

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL D. CREER,

Plaintiff-Appellant,

v

CRAIG N. HILLS,

Defendant-Appellee.

UNPUBLISHED

May 25, 2001

No. 218183

Oakland Circuit Court

LC No. 98-008755-CZ

Before: McDonald, P.J. and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed an action against C N Hills, Inc. in a construction dispute. The circuit court entered a stipulated order referring the matter to arbitration. Plaintiff's motion to set aside the order and motion for rehearing were denied. While the motion for rehearing was pending, plaintiff filed the instant case against Craig N. Hills, president of C N Hills, Inc. The trial court granted summary disposition, finding that the second action was barred by the doctrine of res judicata.

MCR 2.203(A) states:

In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

This court rule codifies the long-standing decisional rule against splitting a cause of action. *Rogers v Colonial Fed Savings & Loan Ass'n of Grosse Pointe Woods*, 405 Mich 607, 618; 275 NW2d 499 (1979).

The applicability of res judicata is a legal question that this Court reviews de novo. *Bergeron v Busch*, 228 Mich App 618, 620; 579 NW2d 124 (1998). Michigan has adopted a

broad application of res judicata that bars claims arising out of the same transaction that plaintiff could have brought but did not. *Id.* at 620-621. The doctrine serves a two-fold purpose: to ensure the finality of judgments and to prevent repetitive litigation, including the splitting of causes of action. *Id.* at 621. A plaintiff's ability to split his claim is limited by the doctrine of claim preclusion/res judicata. *Id.* at 622.

Here, it appears that plaintiff split his claims to avoid the effect of the arbitration order entered in the first case. Both actions are based on the same occurrence. The defendants are essentially the same. The second action does not allege a new basis for liability. The claim against the builder's trust fund implicates the corporation's liability, and not the individual plaintiff's. MCL 570.151; MSA 26.331. The trial court properly found that plaintiff attempted to split his cause of action.

Affirmed.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly