

STATE OF MICHIGAN
COURT OF APPEALS

GREAT AMERICAN INSURANCE COMPANY,

Plaintiff-Appellant,

v

JAIKINS INVESTMENT DEVELOPMENT
CORPORATION, a/k/a JAIKINS INVESTMENT
CORPORATION, JAIKINS INVESTMENT
GROUP, J.I.D. REALTY, INC., JAIKINS
BUILDERS, INC, a/k/a, J.W. JAIKINS
BUILDERS, FOREST HILLS BUILDING
CORPORATION and J.W. JAIKINS
DEVELOPMENT CORPORATION,

Defendants-Appellees.

UNPUBLISHED
October 31, 2000

No. 215306
Oakland Circuit Court
LC No. 97-002289-CK

Before: Griffin, P.J., and Cavanagh and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' cross-motion for summary disposition on res judicata grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff provided Jaikins Investment Development Corporation with commercial insurance policies. After an audit was completed, plaintiff brought an action for additional premiums, naming Jaikins Investment & Development Corporation as defendant. A default judgment was entered. Defendants moved to set aside the default judgment, but the motion was not heard.

Plaintiff filed this second action after it discovered that it had misnamed the defendant in the initial action by including an ampersand in the name. The second action sought the same relief, recovery of additional premiums on the same commercial insurance policies. Plaintiff moved for summary disposition, and defendants filed a cross-motion, asserting that the action was barred by res judicata and collateral estoppel. The trial court granted defendants' motion.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the maintenance of the actions are identical. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). A second action is barred when (1) the first action was decided on the merits, (2) the matter 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. *Id.* Michigan courts have broadly applied the doctrine of res judicata. *Id.*

A party is one who was directly interested in the subject matter, and who had a right to defend in, or control, the proceedings and who had a right to appeal from the judgment. *Howell v Vito's Trucking & Excavating Co*, 386 Mich 37, 42; 191 NW2d 313 (1971). Privity has been defined as mutual or successive relationships to the same right to property or such an identification of interest as to represent the same legal right. *Sloan v City of Madison Heights*, 425 Mich 288, 295-296; 389 NW2d 418 (1986).

The trial court did not err in finding that this action was barred by res judicata. While the caption on the initial case incorrectly listed defendant's name, other portions of the pleading properly identified defendant. Although plaintiff argues that a judgment was entered against a non-existent entity, defendant did appear and sought to set aside the default judgment. Given this participation in the original action, defendant exercised the right to control and defend. Where the parties were substantially identical, the court did not err in finding that res judicata applied. *In re Humphrey Estate*, 141 Mich App 412, 434; 367 NW2d 873 (1985).

Affirmed.

/s/ Richard Allen Griffin

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage