STATE OF MICHIGAN

COURT OF APPEALS

HRT ENTERPRISES and MERKUR STEEL SUPPLY, INC.,

Plaintiffs-Appellants,

and

STEEL ASSOCIATES, INC.,

Plaintiff,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
May 12, 2005

No. 252858
Wayne Circuit Court
LC No. 02-240493-CC

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Plaintiffs HRT Enterprises ("HRT") and Merkur Steel Supply, Inc. ("Merkur") appeal as of right an order granting summary disposition in favor of defendant City of Detroit ("the City"), in this inverse condemnation case. We affirm in part, and reverse in part.

First, plaintiffs argue that the circuit court erred in granting summary disposition of HRT's claim under MCR 2.116(C)(4) for lack of jurisdiction, and/or under MCR 2.116(C)(8) for failure to state a claim against the City. Specifically, plaintiffs argue that HRT did not fail to state a claim against the City and the Wayne Circuit Court is the proper forum. We agree. This Court reviews the trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The City's motion for summary disposition of HRT's claim was brought under MCR 2.116(C)(4) for lack of jurisdiction, and, alternatively, under MCR 2.116(C)(8) for failure to state a claim. The circuit court appeared not to rule on the City's MCR 2.116(C)(8) motion, having instead ruled in favor of the City on its (C)(4) motion, holding that HRT's claim "should be brought in the Court of Claims against the State of Michigan." Although the circuit court did not rule on plaintiff's MCR 2.116(C)(8) argument, we may review HRT's claim under MCR 2.116(C)(8) as an alternate basis for affirming the lower court's decision. See *Stewart v Isbell*, 155 Mich App 65, 74; 399 NW2d 440 (1986).

A summary disposition motion pursuant to MCR 2.116(C)(4) tests the circuit court's subject-matter jurisdiction, i.e., whether it had judicial power over the case. See *Ryan v Ryan*, 260 Mich App 315, 331; 677 NW2d 899 (2004), quoting *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 491; 686 NW2d 770 (2004).

"Circuit courts are courts of general jurisdiction, and have original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given by the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.'" *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999), quoting MCL 600.605. However, MCL 600.6419(1)(a) provides the Court of Claims with exclusive jurisdiction over all claims against the state and any of its departments. The Court of Claims is the exclusive forum in which to seek damages for an alleged taking of an owner's property without just compensation. *Dep't of Natural Resources v Holloway Constr Co*, 191 Mich App 704, 705; 478 NW2d 677 (1991).

The jurisdictional argument raised by the City in the instant action was previously rejected in *Merkur Steel Supply, Inc v Detroit*, 261 Mich App 116; 680 NW2d 485 (2004) and we reject it again for the same reasons. See *id*. at 127. Just like the plaintiff's claim in *Merkur Steel*, HRT's claim did not rest solely on the condition in the tall structure permit. Instead, HRT asserted that the combined effect of the City's actions, including its filing of the airport layout plan, constituted the City's taking of the property because such actions deprived HRT of "all economically viable use of the Property" without just compensation. For purposes of a de facto taking, the circuit court has jurisdiction to analyze all of the City's actions in the aggregate, as opposed to just one incident, to determine the extent of the taking. *Merkur Steel*, *supra* at 125. Because HRT properly brought the inverse condemnation claim against the City, we conclude that the circuit court did not lack jurisdiction to determine the merits of HRT's claim and the Court of Claims is not the exclusive forum. MCL 600.6419(1)(a); *Merkur Steel*, *supra*; *Dep't of Natural Resources*, *supra*; see, also, MCL 600.605; *Bowie v Arder*, 441 Mich 23, 37; 490 NW2d 568 (1992). For the same reasons, we also hold that HRT sufficiently stated an inverse condemnation claim on which relief may be granted. See *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). Accordingly, the circuit court erred in granting summary disposition regarding HRT's claim.

The City raises issues concerning HRT's failure to exhaust the administrative remedies of the Tall Structure Act, MCL 259.482, and HRT's failure to bring the claim, based on the City's actions and omissions from 1992, within the five-year statute of limitations in MCL 600.5813. The City's arguments are without merit. HRT was not required to exhaust administrative remedies because no violation of the Aeronautics Code by the Aeronautics Commission was alleged in the complaint or identified by the City. And, the fifteen-year statute of limitation for an adverse possession claim applies to the instant inverse condemnation claim because plaintiffs held a present ownership/leasehold interest in the property when the suit was filed. See MCL 600.5801(4); *Difronzo v Port Sanilac*, 166 Mich App 148, 154; 419 NW2d 756 (1988).

Plaintiffs next contend that the circuit court erred in holding that res judicata barred Merkur's claim. After de novo review, accepting all of plaintiffs' well-pleaded factual

allegations as true and construing all of the documentary evidence in plaintiffs' favor, we disagree. See MCR 2.116(C)(7); *Spiek, supra*.

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. *Adair, supra* at 121. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Id.* This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.* The test to determine whether the two actions involve the same subject is whether the facts are identical in both actions or whether the same evidence would sustain both actions. *Id.* at 123-124. If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata. *Id.*

We agree with the circuit court's ruling that Merkur's claim against the City in the instant action ("*Merkur II*") was barred by the prior judgment in its inverse condemnation action against the City in *Merkur Steel, supra*. With respect to the first res judicata requirement, the parties do not dispute that the prior Merkur action was decided on its merits. The second res judicata requirement is satisfied because Merkur and the City were parties to both *Merkur I* and *Merkur II*. Merkur contends that HRT was not a party to *Merkur I*, and thus, res judicata does not bar Merkur's claim in the instant action. However, Merkur failed to cite any relevant authority in support of its contention. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment of an issue with little or no citation of supporting authority. MCR 7.212(C)(7); *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Id.* Therefore, we decline to address this argument.

With respect to the last requirement of res judicata, the matter in the instant case was or could have been resolved in *Merkur I*. See *Adair, supra*. In that case, Merkur complained of the same actions and omissions by the City in both *Merkur I* and *Merkur II*. Plaintiffs attempt to distinguish Merkur's claims between *Merkur I* and *Merkur II* by arguing that *Merkur II* involved new evidence regarding the value of the real estate owned by HRT or the value of the entire leasehold interests of Merkur. Also, plaintiffs argue that significant events occurred after the entry of the judgment in the prior Merkur action, including the issuance of the conditional tall structure permit on August 20, 2002.

A second proceeding is not barred if there are changed or new facts. *Labor Council, Michigan Fraternal Order of Police v Detroit*, 207 Mich App 606, 608; 525 NW2d 509 (1994). However, contrary to plaintiffs' argument, new evidence regarding the value of the real estate owned by HRT is irrelevant to the application of res judicata to the instant action between plaintiff Merkur and the City. Also, new evidence of the August 20, 2002, tall structure permit pertains only to HRT's claim. The essential facts and evidence to sustain Merkur's claim in both *Merkur I* and *Merkur II* are identical. See *Adair, supra* at 123-124. Moreover, we hold that, during the pendency of *Merkur I*, Merkur, with due diligence, could have claimed a taking of its entire leasehold interests instead of claiming a partial taking of its leasehold interests in the vacant acreage. In fact, some parts of the complaint in *Merkur I* alleged that defendant's actions, including its filing of the Airport Layout Plan, interfered with Merkur's right as a tenant

to fully utilize "all portions of the property, including the vacant acreage." Also, Merkur would present the same evidence to prove its allegations that it presented in *Merkur I*. Accordingly, we conclude that Merkur's claim against the City arose from the same transactions as did the *Merkur I* claim, and thus, Merkur's claim is barred by res judicata. Merkur offers no evidence that, during the pendency of *Merkur I*, it made any effort to add claims to seek damages for its entire leasehold interests under MCR 2.118(E). See *Adair*, *supra* at 126 n 17. As such, we find no basis for Merkur's assertion that it could not have litigated the claims in the earlier suit. See *Id*. Therefore, the trial court properly dismissed this claim.

Affirmed in part, reversed in part and remanded to the trial court for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin