

STATE OF MICHIGAN
COURT OF APPEALS

PREMIER FARM, INC.,

Plaintiff/Counterdefendant-
Appellee,

v

FRANCES EMMETT,

Defendant/Counterplaintiff-
Appellant.

UNPUBLISHED

May 22, 2001

No. 215351

Oakland Circuit Court

LC No. 98-007036-AV

Before: Whitbeck, P.J., and McDonald and Collins, JJ.

PER CURIAM.

Defendant appeals by leave granted the circuit court order dismissing defendant's appeal of the judgment entered against her in district court following a jury trial. We reverse.

In May 1996, plaintiff Premier Farms, Inc. filed a complaint against defendant Frances Emmett in Livingston Circuit Court to recover the deficiency following a foreclosure sale, pursuant to a stockman's lien, of certain standard bred horses owned by defendant. Plaintiff held a statutory lien on the horses for their board and care over a four-year period. The complaint alleged that James Leslie, defendant's brother, acted as defendant's agent in contracting for board and other services for defendant's horses. Venue subsequently was changed to Oakland Circuit Court and later the case was removed to 52-2 District Court.

In June 1997, defendant filed a motion for summary disposition, arguing that plaintiff's suit was barred on the basis, among others, of res judicata. Defendant alleged that in 1995, plaintiff brought suit against Leslie and defendant in Livingston Circuit Court for nonpayment of services, that the prior action involved the same parties and the same issues, and that it arose out of the same occurrence. Defendant acknowledged that she was never served in that action, but alleged that on or about February 16, 1996, a default judgment was entered against Leslie for non-appearance. Defendant attached a copy of the judgment to her motion.

Defendant contends on appeal that the trial court erred in failing to grant her motion for summary disposition on the basis that plaintiff's suit was barred under the doctrine of res judicata. Although this issue is defendant's last issue on appeal, because it is dispositive, we

address it first. The application of res judicata is a question of law, which is reviewed de novo. *Phinisee v Rogers*, 229 Mich App 547, 551; 582 NW2d 852 (1998).

The doctrine of res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001), citing *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). The doctrine requires that (1) the prior action was decided on the merits; (2) the issues raised in the current action were or could have been resolved in the prior action; and (3) both actions involved the same parties or their privies. *Phinisee, supra*. For purposes of applying the doctrine of res judicata, a default judgment constitutes a determination on the merits. *Schwartz v Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991). The test for determining whether two claims are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two actions. *Id.* at 194-195. “[T]he parties need only be substantially identical in order for res judicata to apply; that is, it applies to the same parties or their privies.” *In re Humphrey Estate*, 141 Mich App 412, 434; 367 NW2d 873 (1985). Privity “has been described as including a person so identified in interest with another that he or she represents the same legal right. Examples include the relationship of principal and agent, master and servant, or indemnitor and indemnitee.” *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270, mod on other grounds 431 Mich 898; 432 NW2d 171 (1988) (citations omitted).

Here, the default judgment entered in the first action against Leslie constituted a determination on the merits. *Schwartz, supra*. Review of the two complaints originally filed in Livingston County reveals that in both, plaintiff sought to recover on a contract theory the costs of boarding the horses first owned by Leslie and then owned by defendant. The amounts claimed in both complaints are the same, and in both complaints, plaintiff pleaded an agency relationship between Leslie and Emmett. Thus, the same claims requirement is met because the same facts or evidence would be essential to the maintenance of both claims, and the same party requirement is met because Leslie and Emmett were in privity. *Id.*; *Viele, supra*.

Because plaintiff’s claim was barred under the doctrine of res judicata, the trial court erred in denying defendant’s motion for summary disposition. MCR 2.116(C)(7). In light of our resolution of this issue, we need not address defendant’s remaining issues on appeal.

Reversed and remanded for entry of an order granting defendant summary disposition under MCR 2.116(C)(7). We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Gary R. McDonald

/s/ Jeffrey G. Collins