STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY HATCHER, STEPHANIE HATCHER and ASL ENTERPRISES, INC.,

Plaintiffs-Appellants,

v

RAYMOND KOCH, CLAUDE PAQUETTE, EVELYN STEADMAN, JUDY HUBBARD, RICHARD THEIL, PHIL LOMMEN, KEN KNEIDING and AVIS RENT-A-CAR SYSTEMS, INC.,

Defendants-Appellees.

UNPUBLISHED
August 17, 2001

No. 220986
Wayne Circuit Court
LC No. 96-624086-NI

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition for defendants on the ground that plaintiffs' claims were barred by res judicata. We affirm.

Plaintiffs first filed suit against defendant, Avis Rent-A-Car Systems, Inc. (Avis), and Avis' regional vice-president in Wayne Circuit Court on January 7, 1994. Plaintiffs raised claims of fraud and misrepresentation, breach of implied covenant of good faith and fair dealing, breach of contract, and discrimination, arising from alleged acts of Avis employees, and related to Anthony Hatcher's relationship with Avis. That action was removed to the United States District Court for the Eastern District of Michigan based on diversity of citizenship, where plaintiffs added claims of negligence, negligent interference with a contract and respondeat superior. The district court dismissed all but one of plaintiffs' claims on summary judgment, but permitted plaintiffs to maintain their claim that Avis breached its contract with Anthony Hatcher when it failed to reimburse him for car washes, gasoline, oil, grease, repair parts and maintenance labor pursuant to an operator's agreement.

On May 6, 1996, plaintiffs entered into a settlement and consent judgment with Avis and its vice-president, waiving their right to appeal both the consent judgment and the court's prior orders of summary judgment. The consent judgment states that it "shall be deemed to finally and fully adjudicate all issues, legal and factual, with respect to the Lawsuit."

On April 23, 1996, plaintiffs filed their complaint in the instant case alleging that Avis and seven employees in management positions (1) fraudulently induced Anthony Hatcher to enter into an agency operating agreement with Avis, (2) interfered with Anthony Hatcher's contractual relationship with Avis by committing numerous acts of harassment and discrimination, (3) breached a duty to plaintiffs to investigate claims of discrimination and harassment in a timely manner and a duty to hire "non-discriminatory and non-negligent" persons, (4) discriminated against plaintiffs based on their race, and (5) violated Michigan's Unfair Trade Practices law. On August 1, 1996, defendants filed a motion for summary disposition contending that the instant action was barred by the doctrine of res judicata because the same issues were litigated in plaintiffs' first action, which was decided on the merits. On November 1, 1996, the district court issued an order permanently enjoining plaintiffs' state court action pursuant to the relitigation exception to 28 USC 2283.[1]

Plaintiffs appealed the district court's injunctive order, and on August 10, 1998, the Sixth Circuit Court of Appeals affirmed the order as it applied to Avis, but vacated the portion of the order applying to defendants, Raymond Koch, Claude Paquette, Evelyn Steadman, Judy Hubbard, Richard Theil, Phil Lommen, and Ken Kneiding, because no claims were actually litigated against them in federal court. In so doing, the circuit court distinguished the relitigation exception in 28 USC 2283, which allows a federal court to enjoin a party from bringing claims in state court that have actually been litigated before the federal court, from the broader doctrine of res judicata, which prohibits a party from raising issues that were litigated or should have been litigated in a prior action. *Hatcher v Avis Rent-A-Car System, Inc*, 152 F3d 540, 542-544 (CA 6, 1998). Thereafter, the trial court granted defendants' motion for summary disposition on the basis of res judicata, finding that plaintiffs' allegations in both their 1994 and 1996 complaints were based on the same facts and transactions, and the additional defendants and claims could have been included in plaintiffs' original action.

Plaintiffs now argue that the trial court erred in granting defendants' motion for summary disposition because this case is not barred by the doctrine of res judicata. We review the grant or denial of a motion for summary disposition de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(7), we accept as true all of plaintiffs' well-pleaded allegations and construe them, together with all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties, most favorably to plaintiffs. *Jones v State Farm Mutual Auto Ins Co*, 202 Mich App 393, 396-397; 509 NW2d 829 (1993). The trial court may grant summary disposition if there are no factual disputes and the claim is barred as a matter of law. *Abbott v John E Green Co*, 233 Mich App 194, 198; 592 NW2d 96 (1998). Summary disposition is inappropriate where factual development could provide a basis for recovery. *Jones, supra* at 397.

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[1] The statute provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, *or to protect or effectuate its judgments*." 28 USC 2283 (emphasis added).

Res judicata bars a subsequent action when (1) the first action was decided on the merits, (2) the issues in the second case were or could have been resolved in the first, and (3) both actions involve the same parties or their privities. *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001), quoting *Dart v Dart*, 460 Mich 575, 586; 597 NW2d 82 (1999). Plaintiffs argue, inaccurately, that a consent judgment is not a final judgment for the purposes of res judicata. However, it is well established that res judicata applies to consent judgments. *Baraga Co v State Tax Comm*, 243 Mich App 452, 455-456; 622 NW2d 109 (2000). Furthermore, the Federal District Court terminated all but one of plaintiffs' claims when it granted summary judgment for defendants, and an order granting summary judgment is a final adjudication on the merits. *Capital Mortgage Corp v Coopers & Lybrand*, 142 Mich App 531, 536; 369 NW2d 922 (1985).

Plaintiffs also claim that the two cases involve different parties. We agree with the trial court that the defendants first identified in the instant case were in privity with Avis, and could have been joined in plaintiffs' first action. "Privity between a party and a non-party requires both a 'substantial identity of interests' and a 'working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation.'" *Phinisee v Rogers*, 229 Mich App 547, 553-554; 582 NW2d 852 (1998), quoting *SOV v Colorado*, 914 P2d 355, 360 (Colo, 1996). Each defendant in the instant case was sued based on his or her position as a managerial employee of Avis, which was named as a party in both cases. Because plaintiffs sought to obtain a judgment against Avis in the initial action based, at least in part, on the actions of the employee defendants named in the instant case, those defendants were in privity with Avis and should have been joined in plaintiffs' first action. See *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270, modified 431 Mich 898 (1999).

It is also apparent that plaintiffs' claims in the instant case are based on identical allegations of fact to plaintiffs' first action against Avis. Where, as in this case, the same facts or evidence are essential to both actions, the claims are the same for res judicata purposes. *Huggett v DNR*, 232 Mich App 188, 197-198; 590 NW2d 747 (1998). Plaintiffs, in the exercise of reasonable diligence, could have litigated any additional claims in the first action. *Dart*, *supra* at 586. We conclude that the trial court correctly determined that plaintiffs' claims against all named defendants were barred by the doctrine of res judicata.

Plaintiffs also argue that their case should not have been dismissed before discovery was completed. Plaintiffs do not argue that the trial court abused its discretion by denying any request for discovery. Rather, they appear be making the claim that summary disposition should never be granted before discovery. Although summary disposition is generally premature before the completion of discovery, it may be proper where further discovery will not uncover factual support for the position of the party opposing the motion. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). Here, plaintiffs' claims were barred by res judicata, and discovery could not have revealed facts to sustain any claim raised in the instant case. Furthermore, plaintiffs were afforded complete discovery in their initial action before the federal court. Accordingly, the trial court did not err when it granted summary disposition for

defendants before plaintiffs were able to engage in discovery.

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra