

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL HOROWITZ,

Plaintiff-Appellant,

v

BURTON FARBMAN and MARTIN
STONEMAN, Personal Representative of the
ESTATE OF LEON D. STEIN, a/k/a LEE D.
STEIN,

Defendants-Appellees.

UNPUBLISHED

May 25, 2001

No. 222878

Oakland Circuit Court

LC No. 98-011237-CK

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, Farbman, and Stein were partners in MHSF Associates and Fernine Associates. Both partnerships were controlled by partnership agreements which provided that during a partner's lifetime, he could transfer his partnership interest to his wife or children, but could not transfer it to another party without giving the partnership the right of first refusal. The relevant provisions of the two agreements were virtually identical.

After Stein died, his estate sold his interest in both partnerships to Farbman. Plaintiff filed two separate actions against defendants, alleging that the sale of each of Stein's partnership interests constituted a breach of the corresponding partnership agreement. The judge presiding over the Fernine suit disagreed and granted defendants' motion for summary disposition. That ruling was affirmed on appeal. *Horowitz v Farbman*, unpublished opinion per curiam of the Court of Appeals, issued 03/30/01 (Docket No. 219850). While that appeal was pending, defendants moved to dismiss the MHSF suit. The trial court granted the motion, ruling that the suit was barred by collateral estoppel.¹

¹ The trial court also granted summary disposition holding that plaintiff's suit was barred by res
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Collateral estoppel is to issues what res judicata is to claims. Where res judicata bars a subsequent action based on the same claim as a prior action, collateral estoppel bars a subsequent action when the ultimate issue to be concluded is the same as that litigated in a prior action. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). “Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding.” *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). We review de novo both the trial court’s application of the doctrine of collateral estoppel and its decision on a motion for summary disposition. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

There is no dispute that both actions involved complete identity of parties. The prior action was resolved by summary disposition, which constitutes a decision on the merits. *Detroit v Qualls*, 434 Mich 340, 343, 356-359; 454 NW2d 374 (1990). The issue before the court in the prior case was whether contract provisions giving the partnership the right of first refusal in the sale of a partner’s interest applied only if the sale occurred during the partner’s life or survived his death, the same issue presented in the instant case.² That issue was necessarily decided and essential to the resulting judgment; but for the court’s ruling in the prior case that the partnership’s right of first refusal did not apply to the sale of a deceased partner’s partnership interest by that partner’s estate, plaintiff would have had a valid cause of action for breach of the partnership agreement. Therefore, the trial court did not err in ruling that plaintiff’s claim was barred by collateral estoppel.

Affirmed.

/s/ Kathleen Jansen
/s/ Brian K. Zahra
/s/ Donald S. Owens

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judicata. We disagree. The prior case involved the sale of Stein’s interest in the Fernine partnership while the present case involves the sale of Stein’s interest in the MHSF partnership. Therefore, the claims litigated, or to be litigated, in the two cases were different. *Jones v State Farm Automobile Ins. Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993). Nevertheless, reversal is not required because the trial court correctly ruled with respect to defendant’s alternative basis for summary disposition.

² Although the contract at issue in the prior case was not the same as that at issue here, both contracts contained the same relevant provisions and both cases involve construction of the those provisions in light of the same factual circumstances.