

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY R. PAYTAS,

Plaintiff-Appellant/Cross-Appellee,

v

BONNIE R. RICHTER,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

June 22, 2001

No. 221540

Macomb Circuit Court

LC No. 99-001261-CK

Before: Smolenski, P.J., and McDonald and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7). Defendant cross appeals. We affirm.

This lawsuit arises from a series of contracts that the parties executed in January 1993, with regard to the production and marketing of a solar-powered lawnmower that plaintiff developed. Pursuant to the agreements, defendant was to receive an interest in plaintiff's patent for the solar-powered lawnmower and stock of the company that was to be formed for the purpose of producing and marketing the lawnmower. Defendant agreed to market the stock to other investors to raise the capital required for the venture. Defendant entered into agreements with third-party investors, which provided for the sale of stock in the company to be formed. Defendant paid plaintiff the money furnished by these investors. Defendant subsequently discontinued her efforts to raise capital after allegedly learning that plaintiff had misrepresented material facts concerning the lawnmower. No stock was ever issued and plaintiff never returned any of the investors' money.

After losing their money in the investments, the third-party investors brought suit against defendant and her business partner alleging breach of contract and fraudulent misrepresentation. In that action, defendant brought a third-party action against plaintiff, seeking indemnification for any damages for which she might be liable to the third-party investors. Plaintiff answered the third-party complaint, but did not file any counterclaim. The trial court in this other action held that defendant and her partner breached their contracts with the investors to provide them with shares of stock in the company to be formed and fraudulently misrepresented that the company had already obtained ownership of the patent for the mower. The trial court awarded the investors damages of \$75,000. Additionally, the court ruled in favor of plaintiff on defendant's third-party

complaint, finding that defendant and her partner had engaged in wrongful conduct and, therefore, indemnification was not appropriate.

Plaintiff subsequently filed the instant action against defendant, seeking damages for breach of contract on the basis that defendant failed to perform in accordance with the parties' agreements. The trial court granted defendant's motion for summary disposition, concluding that plaintiff's action was barred by *res judicata*. Summary disposition may be granted pursuant to MCR 2.116(C)(7), on the ground that the claim is barred because of prior judgment. The applicability of *res judicata* is a question of law, which is reviewed de novo on appeal. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.

Michigan courts have broadly applied the doctrine of *res judicata*. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001), quoting *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999) (citations omitted).]

In addition to the three requirements listed above, the decree in the prior action must be a final decision. *Baraga Co v State Tax Comm*, 243 Mich App 452, 455; 622 NW2d 109 (2000); *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379-380; 521 NW2d 531 (1994).

In the case at bar, the prior action was decided on the merits and was a final decision. Further, plaintiff and defendant were both parties to the prior action. The prior action and the present case both arise from the same underlying transaction, the proposed manufacturing and marketing of a patented solar-powered lawnmower. Although plaintiff perhaps was not *required* to raise the present claim in the prior action, he could have done so. In Michigan, the law is clear that *res judicata* bars not only claims that were litigated previously, but also "every claim arising from the same transaction that the parties, exercising reasonable diligence, *could* have raised but did not." *Sewell, supra* at 575 (emphasis added). Because the issues in the present case could have raised in the prior action, the trial court did not err in granting defendant's motion for summary disposition based on *res judicata*.

In light of our holding, it is unnecessary to address the parties' remaining issues concerning appropriate remedies.

Affirmed.

/s/ Michael R. Smolenski
/s/ Gary R. McDonald
/s/ Kathleen Jansen