# STATE OF MICHIGAN

# COURT OF APPEALS

| | |
|---|---|
| LIBERTY BIDCO, Assignee of ENAMELCOTE, INC., | UNPUBLISHED<br>July 9, 2002 |
| Plaintiff-Appellant, | |
| v | No. 226609<br>Wayne Circuit Court |
| PRODUCTION STAMPING, INC., | LC No. 99-939671-CK |
| Defendant-Appellee. | |

Before: Kelly, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Plaintiff Liberty Bidco appeals as of right from the trial court's order granting defendant Production Stamping Inc.'s (PSI) motion for summary disposition pursuant to MCR 2.116(C)(6). We affirm.

## I. Facts and Procedural History

On or about October 2, 1998, Enamelcote, Inc. and PSI entered into a written purchase agreement under which Enamelcote obtained the right to exclusively coat all of the products shipped out of PSI's New Baltimore, Chesterfield, and Oxford, Michigan facilities for a three-year period. Unfortunately, the relationship between Enamelcote and PSI appears to have quickly disintegrated. Specifically, on or about December 27, 1998, Enamelcote sued, amongst others, PSI in the Macomb Circuit Court. A first amended complaint was filed by right on February 17, 1999, and alleged that PSI failed to provide Enamelcote with one hundred percent of the coating business from the three facilities, as required by the October 2, 1998, agreement. The first amended complaint alleged breach of contract, unjust enrichment, and promissory estoppel.

On April 13, 1999, almost two months after the first amended complaint was filed in the Macomb Circuit Court case, Enamelcote assigned to Liberty Bidco its accounts receivable from PSI under the October 2, 1998, agreement. Thereafter, on December 17, 1999, Liberty Bidco, as "assignee of Enamelcote," filed a verified complaint in the Wayne Circuit Court alleging that PSI had breached the October 2, 1998, contract by failing to pay for services rendered. The Wayne Circuit Court complaint, like the Macomb Circuit Court first amended complaint, contained an allegation of breach of contract, account stated, unjust enrichment, and promissory estoppel. The undisputed evidence submitted in the Wayne Circuit Court case revealed that the

accounts receivable allegedly owed by PSI totaled $412,525.73, and was for shipments taking place between April 1998 and January 1999.

In lieu of filing an answer, PSI filed a motion for summary disposition in the Wayne Circuit Court case alleging that the case was barred because Enamelcote had already sued PSI for breach of the same contract in Macomb Circuit Court. In essence, PSI argued that because the assignment of accounts receivable from Enamelcote to Liberty Bidco took place after Enamelcote had filed a Macomb County action, Liberty Bidco was improperly splitting Enamelcote's cause of action against it.

As noted, the Wayne Circuit Court granted PSI's motion. The lower court reasoned that Enamelcote could not split its cause of action because it "cannot accomplish the same result by an assignment of his demand thereby enabling others to do what he could not do." Because there was a single cause of action, "all of the damages that arise out of that single cause of action include any accounts receivable as well as any future, or loss of the future business from this particular defendant." Liberty Bidco has appealed the order of dismissal, and we affirm.

## II. Analysis

PSI argues on appeal, as it did in the trial court, that Liberty Bidco's complaint was properly dismissed because to allow two simultaneous cases to proceed based upon the alleged breach of the same alleged contract violates the rule against the splitting of causes of action. However, PSI's motion for summary disposition was filed pursuant to MCR 2.116(C)(6), and presumably granted under that subrule.

We review a trial court's grant of summary disposition de novo. *Spiek v Dept of Transportation,* 456 Mich 331, 337; 572 NW2d 201 (1998). In the present case, defendant moved for summary disposition under MCR 2.116(C)(6), which provides for dismissal where "[a]nother action has been initiated between the same parties involving the same claim." *Sovran Bank v Parsons,* 159 Mich App 408, 412; 407 NW2d 13 (1987). In deciding whether summary disposition is warranted under this sub-rule, the trial court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted by the parties, MCR 2.116(G)(5), and determine whether the two lawsuits involved the same parties and are based on the "same or substantially same cause of action." *Ross v Onyx Oil & Gas Corp,* 128 Mich App 660, 666; 341 NW2d 783 (1983).

This Court has previously pointed out that MCR 2.116(C)(6) is the codification of the common law rule of the plea of abatement by prior action. *Fast Air, Inc v Knight,* 235 Mich App 541, 545; 599 NW2d 489 (1999). The purpose of this rule is to preclude parties from being harassed by new suits brought by the same plaintiff involving the same questions as those existing in pending litigation. *Id.* at 546, quoting *Chapple v Nat'l Hardwood Co,* 234 Mich 296, 298; 207 NW 888 (1926); *Rowry v Univ of Michigan,* 441 Mich 1, 20-21; 490 NW2d 305 (1992) (Riley, J., concurring). To be applicable, the initial suit must still be pending at the time of the decision regarding the motion for summary disposition. *Fast Air, Inc, supra* at 549. Additionally, under this subrule, neither all the parties nor all the issues need be identical. *Id.* at 545 n 1, citing *J D Candler Roofing Co, Inc v Dickson,* 149 Mich App 593, 598; 386 NW2d 605 (1986). Rather, "[t]he two suits only have to 'be based on the same or substantially the same cause of action.'" *Id*.

The lower court determined, and PSI continues to argue on appeal, that under Michigan law, a plaintiff must present his whole cause of action in one suit. This statement of the law is, of course, correct. MCR 2.203(A); *Coniglio v Wyoming Valley Fire Ins Co*, 337 Mich 38, 46; 59 NW2d 74 (1953); *Arnold v Masonic Country Club*, 268 Mich 430, 434-435; 256 NW 472 (1934). "The primary reason for the rule against splitting a cause of action is that the defendant should not be unreasonably harassed by a multiplicity of suits." *Chatham-Trenary Land Co v Swigart*, 245 Mich 430, 435; 222 NW 749 (1929). Hence, the purpose of both a dismissal under MCR 2.116(C)(6) and 2.203(A) are the same: the elimination of a defendant having to defend multiple suits based on the same or substantially same cause of action.

We conclude that the motion for summary disposition was properly granted under MCR 2.116(C)(6). First, the Wayne Circuit Court case involved the same parties as the Macomb Circuit Court case. PSI was a defendant in both cases. As the assignee of Enamelcote's contractual right to receive payment under the October 2, 1998, contract, Liberty Bidco stood in the same shoes as Enamelcote. *Professional Rehabilitation Associates v State Farm Mut Auto Ins Co*, 228 Mich App 167, 177; 577 NW2d 909 (1998). Therefore, Liberty Bidco and Enamelcote were essentially the same parties because Liberty Bidco was enforcing the same contractual rights as previously held by Enamelcote.

Second, it is undisputed that at the time the motion for summary disposition was heard, there was pending in the Macomb Circuit Court a first amended complaint against PSI for breach of the same contract at issue in the instant case. *Fast Air, Inc, supra* at 549. Both complaints also contained the very same causes of action: breach of contract, unjust enrichment, and promissory estoppel. Moreover, at the time Enamelcote filed its first amended complaint on February 17, 1999, it had not assigned the accounts receivable to Liberty Bidco. The evidence before the lower court established that not only did Enamelcote still have full rights to the accounts receivable, but also that the accounts receivable subsequently sought by Liberty Bidco through the instant case had already accrued by the time the first amended complaint was filed. Hence, pursuant to MCR 2.116(C)(6), dismissal was appropriate because it was undisputed before the trial court that another pending action existed involving the same parties and same claims. *Darin v Haven*, 175 Mich App 144, 149; 437 NW2d 349 (1989).[1]

Finally, we reject PSI's request for sanctions.[2] PSI has cited no authority in support of its assertion that Liberty Bidco should be sanctioned, and we will not search for law to support its

---

[1] We note that the dismissal in this case should have been without prejudice, but the issue is not properly before us because plaintiff waived the issue before the circuit court, and the issue has become moot as the case previously pending in Macomb Circuit Court has now been settled. Furthermore, Enamelcote was required to bring all of its alleged breach of contract claims against PSI in its original compliant. MCR 2.203(A). The evidence revealed that the accounts receivables were due and owing by the time the first amended complaint was filed, and certainly before the assignment took place with Liberty Bidco. Hence, as the trial court reasoned, Liberty Bidco could not bring an action that its assignor could not bring. Dismissal was proper on this basis as well.

[2] Both parties utilize a significant portion of their briefs to argue the circumstances surrounding the entry of, and subsequent vacating of, the default judgment. All of this bantering by the

(continued…)

position. See *Chapdelaine v Sochocki*, 247 Mich App 167, 174; 635 NW2d 339 (2001).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ Christopher M. Murray

(…continued)

parties is irrelevant, however, because neither party has properly raised as an issue on appeal the propriety, or lack thereof, in the entry of the default judgment.