

STATE OF MICHIGAN  
COURT OF APPEALS

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LAWSUIT FINANCING, INC., and  
RAINMAKER USA, L.L.C.,

UNPUBLISHED  
August 11, 2009

Plaintiffs-Appellants,

v

ELIAS MUAWAD and LAW OFFICES OF  
MUAWAD & MUAWAD P.C.,

No. 284717  
Macomb Circuit Court  
LC No. 2005-004763-CK

Defendants-Appellees.

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Before: Owens, P.J., and Servitto, and Gleicher, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(I)(1). The trial court ruled, pursuant to MCR 2.205 (A), that in a prior lawsuit defendants were necessary counter-defendants to plaintiffs' counterclaims, and that plaintiffs could not assert their claims against defendants in this subsequent action due to their failure to join defendants in the prior lawsuit. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This is not the first appearance of this case before this Court. In a prior opinion, *Lawsuit Financing, Inc v Muawad*, unpublished opinion per curiam of the Court of Appeals, issued April 3, 2007 (Docket No. 272259), the basic facts were set forth as follows:

In connection with an earlier action, plaintiffs entered into a written purchase agreement with defendants' clients. Through this agreement, plaintiffs acquired a \$50,000 lien against the clients' anticipated recovery in the underlying lawsuit in exchange for \$10,000. Defendant Elias Muawad signed as the clients' attorney under the following paragraph included at the end of the purchase agreement:

I, Elias Muawad, Esq., the undersigned attorney ("Attorney") for the Seller, received and agree that the *Purchase Agreement and Lien* for the Seller are legal, binding and enforceable. I agree to distribute any Proceeds of the Litigation in accordance with the terms of the Purchase Agreement and Lien (merged document). All proceeds recovered will be deposited into and distributed from my clients Trust Account. . . . By execution hereof, I am only following the

instructions of Seller. . . . By the execution hereof, I assume no duties or obligations to Buyer other than the ministerial duties of disbursement of proceeds to satisfy the lien, at the time that proceeds are received and of furnishing ongoing requested information as specifically outlined herein, including a written “closing statement” that shall have a worksheet of all proceeds received in connection with this claim/settlement judgment and all payoffs to lien holders. [Emphasis in original.]

After the underlying matter was resolved, defendants, citing a breakdown of the attorney-client relationship arising from a dispute concerning attorney fees, moved to have the proceeds of the litigation released to their client trust account for disbursement. The trial court granted defendants’ motion and ordered that the litigation proceeds be distributed to defendants and their clients. The proceeds were later distributed in accordance with the trial court’s order, which did not make provision for satisfaction of plaintiffs’ lien.

Defendants’ clients subsequently filed suit seeking a judicial declaration that the purchase agreement effectuated what amounted to a usurious loan and that plaintiffs were, therefore, entitled only to recover the principal amount borrowed, i.e., \$10,000. Plaintiffs counterclaimed to enforce the purchase agreement, and later moved to amend their counterclaim to include a claim that defendants breached their obligation to satisfy plaintiffs’ lien before distributing any proceeds of the underlying litigation to the clients. Defendants opposed the motion, arguing, among other things, that their authority to disburse funds in accordance with the purchase agreement had been revoked by the clients and that, in any event, their duty in this regard was “ministerial” in nature and did not substantively obligate them to honor plaintiffs’ lien. Noting that case evaluation was only a few weeks away, defendants further asserted that amendment of plaintiffs’ counterclaim would prejudice them because they had not materially participated in discovery, which was now closed, because they were not substantially involved in the action from its outset. The trial court denied plaintiffs’ motion, stating only that, “[b]ased on the law and facts presented to this Court, the motion is denied.” The litigation concluded with entry of a judgment upholding the purchase agreement and lien, and awarding plaintiffs “damages in the amount of \$50,000 (due under . . . the [a]greement).” Four days later, the clients filed for bankruptcy.

Thereafter, plaintiffs filed the instant action against defendants, alleging breach of defendants’ duty to honor plaintiffs’ lien in the underlying lawsuit, including breach of defendants’ alleged obligations under the purchase agreement to satisfy plaintiffs’ lien before disbursing any funds to their clients. Defendants moved for summary disposition, arguing that plaintiffs’ claims were barred by res judicata and by prior disposition of the proceeds in the underlying lawsuit. The trial court found that res judicata did not apply to bar plaintiffs’ claims, but granted summary disposition in favor of defendants under MCR 2.116(C)(7), on the ground that the disputed funds were disposed of by the court’s disbursement order in the underlying litigation. Plaintiffs appealed the court’s decision to this Court. *Id.*

In that appeal, a panel of this Court agreed with the trial court's ruling on res judicata, but found that summary disposition under MCR 2.116(C)(7) was inappropriate because plaintiffs' claims had not been disposed of by any prior action. This Court remanded the case to the trial court for further proceedings consistent with its opinion. *Id.*

On remand, the parties filed cross-motions for summary disposition, and the court again granted summary disposition in favor of defendants. This time, the trial court found that defendants should have been joined in the prior lawsuit according to MCR 2.205(A):

Under the totality of circumstances, the Court is satisfied that [defendants] [were] a necessary party to [the prior lawsuit] inasmuch as that action involved the subject funds and [defendants'] presence was required to grant complete relief with respect thereto.

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It would be contrary to the interest of justice and judicial economy to allow [plaintiffs] to presently seek the same damages against [defendants] that it could have pursued in [the prior lawsuit].

Plaintiffs now appeal that decision. On appeal, plaintiffs first argue that the trial court erred by granting summary disposition to defendants on remand because it did so by invoking the doctrine of "res judicata" (although the trial court did not use that term) in contravention of this Court's previous holding that res judicata did not bar the claims. We disagree.

An order granting or denying a motion for summary disposition is reviewed de novo. *Alcona County v Wolverine Environmental Production, Inc.*, 233 Mich App 238, 246; 590 NW2d 586 (1998). The law of the case doctrine mandates that an appellate court ruling on a particular issue binds the appellate court and all lower courts with regard to that issue. *Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997). The "primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Ashker ex rel Estate of Ashker v Ford Motor Co.*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

The doctrine of res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Sewell v Clean Cut Mgt, Inc.* 463 Mich 569, 575; 621 NW2d 222 (2001). It requires that (1) the prior action was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 10; 672 NW2d 351 (2003).

On remand, the trial court did not make any findings that plaintiffs' claims against defendants had been decided on the merits in the prior lawsuit. Nor did it find that a final decision was issued by the trial court resolving all of plaintiffs' claims against defendants. Both of those findings are required for a ruling to be considered res judicata. While the trial court did find that the matter being contested in the instant matter was or could have been resolved in the prior lawsuit, this is only one of the required findings for the application of res judicata. We do not find, then, that the trial court implicitly granted defendants' motion for summary disposition

based upon res judicata. Accordingly, the trial court did not violate the law of the case doctrine with respect to our prior res judicata determination.

As previously indicated, the trial court granted summary disposition in favor of defendants based upon its conclusion that defendants were necessary parties in their clients' prior action against plaintiffs. MCR 2.205(A), which governs the necessary joinder of parties, provides:

Subject to the provisions of subrule (B) and MCR 3.501, persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests.

Generally, the "[j]oinder of parties is appropriate in situations in which their respective rights and obligations arise out of the same contract, transaction, occurrence or like circumstances, and any questions of law or fact is common to the claims of them all." *Yedinek v Yedinek*, 383 Mich 409, 416; 175 NW2d 706 (1970).

We agree that defendants were a necessary party to the prior lawsuit because that lawsuit involved the exact same proceeds of litigation that plaintiffs sought to collect from defendants in the instant matter, and defendants' presence was required to render complete relief with respect to plaintiffs' claims. Furthermore, the rights and obligations of defendants and their clients arise from the exact same purchase agreement, and any questions of law or fact were common to the claims of both of them because they had an attorney-client relationship in the underlying lawsuit. The issue for resolution, then, is whether the trial court erred in granting summary disposition in defendants' favor based upon plaintiffs' failure to join these necessary parties in the prior lawsuit.

Notably, defendants in this matter were *already* a party to the prior lawsuit, having intervened in the litigation. It is undisputed that plaintiffs moved to add defendants to their counter-claim in the prior lawsuit, apparently seeking to assert at least some of the claims against defendants in the prior lawsuit that are at issue in the instant matter. Without explanation, the trial court assigned to the prior lawsuit (a different judge than the one assigned to preside over the instant matter) simply denied the motion. It is difficult to understand how the trial court in the instant matter could have determined that plaintiffs' failed attempt to join defendants in the prior lawsuit was a bar to this litigation, particularly when that trial court gave no explanation or reason for the denial. In its February 23, 2006 opinion and order, the trial court in the instant matter acknowledged the lack of clarity in the other trial court's order:

Contrary to defendants' position, the Court is not convinced that the denial of present plaintiffs' motion to amend their counterclaim in [the prior lawsuit] constituted a decision on the merits. Although defendants maintain that the denial was based on the ground of futility, they have failed to submit any concrete evidence in support of their argument. In their own brief in opposition to the motion, defendants failed to assert that the proposed amendment was futile.

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At the conclusion of oral argument on the motion to amend, the Court held that: Based on the law and facts presented to this Court, the motion is denied.

Further, the corresponding written order fails to set forth any reasons for the ruling. Instead, the order notes that briefs were filed, oral argument was conducted, and that the Court was “otherwise fully advised in the premises.”

With no verbal or written record governing the denial of the motion to amend filed in the prior lawsuit, this trial court’s conclusion that there was “no valid reason” why plaintiffs could not have initially included defendants in their counterclaim appears speculative.

Additionally, as pointed out by plaintiff, if a motion to amend to state a counterclaim or a cross-claim is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise. MCR 2.203(E). As the order denying plaintiffs’ motion to add claims against defendants in the prior lawsuit does not specifically provide that plaintiffs could not litigate its claims against defendants in another action, plaintiffs were permitted to initiate the present action against defendants. Defendants were already an intervening party in the prior lawsuit, this Court previously held that res judicata did not bar plaintiffs’ claims against defendants and the relevant court rule also allowed plaintiffs to pursue their claims. The trial court’s grant of summary disposition in defendants’ favor based upon plaintiffs’ failure to join defendants as a party in the prior action was thus in error. Given our conclusion, we need not address plaintiffs’ remaining arguments.

Reversed and remanded for proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher