

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA A. KOIVISTO,

Plaintiff-Appellee,

v

MICHIGAN STATE INDUSTRIES,

Defendant-Appellant,

and

ROGER GRAHAM and JOYCE CRAM,

Defendants.

UNPUBLISHED

June 7, 2002

No. 231569

Chippewa Circuit Court

LC No. 97-003059-NZ

Before: Griffin, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Defendant Michigan State Industries, a division of the Michigan Department of Corrections, appeals by leave granted a denial of defendant's motion for summary disposition of a gender discrimination suit filed by plaintiff, a former employee. The suit, which included both state and federal claims against both defendant and two of its employees, was removed to federal court. Having exercised jurisdiction over the claims against the employees in their individual capacities, the federal court remanded the remaining claims against defendant and its employees in their official capacities to state court.

On remand, defendant moved for summary disposition on the ground that the federal court had already determined that defendant's employees had not discriminated against plaintiff, thereby precluding the claims against defendant that were based on this conduct, and on the additional ground that plaintiff failed to allege independent wrongdoing on defendant's part. The trial court denied the motion. We reverse.

Defendant first argues that the trial court improperly denied the motion for summary disposition because plaintiff's claim was barred by collateral estoppel. We review a trial court's denial of summary disposition under MCR 2.116(C)(7) de novo. *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

Generally, collateral estoppel precludes relitigation of an issue if (1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full opportunity to litigate the issue, and (3) there is mutuality of estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 541-542; 533 NW2d 250 (1995). Because the same underlying allegations of discriminatory conduct were put into issue by the pleadings, submitted to the trier of fact, and determined, the first element is satisfied. *Cogan v Cogan*, 149 Mich App 375, 379; 385 NW2d 793 (1986).

With respect to the remaining elements, as plaintiff correctly points out, the “same parties” did not fully litigate the issue, because the federal court did not have jurisdiction over defendant. Furthermore, there was no mutuality of estoppel between defendants and the two employees who were sued in their individual rather than official capacities, because defendant would not have been bound by an adverse judgment against the individual employees. *Barrow v Pritchard*, 235 Mich App 478, 481; 597 NW2d 853 (1999).

However, an exception to these requirements applies where “the liability of the defendant is altogether dependent on the culpability of one exonerated in a prior suit, upon the same facts when sued by the same plaintiff.” *Bigelow v Old Dominion Copper Mining & Smelting Co*, 225 US 111, 127-128; 32 S Ct 641; 56 L Ed 1009 (1912). This exception applies in cases where the defendants in the two suits have a principal/agent or master/servant relationship. See *DePolo v Greig*, 338 Mich 703, 711; 62 NW2d 441 (1954).

In the instant case, defendant had a master/servant relationship with its employees. The fact that the employees were sued as individuals rather than officials does not change the nature of their conduct or their relationship to defendant; rather, it is merely a procedural distinction that allowed plaintiff to proceed with her claims against them in federal court and preserve the possibility of an award of money damages. See *Hafer v Melo*, 502 US 21, 26; 112 S Ct 358; 116 L Ed 2d 301 (1991). Because an exception to the mutuality doctrine applied, the trial court erred in denying defendant’s motion for summary disposition on collateral estoppel grounds.

Finally, plaintiff has alleged no discriminatory conduct on defendant’s part that was not based on the conduct of its exonerated employees. The only allegation in plaintiff’s complaint that arguably refers to defendant’s independent conduct is its failure to enforce department policies. However, because no reference is made to a specific policy that defendant failed to enforce, the allegation only has substance when read in light of plaintiff’s allegations against the actions of defendant’s employees. Because defendant’s employees were exonerated of both the state and federal gender discrimination claims, there is no basis on which to impose respondeat superior liability on defendant. See *Davis v Roper Corp*, 160 Mich App 595, 599; 408 NW2d 513 (1987), vacated on other grounds, 431 Mich 871; 429 NW2d 594 (1988).

In light of the resolution of the above issues, we need not address defendant’s res judicata issue.

Reversed.

/s/ Richard Allen Griffin
/s/ Harold Hood
/s/ David H. Sawyer