

STATE OF MICHIGAN
COURT OF APPEALS

RAO GROUP, INC.,

Plaintiff-Appellant,

v

THOMAS G. McINTYRE,

Defendant-Appellee,

and

JOHN H. FADER, a/k/a JACK FADER,

Defendant.

UNPUBLISHED

May 12, 2000

No. 217963

Grand Traverse Circuit Court

LC No. 98-017098-CK

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant under MCR 2.116(C)(7) (claim barred because of prior judgment). We affirm.

This case arises out of plaintiff's claim that its principal, Duane T. Rao, had an oral contract with defendant McIntyre. Plaintiff contended that pursuant to this alleged contract, Rao agreed to help McIntyre and his wife remove their names from a mortgage loan they had personally guaranteed for defendant John Fader in exchange for McIntyre's promise to relieve plaintiff from paying the Traverse Group (an entity of which McIntyre was a part) a certain sum of money pursuant to a stock purchase agreement. Plaintiff sued for indemnification from McIntyre, pursuant to the alleged oral contract, in the event that it was ordered to pay the Traverse Group under the stock purchase agreement.

Plaintiff was, in fact, ultimately ordered to pay the money owed under the stock purchase agreement in a breach of contract action brought against it by the Traverse Group. The trial court then granted McIntyre summary disposition in plaintiff's instant indemnification action, indicating that collateral estoppel barred the action because the court had already determined, in the breach of contract

action, that no oral contract between Rao and McIntyre existed regarding the amount due under the stock purchase agreement.

Plaintiff argues that the trial court erred by determining that collateral estoppel precluded plaintiff from seeking indemnification from defendant. We review a trial court's decision to dismiss a cause of action pursuant to collateral estoppel de novo. *Barrow v Pritchard*, 235 Mich App 478, 480; 596 NW 2d 853 (1999).¹

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action if (1) the same parties were involved in both causes of action, (2) the first cause of action culminated in a final valid judgment, and (3) the issue was actually and necessarily determined in the prior proceeding. *Barrow, supra* at 480. Factor 3 is at issue in the instant case.

"To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel." *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994). Here, the judgment in the first action did indeed depend on a determination of whether Rao and McIntyre made an oral contract to dismiss any payment obligations under the stock purchase agreement, and the trial court in the first action essentially determined that such a contract did not exist because of inadequate consideration.² Accordingly, the trial court in this case did not err in determining that plaintiff's claim was barred by collateral estoppel.

Affirmed.

/s/ Hilda R. Gage

/s/ Patrick M. Meter

/s/ Donald S. Owens

¹ Plaintiff also argues that the trial court erred by determining that res judicata precluded it from seeking indemnification from McIntyre. Res judicata bars a second action when (1) the first action was decided on the merits, (2) the claim contested in the second action was or could have been resolved in the first, and (3) both actions involved the same parties or their privies. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). We conclude that the trial court did not decide that res judicata precluded plaintiff from seeking indemnification from defendant in this case because it did not address whether plaintiff could have sought indemnification from defendant in a counterclaim in the first action. Therefore, we will only address the merits of the collateral estoppel issue.

² Defendant argues that the trial court's finding of inadequate consideration was erroneous. We need not address this argument, however. Indeed, our duty in the instant case is not to review the merits of the first litigation but is merely to determine if the first litigation resolved issues in the instant case such that they were barred by collateral estoppel.