

STATE OF MICHIGAN
COURT OF APPEALS

TROY WOODS,

Plaintiff-Appellant,

v

WAYLAND FORD,

Defendant-Appellee.

UNPUBLISHED

April 17, 2008

No. 275177

Kent Circuit Court

LC No. 2006-001822-AV

Before: Wilder, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order entered by the circuit court that affirmed the district court's order granting summary disposition in favor of defendant in this action involving a claim under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* We affirm.

In January 2001, plaintiff purchased a vehicle from defendant, and in that same month Christine Daenzer purchased a vehicle from defendant. In February 2001, Daenzer filed a class action complaint against defendant in the United States District Court for the Western District of Michigan – Southern Division, alleging numerous state and federal causes of action, including a claim under the MCPA. *Daenzer v Wayland Ford, Inc* (Docket No. 1:01-CV-133). The gist of the claims focused on defendant's alleged failure or refusal to provide customers with a copy of their retail installment sales contracts before or at the time of execution in a deceptive effort to make subprime loans to unsophisticated customers needing alternative or special financing assistance. With respect to the MCPA count, the requested relief sought a declaratory judgment that defendant's practices violated the MCPA, actual damages or \$250, whichever was greater, pursuant to MCL 445.911(2), and reasonable attorney fees under MCL 445.911(2). To give context to our discussion, we quote MCL 445.911, which addresses the relief available for violations of the MCPA, and which provides in pertinent part:

(1) Whether or not he seeks damages or has an adequate remedy at law, a person may bring an action to do either or both of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is unlawful under section 3.

(b) Enjoin in accordance with the principles of equity a person who is engaging or is about to engage in a method, act, or practice which is unlawful under section 3.

(2) Except in a class action, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or \$250.00, whichever is greater, together with reasonable attorneys' fees.

(3) A person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured in this state for the actual damages caused by any of the following

As can be gleaned from MCL 445.911(1)(a), the request for declaratory relief contained in the federal complaint for MCPA violations was consistent with and allowable under the statute. However, the claim under MCL 445.911(2) for attorney fees and actual damages or \$250, whichever was greater, was inconsistent with the statute in that subsection (2) is expressly inapplicable to class action suits, which fall under MCL 445.911(3), and subsection (3) provides solely for actual damages.

In January 2002, the federal district court granted class certification, and after notices were issued, plaintiff in the case at bar¹ declined to opt out of the class, thereby becoming a member of the class. The federal district court denied a summary judgment motion filed by defendant relative to the MCPA claim. The court noted that the claim for statutory damages and attorney fees under MCL 445.911(2) was not sustainable because subsection (2) was inapplicable to class actions and that MCL 445.911(3), providing simply for actual damages, governed the litigation; however, the court found that dismissal would be inappropriate because actual damages were alleged.² Subsequently, the federal district court granted summary judgment in favor of the plaintiff class on the MCPA claim, finding that the undisputed facts showed that defendant violated the act.³ The court also stated that, in relation to the MCPA claim, “[t]he determination of actual damages of Plaintiff and the class members will be left to a damages determination proceeding.”⁴ The federal district court later entered a summary

¹ For purposes of this opinion, we shall refer to plaintiff Troy Woods as “plaintiff” and the plaintiffs in the class action lawsuit as “the plaintiff class.”

² The federal district court did summarily dismiss various causes of action brought by the plaintiff class, which left surviving only the MCPA claim, a claim under the Federal Truth in Lending Act (TILA), 15 USC 1601 *et seq.*, and a claim under the Michigan Motor Vehicle Installment Sales Contracts Act (MVISCA), MCL 566.301 *et seq.*

³ At this time, the court also granted summary judgment in favor of the plaintiff class on the TILA and MVISCA claims.

⁴ At the end of the court’s opinion, the court indicated that the plaintiff class was granted summary judgment on the issue of liability under the TILA, MVISCA, and the MCPA and that “[t]he computation of damages will be left for a future proceeding, and the parties will be referred to [the magistrate judge] for a status conference to determine the parameters of this proceeding.”

judgment on the claim for declaratory relief under the MCPA consistent with the prior judgment, declaring that defendant violated various provisions of the MCPA.⁵ With regard to an individual action filed by plaintiff in federal court, which is explained and referenced in footnote 5 of this opinion, a summary judgment that encompassed plaintiff's action and numerous other individual actions ordered defendant to pay damages under the TILA in the amount of twice the finance charge disclosed in the respective retail installment sales contracts.⁶ In June 2003, a final judgment was entered in the federal class action lawsuit that ordered defendant to pay class members damages in accordance with the amounts listed in an amended stipulation. The amended stipulation, which expressly did not constitute a waiver of any issues subject to appeal, indicated that plaintiff was to receive \$2,304 in damages.

The United States Court of Appeals for the Sixth Circuit eventually reversed the district court on the MVISCA claim and on the award of damages, costs, and attorney fees under the TILA, granting summary judgment instead in favor of defendant on the TILA and MVISCA claims. *Dykstra v Wayland Ford, Inc.*, 134 Fed Appx 911 (CA 6, 2005).⁷ The federal court of appeals noted that the district court's ruling on the MCPA claim had not been appealed. *Id.* at 914 n 1.

Plaintiff then filed the present action in state district court against defendant, alleging the same violations of the MCPA as claimed in the federal lawsuit and seeking statutory damages and attorney fees pursuant to MCL 445.911(2). The district court granted summary disposition in favor of defendant on the basis of res judicata, and on appeal to the state circuit court, the court affirmed the district court's ruling, similarly finding that res judicata barred the MCPA claim because the issue of damages "was or could have been resolved in the class action case."

On appeal to this Court, plaintiff first argues that the circuit court erroneously concluded that plaintiff sought actual damages in the federal case, where plaintiff only sought and received declaratory relief. This argument lacks merit. As reflected in our discussion of the federal action above, the plaintiff class in the federal suit requested in the complaint declaratory relief and actual damages, or \$250, whichever was greater, along with attorney fees. The federal district court later ruled that the request, under MCL 445.911(2), for actual damages, or \$250, and attorney fees was improper because MCL 445.911(2) does not apply to class actions. However,

⁵ This order also indicated that the plaintiff class was awarded reasonable attorney fees under the TILA, that the TILA class was decertified as to the issue of TILA damages, and that the plaintiff class was entitled to reimbursement from defendant for past finance charges paid and for future finance charges owed under the contracts as directed by the MVISCA. Because the TILA class was decertified with respect to TILA damages, our plaintiff, as well as other class members, filed a separate individual action in the federal court against defendant seeking personal TILA damages and reasonable attorney fees under the TILA.

⁶ This consolidated judgment was under the case name of *Dykstra v Wayland Ford, Inc.* (Docket No. 1:02-CV-787).

⁷ This appeal consolidated the cases of *Dykstra v Wayland Ford, Inc* and *Daenzer v Wayland Ford, Inc.*

the federal court allowed the plaintiff class to pursue actual damages under MCL 445.911(3), finding that the complaint contained an allegation of actual loss or damages. Subsequently, the federal court granted summary judgment in favor of the plaintiff class, concluding that there was no factual dispute that defendant violated the MCPA. Plaintiff ignores the language in the federal complaint and ignores the court's summary judgment rulings, and instead points to the federal district court's later summary judgment order on the claim for declaratory relief under the MCPA, which declared that defendant violated various provisions of the MCPA. Plaintiff's argument that this last judgment proved that there was only a claim for declaratory relief defies reason in light of the complaint and the earlier judgments. Moreover, in the opinion that accompanied the summary judgment regarding declaratory relief, the federal court reiterated its prior ruling which had determined that the plaintiff class was entitled to summary judgment on the MCPA claim, and the court proceeded to rule that the plaintiff class was thus also entitled to summary judgment on the claim for declaratory relief. The multiple judgments simply complimented each other, covering all of the claims and all of the forms or types of requested relief.

Plaintiff makes the preceding argument to support his follow-up claim that res judicata does not apply unless the federal district court specifically adjudicated the issue of actual damages. As to "actual damages" under the MCPA, which is language found in both subsections (2) and (3) of MCL 445.911, the federal district court found that the plaintiff class was entitled to a determination of actual damages to be handled in a damages determination proceeding. This proceeding apparently never took place. Under an amended stipulation filed in the federal case, plaintiff was awarded \$2,304 "pursuant to the Court's prior Orders in this matter." It is unclear from the documents whether any of this amount pertained to the MCPA claim; however, defendant indicates that the amount pertained solely to damages under the MVISCA, and we shall thus treat those damages as such. Damages for the TILA violations were covered by another judgment, which entitled class members to damages in the amount of twice the finance charge disclosed in their respective retail installment sales contracts. The award of TILA and MVISCA damages was later reversed by the Sixth Circuit. Accordingly, while there was a claim for actual damages under the MCPA, and while the federal district court found that the plaintiff class was entitled to have actual damages determined, no damages were ever awarded under the final judgment, but the plaintiff class never appealed, nor took any steps to have the actual damages determined. Thus, the final judgment implicitly and effectively awarded the class members nothing in MCPA actual damages.

In *Beyer v Verizon North, Inc*, 270 Mich App 424, 428-429; 715 NW2d 328 (2006), this Court, setting forth the applicable rules governing res judicata analysis where a state action follows a federal action, observed:

This Court must apply federal law in determining whether the doctrine of res judicata requires dismissal of this case because the consent judgment in the prior suit was entered by a federal court. Under federal law, res judicata precludes a subsequent lawsuit if the following elements are present: (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their "privies;" (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. [Citations and internal quotation marks omitted.]

Applying these rules, in the context of a claim for actual damages, there was a final decision on the merits rendered by the federal court, the subsequent action in state court involved parties who litigated the federal action, and there was an identity of the causes of action, i.e., a claim under the MCPA. With respect to the third element requiring previous litigation of an issue or an issue that should have been litigated, we conclude that the issue of actual damages was litigated in the federal court. Actual damages were requested by the plaintiff class, the federal court found various violations of the MCPA, and the court called for a damages determination proceeding, but ultimately a final judgment was entered absent an award of MCPA damages. Minimally, the issue of actual damages should have been litigated.

Plaintiff continues his argument by maintaining that damages under MCL 445.911(2), which includes actual damages or \$250, whichever is greater, along with attorney fees (collectively referred to as statutory damages), could not and were not litigated in the federal action because subsection (2) is inapplicable to class actions. However, because the plaintiff class actually made a demand for statutory damages under MCL 445.911(2) in the federal complaint, although most likely an oversight, and because the federal court rejected the claim given that a class action suit was being pursued, the issue was necessarily litigated. Furthermore, looking at the structure of MCL 445.911, we cannot conclude that the Legislature intended for parties to pursue both individual claims under subsection (2) and class action claims under subsection (3) for identical violations arising out of the same conduct, events, or transactions. In that same vein, and relating the issue back to the doctrine of res judicata, our Supreme Court in *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999), stated that “res judicata will apply to bar a subsequent relitigation based upon the same transaction or events, regardless of whether a subsequent litigation is pursued in a federal or state forum.” We also note that “[t]he doctrine of res judicata is employed to prevent multiple suits litigating *the same cause of action*.” *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004) (emphasis added). Here, plaintiff is attempting to pursue the same cause of action, that being a violation of the MCPA. Although plaintiff is seeking a different form or type of relief, it does not change the fact that the cause of action remains the same.

Finally, we address the United States Supreme Court’s opinion in *Cooper v Fed Reserve Bank of Richmond*, 467 US 867; 104 S Ct 2794; 81 L Ed 2d 718 (1984), which is addressed by both parties. In *Cooper*, the federal district court entered a judgment in a class action suit, which determined that the defendant employer had not engaged in a general pattern or practice of racial discrimination against a certified class of employees for purposes of Title VII of the Civil Rights Act of 1964. Some class members commenced individual actions against the defendant employer on the basis of racial discrimination, and the federal appellate court found that the class action judgment barred the separate, individual actions pursuant to the doctrine of res judicata. The Supreme Court stated that “[i]t could not be more plain that the rejection of a claim of classwide discrimination does not warrant the conclusion that no member of the class could have a valid individual claim.” *Cooper, supra* at 878. The Court, in reversing the federal court of appeals, stated:

The court erred . . . in the preclusive effect it attached to that prior adjudication. That judgment (1) bars the class members from bringing another class action against the [employer] alleging a pattern or practice of discrimination for the relevant time period and (2) precludes the class members in any other

litigation with the [employer] from relitigating the question whether the [employer] engaged in a pattern and practice of discrimination against black employees during the relevant time period. The judgment is not, however, dispositive of the individual claims the . . . petitioners have alleged in their separate action. Assuming they establish a prima facie case of discrimination . . . , the [employer] will be required to articulate a legitimate reason for each of the challenged decisions, and if it meets that burden, the ultimate questions regarding motivation in their individual cases will be resolved by the District Court. [*Id.* at 880.]

Here, plaintiff is attempting to relitigate the question of whether defendant violated the MCPA. In *Cooper*, the elements necessary to establish the cause of action filed by the class (general pattern or practice of racial discrimination) were not the same that would support an individual action for racial discrimination. There is no such distinguishing feature in the case at bar; rather, plaintiff here is simply attempting to recover a different type or form of relief for the same cause of action, i.e., a violation of various MCPA provisions. But plaintiff made his choice for the type of relief that could be obtained when he chose not to opt out of the federal class action; he elected his remedy.⁸ The *Cooper* Court additionally stated:

There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation. Basic principles of res judicata (merger and bar or claim preclusion) and collateral estoppel (issue preclusion) apply. A judgment in favor of the plaintiff class extinguishes their claim, which merges into the judgment granting relief. A judgment in favor of the defendant extinguishes the claim, barring a subsequent action on that claim. A judgment in favor of either side is conclusive in a subsequent action between them on any issue actually litigated and determined, if its determination was essential to that judgment. [*Cooper, supra* at 874 (citations omitted).]

Plaintiff seizes on the “actually litigated” language from the above quote, but, again, damages and attorney fees under MCL 445.911(2) were actually litigated in the federal action, rightfully being soundly rejected, although they should not have been litigated. Moreover, the claim of whether defendant violated the MCPA was actually litigated. Additionally, as reflected by the proceedings here in the federal court relative to the TILA claim, a class may be decertified following a liability determination due to difficulties arising from individual damages issues.

⁸ The doctrine of election of remedies is a procedural rule that precludes a party to whom there are available two inconsistent remedies from pursuing both, and the doctrine requires (1) the existence of two or more remedies, (2) an inconsistency between the remedies, and (3) a choice of one of the remedies. *Riverview Coop, Inc v The First Nat'l Bank & Trust Co of Michigan*, 417 Mich 307, 311, 313; 337 NW2d 225 (1983). Actual damages are available under both MCL 445.911(2) and (3), making them duplicative, subsection (3) does not allow an attorney fee award, and one subsection applies to class actions and one to individual actions. They are clearly inconsistent, and plaintiff made his choice by joining the class action suit.

Carnegie v Household Int'l, Inc, 376 F3d 656, 661 (CA 7, 2004) (FR Civ P 23 “allows district courts to devise imaginative solutions to problems created by the presence in a class action litigation of individual damages issues,” including “decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages”). Plaintiff presents us with no authority that this principle allows a party to proceed with a request for individual damages in a state court following decertification of a class action in the federal court. In sum, we find no basis for reversal.

Affirmed

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Patrick M. Meter