STATE OF MICHIGAN

COURT OF APPEALS

ROBERT W LANGELAND and SHARON LANGELAND,

Plaintiff-Appellants,

v

ST. PAUL INSURANCE COMPANIES, and THORNAPPLE VALLEY, INC.,

Defendant-Appellees.

UNPUBLISHED
July 9, 1996

No. 177831
LC No. 94-001896-CK

Before: Hoekstra, P.J., and Saad and S. J. Latreille,* JJ.

PER CURIAM.

Plaintiffs appeal the trial court's grant of summary disposition in favor of defendants. Because plaintiffs' fraud claim is barred by res judicata, and their civil RICO claim, 18 USC §§ 1961(1), 1964, fails to state a cause of action, we affirm.

Robert Langeland was injured on May 1, 1992, while acting in his capacity as a truck driver for Thornapple Valley. Thornapple Valley told Robert that it was self-insured for the first $200,000 of no-fault insurance, and after Robert filed suit against Thornapple, they ultimately settled his no-fault case for $41,500. Robert later learned that Thornapple was not self-insured, but in fact had first dollar coverage through St. Paul Insurance. Robert and his wife, Sharon, then filed a second lawsuit, in which they sought relief from St Paul for "all benefits denied through the wrongful representation of coverage and the fraud used on the insurance deception." Essentially, plaintiffs claim that if Robert had been negotiating with St. Paul instead of Thornapple Valley, he would not have settled for the same amount of money, but instead would have sought and obtained a better settlement. Plaintiffs also alleged violations of civil RICO, 18 USC § 1961(1)(B),(C) and (D) (apparently against both defendants).

The trial court dismissed plaintiffs' claims and announced from the bench that it was doing so: (1) "for the reasons stated in defendants' brief," (2) because plaintiffs had failed to state a cause of

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* Circuit judge, sitting on the Court of Appeals by assignment.

action (no damages), and (3) because plaintiffs had not paid back the $41,500 received from the previous settlement. The court's written order dismissed the case pursuant to MCR 2.116(C)(8).

The trial court correctly dismissed plaintiffs' fraud claims as barred by the doctrine of res judicata. Michigan follows the broad rule of res judicata which bars not only claims actually litigated in the prior action, but every claim arising out of the same transaction which the parties, exercising reasonable diligence, could have raised but did not. *Gose v Monroe Auto Equipment Co,* 409 Mich 147, 160; 294 NW2d 165 (1980); *Sprague v Buhagiar,* 213 Mich App 310, 313-314; 539 NW2d 587 (1995). As this Court discussed in *Sprague*, in the context of a fraud claim:

> . . . plaintiff asserts that this general rule of [broad] res judicata does not apply when fraud is pleaded. . . .The fraud exception to res judicata pertains only if the fraud is characterized as extrinsic fraud. Extrinsic fraud is fraud outside the facts of the case: "fraud which actually prevents the losing party from having an adversarial trial on a significant issue." *Rogoski v Muskegon,* 107 Mich App 730, 736; 309 NW2d 718 (1981). An example of such fraud would be with regard to the filing of a return of service.
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> Extrinsic fraud must be distinguished from intrinsic fraud, which is a fraud within the cause of action itself. An example of intrinsic fraud would be perjury, *id.* at 737, discovery fraud, fraud in inducing a settlement, or fraud in the inducement or execution of the underlying contract. In *Triplett v St Armour,* 444 Mich 170, 175-176; 507 NW2d 194 (1993), our Supreme Court declined to recognize an independent action at law to recover damages for intrinsic fraud. The Court held that the remedy in the intrinsic fraud circumstance is exclusively in a motion for relief from judgment pursuant to MCR 2.612(C). *Triplett, supra*.
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> Because plaintiff alleges only intrinsic fraud in this case, she cannot seek relief by independent action. *Rogoski,* supra at 737. There is not a separate cause of action. Plaintiff's remedy is to move to reopen the judgment pursuant to MCR 2.612(C). *Nederlander v Nederlander,* 205 Mich App 123, 126; 517 NW2d 768 (1994). (Emphasis added.)

Similarly, here, plaintiffs allege intrinsic fraud, and, therefore, their remedy, if any, should have been pursued in the initial lawsuit, not by filing this suit. Therefore, their fraud claims here are barred by res judicata. We need not address the other reasons articulated by the lower court for dismissal of the fraud claims.

The trial court also properly dismissed the RICO claim because plaintiffs failed to plead a "pattern" of "racketeering activity." "Racketeering activity" is defined in 18 USC § 1961(1) by an extensive list of acts or threats involving specific criminal activities. Even if plaintiffs' allegations are true,

and defendants perpetrated a fraud against numerous truck drivers by withholding insurance benefits, this activity does not fall within the definition of "racketeering activity." *Does 1-60 v Republic Health Corp*, 669 F Supp 1511, 1516 (D Nev, 1987). Therefore, plaintiffs have failed to state a claim on which relief could be granted, and Count II of plaintiffs' complaint was properly dismissed by the trial court.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Stanley J. Latreille