

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LINDA K. MCLEAN and DENIS MCLEAN,

Plaintiffs-Appellants,

v

LARRY CROSSMAN and RUTH CROSSMAN,

Defendants-Appellees.

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UNPUBLISHED

May 29, 2001

No. 224335

Kent Circuit Court

LC No. 99-004033-NI

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

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs rented a duplex from defendants for a number of years. Disputes arose regarding defendants' obligation to make repairs to the premises, including replacing defective carpeting. Plaintiffs withheld payment of rent in an effort to force defendants to make repairs. Defendants filed summary proceedings in district court to evict plaintiffs for non-payment of rent. Plaintiffs vacated the premises prior to trial; therefore, possession was not an issue at trial. At trial, plaintiffs asserted that they did not pay rent because defendants failed to keep the premises in reasonable repair. Specifically, they noted that defendants failed to replace defective carpeting. The district court found in favor of defendants (plaintiffs in that action).

Subsequently, plaintiffs filed suit in circuit court, alleging negligence and premises liability based on defendants' failure to replace the carpeting. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' claims were barred by res judicata and/or collateral estoppel. The circuit court granted the motion, concluding that plaintiffs' claims were barred because the issue that formed the basis of plaintiffs' claims had been fully litigated in district court.

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 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 argue that the circuit court erred by granting defendants' motion for summary disposition. We disagree and affirm. The parties in the circuit court suit were the same as in the district court suit. The fact that their positions were reversed (i.e., plaintiffs in circuit court were defendants in district court, and vice versa) is of no moment. See *Leslie v Mollica*, 236 Mich 610, 617; 211 NW 267 (1926). In the district court action, plaintiffs asserted that they stopped paying rent because the premises were dangerous as a result of defendants' failure to replace defective carpeting. The district court necessarily rejected the assertion that defendants acted wrongfully by failing to replace the carpeting when it entered a judgment in defendants' favor. Given that the basis of plaintiffs' present claims were 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).<sup>1</sup> Therefore, summary disposition was properly granted in favor of defendants.

Affirmed.

/s/ Kathleen J. Jansen

/s/ Brian K. Zahra

/s/ Donald S. Owens

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<sup>1</sup> 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.