STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR A. DEBLOCK,

Plaintiff-Appellant,

v

HOME DEPOT USA, INC.,

Defendant-Appellee.

UNPUBLISHED
May 19, 1998

No. 202068
Oakland Circuit Court
LC No. 96-534157 NO

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Plaintiff appeals from an opinion and order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) in this premises liability action. We affirm.

I

On August 20, 1994, while he was visiting one of defendant's stores in Colina, California, plaintiff's hand was allegedly injured when a stack of large plastic garbage cans fell and struck him. Plaintiff filed his first negligence action against defendant in Wayne County Circuit Court.[1] The trial court declined to exercise jurisdiction, indicating that a California court was the proper forum in which to resolve plaintiff's negligence action. Plaintiff did not appeal this ruling.

Plaintiff filed a second premises liability action against defendant in Oakland Circuit Court.[2] In that action, the trial court likewise declined to exercise jurisdiction on the basis of forum non conveniens, holding that a California court was the proper forum in which to litigate plaintiff's premises liability claim. Again, plaintiff did not appeal this ruling.

When plaintiff finally filed suit in California, the action was dismissed because he failed to file his complaint within California's one-year statute of limitations.

Plaintiff then filed the instant action in Oakland Circuit Court, alleging facts substantially similar to those in his previously dismissed Michigan lawsuits against defendant, as well as an identical basis for recovery. The trial court granted defendant's motion for summary disposition pursuant to MCR

2.116(C)(7), stating, "A decision to the contrary would allow the plaintiff to profit from his multiple filings from which he had a plausible remedy, namely seeking his appeal as of right from one of the three trial court decisions rendered as to this incident." Plaintiff now appeals.

II

Although the parties raise numerous issues concerning the doctrines of res judicata, collateral estoppel, and forum non conveniens, resolution of this appeal is actually a quite simple matter. The true issue here concerns plaintiff's ability to collaterally attack the trial court's previous final order declining jurisdiction on the basis of forum non conveniens in lower court number 95-501963-NO, the first negligence case that plaintiff filed in Oakland Circuit Court. As we gather from his brief, plaintiff's primary purpose in filing this appeal is to convince this Court of the error underlying the order of dismissal in this previous case. However, a decision of a court having jurisdiction is final and cannot be collaterally attacked. *In re Waite*, 188 Mich App 189, 197; 468 NW2d 912 (1991); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). Without question, the trial court in lower court number 95-501963-NO had jurisdiction to decide the forum non conveniens issue, and plaintiff does not argue otherwise.

Moreover, contrary to his argument, plaintiff could have filed an appeal as of right from the trial court's order granting defendant's motion to dismiss for lack of jurisdiction in lower court number 95-501963-NO. See, e.g., *Hamann v American Motors Corp*, 131 Mich App 605, 607; 345 NW2d 699 (1983). Plaintiff chose not to do so, thereby allowing the order declining jurisdiction to become final.

Finally, we find support for our decision to affirm in the following language from *Curry v Detroit*, 394 Mich 327, 333; 231 NW2d 57 (1975):

> If the double filing is allowed in this case, it follows that any possible "final" adverse ruling can be likewise circumvented. Several questions then call for answers. For instance, how long after the first adverse decision may one wait before filing another complaint and how many such complaints can be filed?
>
> *Jones v Chambers*, 353 Mich 674; 91 NW2d 889 (1958) said where issues of law "have been finally decided by a court of competent jurisdiction in one legal action which are essential to the maintenance of another legal action, it is universally held that the second action must fail." Accordingly, this second action must fail.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.

[1] Lower court No. 95-519262-NO.

[2] Lower court No. 95-501963-NO.