeals by assignment.

(CERCLA), 42 USC 9601 *et seq.* After a federal district court dismissed this federal action, plaintiffs filed the instant state suit seeking response costs from defendants on various grounds. Defendants responded by arguing that plaintiffs' state suit was barred by the res judicata effect of the prior federal judgment.

Defendants first argue that the trial court erred in applying federal law, rather than Michigan law, to determine whether plaintiffs' state cause of action was barred by the doctrine of res judicata. We disagree. Federal law governs the res judicata effect of federal judgments, including those in diversity cases, in subsequent state suits. Restatement Judgments, 2d, § 87, p 314 (1982); *Travelers Indemnity Co v Sarkisian*, 794 F2d 754, 761 n 8 (CA 2, 1986); *Silcox v United Trucking Service, Inc*, 687 F2d 848, 852 (CA 6, 1982).

Defendants next argue that the doctrine of res judicata bars plaintiffs' present lawsuit. We disagree. The federal district court that decided plaintiffs' prior suit could have exercised pendent jurisdiction over plaintiffs' state law claims, had the claims been raised before it. However, where the district court dismissed all of plaintiffs' federal claims in advance of trial, it is clear that the federal court would not have exercised its pendent jurisdiction over the remaining state law claims. See *Sherwin-Williams Co v Hamtramck*, 840 F Supp 470, 479 (ED Mich, 1993); see also *Bell v Fox*, 206 Mich App 522; 522 NW2d 869 (1994). Res judicata therefore does not bar plaintiffs' subsequent state suit. Restatement Judgments, 2d, § 25, Comment e, Illustration 10, pp 213-214 (1982); see *Anderson v Phoenix Investment Counsel of Boston, Inc*, 387 Mass 444; 440 NE2d 1164, 1168-1169 (1982).

Affirmed.

/s/ Myron H. Wahls
/s/ Robert P. Young, Jr.
/s/ James H. Fisher