STATE OF MICHIGAN

COURT OF APPEALS

NARTRON COPORATION,

Plaintiff-Appellant,

v

RICHARD J. PLUTA, CLINTON JAMES, INC. and CJ DESIGN & ENGINEERING, INC.,

Defendants-Appellees.

UNPUBLISHED
October 19, 1999

No. 207515
Kent Circuit Court
LC No. 96-009347 CK

Before: Hood, P.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Nartron Corporation appeals as of right from a circuit court order dismissing its claims against a former employee, Richard Pluta, and two businesses with which he was involved. Although Nartron's complaint contained eight counts, only the dismissal of count I (breach of employment contract) and count II (breach of common law duty of confidentiality) are challenged on appeal. We reverse and remand for further proceedings.

Nartron argues that the trial court erred in granting summary disposition to defendants on the basis of collateral estoppel. We agree.

Counts I and II were based in part on allegations that Pluta gave Amway Corporation information concerning Nartron's exhibit at the 1990 SAE trade show. In Count I, Nartron alleged that Pluta breached an employment agreement in which he agreed not to disclose or use secret or confidential information. In Count II, Nartron alleged that Pluta breached his common law duty of confidentiality by misappropriating and using Nartron's secret and confidential information. The trial court ruled that counts I and II were barred by collateral estoppel, given the circuit court's ruling in *Nartron v Amway*, Osceola Circuit Court, File No. 90-005238-CK.

The requirements for collateral estoppel were explained by this Court in *Alterman v Provizer, Eisenberg, Lichtenstein & Pearlman, PC*, 195 Mich App 422, 424; 491 NW2d 868 (1992), as follows:

> The doctrine of collateral estoppel holds that, where the first and second causes of action are different, "the judgment [rendered in the first cause of action] is conclusive between the parties in such a case as to questions actually litigated and determined by the judgment." By the "very definition" of the doctrine, "one of the critical factors" is "whether the respective litigants were parties or privy to a party." "In other words, '[t]he estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it had it gone against him.'" [Citations omitted.]

Nartron argues that the requirements of collateral estoppel were not met here because the parties in the earlier lawsuit were not the same and there is no mutuality. Defendants contend that collateral estoppel was properly applied, despite the difference in parties and lack of mutuality. According to defendants, this case presents an instance in which "nonmutual defensive collateral estoppel" is warranted.

This Court has held that, in some instances, defensive use of collateral estoppel is proper, despite the fact that the parties are not identical and no mutuality exists. *Barrow v Pritchard*, 235 Mich App 478; ___ NW2d ___ (1999); *Schlumm v Terence J O'Hagan, PC*, 173 Mich App 345; 433 NW2d 839 (1988); *Knoblauch v Kenyon*, 163 Mich App 712; 415 NW2d 286 (1987), all involved criminal defendants whose legal malpractice claims were found to be barred by collateral estoppel because ineffective assistance of counsel claims had previously been rejected. Similarly, in *Alterman, supra*, a legal malpractice claim alleging that the plaintiff's attorney had improperly allowed the plaintiff to settle a claim while incompetent was found to be barred by collateral estoppel because another court had previously rejected a motion to set aside the settlement on the basis of the client's alleged incompetence.

However, in general, "[m]utuality of estoppel remains the law in this jurisdiction . . . ." *Lichon v American Universal Ins Co*, 435 Mich 408, 428; 459 NW2d 288 (1990). We decline defendants' invitation to craft another exception to the mutuality requirement tailored to the facts in this case. Accordingly, we hold that the trial court erred in granting defendants' motion for summary disposition on counts I and II on the basis of collateral estoppel.

The trial court's opinion also discusses Nartron's failure to identify in its complaint the specific confidential information that Pluta allegedly disclosed. According to defendants, the opinion indicates that the court dismissed counts I and II because Nartron's allegations of violations of the confidentiality agreement, other than the disclosures concerning the SAE trade show, were conclusory and insufficient to state a claim. However, the judgment does not identify lack of specificity in the complaint as a basis for dismissal. In any event, we conclude that Nartron's complaint contained "the specific allegations necessary to reasonably inform the adverse party of the nature of the claims the adverse party is called on to defend." MCR 2.111(B)(1). "To the extent defendant found the pleaded allegations supporting plaintiff's claims too general, it could have filed a motion for more definite statement under MCR 2.115(A) or interrogatories requesting greater factual specificity regarding plaintiff's claims." *Iron County v Sundberg, Carolson & Associates, Inc*, 222 Mich App 120, 125; 564 NW2d 78 (1997). Although we agree with the trial court that discovery should not be used as a "fishing expedition," we

believe the availability of sanctions for filing a frivolous lawsuit pursuant to MCL 600.2591(3)(a)(ii); MSA 27A.2591(3)(a)(ii) is a sufficient deterrent for filing lawsuits without adequate factual support.

Finally, the parties discuss whether counts I or II are barred by the applicable statute of limitations with respect to the alleged SAE trade show disclosures, although that issue was not decided by the trial court. This Court may consider an issue not decided by the trial court to the extent the issue presents a question of law and all the necessary facts are presented. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 326; 565 NW2d 915 (1997). Whether a claim is statutorily barred is a question of law if there are no facts in dispute. *Witherspoon v Guilford*, 203 Mich App 240, 243; 511 NW2d 720 (1994). In this case, the court stayed discovery pending resolution of the motions for summary disposition. Because discovery may yield further facts pertinent to this issue, e.g., information concerning when the alleged disclosures took place,[1] and given Nartron's claim that the fraudulent concealment statute applies, MCL 600.5855; MSA 27A.5855; *Brownell v Garber*, 199 Mich App 519, 527; 503 NW2d 81 (1993), we conclude that it is inappropriate to address this issue at this time.

Reversed and remanded for further proceedings. Jurisdiction is not retained.

/s/ Harold Hood
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] We recognize that Pluta's affidavit indicates that he transmitted a copy of materials displayed at the trade show to Amway between February 26, 1990, and March 2, 1990. However, Pluta's affidavit does not indicate that this transmission was the only time Pluta disclosed information to Amway concerning the SAE trade show.