STATE OF MICHIGAN

COURT OF APPEALS

DANIEL RIGGS and CYNTHIA RIGGS,

Plaintiffs-Appellants,

v

BETTY SPEAKS,

Defendant-Appellee.

UNPUBLISHED
May 22, 2001

No. 218713
Eaton Circuit Court
LC No. 97-001199-CK

Before: O'Connell, P.J., and Zahra and B.B. MacKenzie*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition pursuant to MCR 2.116(C)(7) in this fraudulent inducement action. We affirm.

This action arises out of a lease agreement between the parties. When plaintiffs failed to pay rent under the lease, defendant brought a district court action and obtained a judgment for possession and a money judgment for past due rent and taxes against plaintiffs. Plaintiffs then brought this circuit court action, alleging that they were fraudulently induced into leasing the property. The circuit court ruled that res judicata barred the present action and dismissed the suit with prejudice. The circuit court also denied plaintiffs' request to amend their complaint to allege constructive eviction.

I

Plaintiffs first argue that the trial court erred in concluding that res judicata precluded their circuit court action. This Court reviews a trial court's grant of summary disposition under MCR 2.116(C)(7) de novo. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). In reviewing a motion under MCR 2.116(C)(7), this Court accepts as true all well pleaded allegations unless specifically contradicted by affidavits or other documentary evidence. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). The pleadings and any documentary evidence offered in support of the motion are reviewed in a light most favorable to the nonmovant. *Stamps v Taylor*, 218 Mich App 626, 630; 554 NW2d 603 (1996). Res judicata precludes the prosecution of an action when: (1) the first action was decided on the merits; (2) the matter contested in the second case was or could have been resolved in the first; and (3) both

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

actions involve the same parties or their privies. *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994).

Plaintiffs claim that the present action is distinguishable from the district court case, which involved a claim for nonpayment of rent. Plaintiffs contend that the present case is centered on defendant's violation of MCL 554.139(a); MSA 26.1109(a), which provides that the lessor of residential premises covenants that the premises are fit for the use intended. The record of the district court action indicates the tenants' counsel argued that the landlord's failure to bring the premises' electrical system into working order as promised in the lease entitled plaintiff to an abatement of the rent. That argument was considered and rejected by the district court. The district court judge stated, in part: "After listening to this case, I'm not so sure that the [tenants were] ever serious about dairy farming and I see no reason to abate the rent. Ms. Speaks told us, and I believe her, that, ah, the electrical work has in fact been done." The full amount of the dispute was awarded to the landlord and the tenants did not move for reconsideration or appeal the district court's ruling.

We conclude that there exists no meaningful distinction between plaintiffs' present claim of fraudulent inducement regarding defendant's failure to repair the premises' electrical system and the prior issues involving the electrical system that were decided by the district court. In the present case, plaintiffs assert that defendant fraudulently induced them to enter the lease by telling plaintiffs the electrical system would be in working order, when defendant had no intent to actually repair the system. As noted *supra*, the district court found that the necessary electrical work had, in fact, been completed. For plaintiffs to prevail on the present claim of fraudulent inducement, they would be required to demonstrate that defendant's representations with respect to repairing the electrical system were false; that the necessary electrical work was not completed. See *HJ Tucker and Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 572; 595 NW2d 176 (1999) (setting forth the elements of fraud). Given that the basis of plaintiffs' present claim was actually litigated in the prior action, the present action is barred by res judicata. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 577; __ NW2d __ (2001).[1]

Moreover, plaintiffs' assertion that the present case involves a claim of constructive eviction that was not previously litigated in the district court action lacks merit. The tenants specifically argued before the district court that they were entitled to abatement of rent because the landlord's failure to repair the electrical system constituted a constructive eviction. Because the district court considered and rejected that claim, it is barred by res judicata. *Sewell*, *supra*.

Plaintiffs contend that the doctrine of res judicata does not apply in this case because the district court only considered evidence pertinent to the claim of nonpayment of rent and did not consider factors that may have justified nonpayment pursuant to MCL 554.201; MSA 26.1121,

[1] We note that in *JAM Corp v AARO Disposal, Inc*, 461 Mich 161; 600 NW2d 617 (1999), our Supreme Court held that MCL 600.5750; MSA 27A.5750 provides a statutory exception in cases litigated by way of summary proceedings to the general rule that claims arising out of the same transaction that could have been litigated in the prior proceeding, but were not, are barred by res judicata. However, in *Sewell*, the Supreme Court clarified that claims actually litigated in prior summary proceedings are barred by res judicata. *Sewell*, *supra* at 576-577.

governing untenantable buildings. This argument also lacks merit. MCL 554.201; MSA 26.1121 provides a defense to a claim for nonpayment of rent, but only allows release from liability for nonpayment after a tenant elects to surrender the premises. The record indicates that plaintiffs remained in possession of the leased premises until they were evicted, and that the money judgment was for rent in arrears. Under these circumstances, the circuit court properly granted summary disposition for defendant.

II

Plaintiffs also argue that the trial court abused its discretion in denying leave to amend their complaint to include a constructive eviction claim. This Court will not reverse a trial court's decision to grant or deny a motion to amend unless it constituted an abuse of discretion that resulted in injustice. *Phillips v Deihm*, 213 Mich App 389, 393; 541 NW2d 566 (1995). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *Detroit/Wayne Co Stadium Authority v 7631 Lewiston, Inc*, 237 Mich App 43, 47; 601 NW2d 879 (1999).

We conclude that the circuit court acted within its discretion in denying plaintiffs leave to amend their complaint because any such amendment would have been futile. See MCR 2.116(I)(5) and *Dowerk v Oxford Twp*, 233 Mich App 62, 75; 592 NW2d 724 (1998). As noted *supra*, constructive eviction was argued by plaintiffs when they requested an abatement of rent in the district court action, and relief on this ground was denied by the district court. With the same parties and the same constructive eviction claim in both suits, a constructive eviction count, like the fraudulent inducement claim, would have been barred by res judicata.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie