

STATE OF MICHIGAN
COURT OF APPEALS

ELSIE M. COMPTON and CHRISTINE
TAYLOR,

UNPUBLISHED
July 27, 2010

Plaintiffs-Appellees,

v

BETTY MAE THOMPSON,

No. 291788
Oakland Circuit Court
LC No. 2007-086203-CZ

Defendant-Appellant.

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of foreclosure. For the reasons set forth in this opinion, we reverse the trial court's order of foreclosure and remand the matter to the trial court for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In 1994, plaintiffs' predecessor and defendant entered into a fifteen-year, eleven percent, \$34,000 land contract with \$2,000 paid down. For some of the period of the contract, the state paid defendant's housing expenses. In 2006, defendant was in arrears, and plaintiffs brought a forfeiture action in the 43rd District Court for the amount owed. Plaintiffs did not attempt to accelerate the loan, although the loan terms allowed for acceleration. After a hearing, the district court determined that defendant owed \$4,500 on the contract plus \$73 in court costs, which defendant paid in time to avoid eviction.

Defendant did not pay anything further on the contract and in January 2007, plaintiffs again brought a forfeiture action in the 43rd District Court for the outstanding amount. Defendant asserted that the contract had been paid in full, and requested discovery on the total amount still owing. The district court, however, held that because this was a forfeiture action, only the amount presently due was relevant, not the total owed. The court responded to plaintiffs' argument that the issue was adjudicated in the earlier forfeiture action by ordering briefing on the matter of res judicata. However, the parties entered a stipulated judgment for the amount owed at the time, and the court did not make a decision on the issue of res judicata. This decision was not appealed. Thus, there was no discovery regarding how close the contract was to being paid off. The judgment was entered for \$5,196.78, and defendant again paid in time to avoid eviction.

Defendant made no further payments. In October 2007, plaintiffs filed this foreclosure action in the Oakland Circuit Court, claiming that \$33,321.63 was owed on the contract. Defendant did not answer, and a default judgment was entered. Defendant moved to set the default judgment aside, and the trial court granted the motion.

Plaintiffs moved for summary disposition, arguing that the doctrine of res judicata barred defendant from relitigating the issue of how much was owed because the district court had decided the facts of the case in the earlier forfeiture proceedings. The court agreed with plaintiffs, concluding that, “the balance of the Land Contract has already been adjudicated.” Accordingly, a judgment of foreclosure was entered, stating that the amount owed on the land contract was \$33,321.63, and ordering a sheriff’s sale if that amount was not paid within twenty-one days.

At issue in this case is the question of whether res judicata bars defendant’s allegation that she had paid the parties’ land contract in full, and thus it could not be foreclosed.

We review de novo a trial court’s decision to grant or deny a motion for summary disposition. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The question whether res judicata bars a subsequent action is reviewed de novo by this Court. *Pierson Sand & Gravel, Inc v Keller Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

The doctrine of res judicata bars a subsequent action when “(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.” *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). The doctrine bars all matters that with due diligence should have been raised in the earlier action. *Id.* If a material change in circumstances occurs after a judgment has been rendered, or if different facts or proofs would be required in the second action, res judicata does not apply. *Cloverlanes Bowl, Inc v Gordon*, 46 Mich App 518, 524; 208 NW2d 598 (1973); *PT Today, Inc v Comm’r of Financial & Ins Services*, 270 Mich App 110, 146; 715 NW2d 398 (2006).

The trial court erred when it held that the district court actually adjudicated this issue. In each of the forfeiture actions, plaintiffs alleged a certain amount was still owed on the contract, but the district court judgments only identify the amount that was overdue at the time. In the second forfeiture, defendant raised the issue but the district court did not decide it because the parties stipulated to the amount overdue and judgment was entered for that amount. This is not a case of defendant failing to raise an issue. Where an issue is raised but not decided and is not necessary to the decision at hand, res judicata does not bar it from being raised in a new suit. *Bacon v Detroit*, 282 Mich 150, 153; 275 NW 800 (1937). Moreover, the circumstances have changed because defendant has made two payments totaling nearly \$10,000 as a result of the forfeiture actions. Thus, res judicata does not bar defendant’s request for proof that the land contract has not been paid off.

Res judicata ultimately was *not* applied, because the trial court’s order determined how much was owed. The trial court could not reference the decision of an earlier order because no earlier order established the amount that was owed on the balance of the land contract. Nor was any evidence submitted regarding the amount; plaintiffs alleged one figure and defendant alleged that at most, less than \$5,000 was owed. The trial court had no basis for choosing one allegation

over the other and appeared to decide that because defendant owed *something*, it must be the amount plaintiffs alleged. By making such a factual determination, the trial court clearly erred; necessitating that the matter be remanded to the trial court for further proceedings consistent with this opinion.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Defendant having prevailed, may access costs pursuant to MCR 7.219.

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

/s/ Cynthia Diane Stephens