

STATE OF MICHIGAN
COURT OF APPEALS

ARMEN BOLADIAN,

Plaintiff-Appellee,

v

GEORGE CLINTON and ALL OCCUPANTS OF
839 KNAPP HIGHWAY, BROOKLYN,
MICHIGAN,

Defendants-Appellants.

UNPUBLISHED

February 23, 2001

No. 216153

Lenawee Circuit Court

LC No. 96-007197-CK

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

PER CURIAM.

Defendants appeal by delayed leave granted the order granting summary disposition to plaintiff on collateral estoppel grounds. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant George Clinton is a musician who had a business relationship with plaintiff. Defendant purchased the subject property on land contract, and involved plaintiff in the property when defendant was unable to make payments. Plaintiff eventually purchased the property himself, and defendant resided there. Plaintiff filed an action in district court for nonpayment of rent, and defendant raised multiple affirmative defenses. The case was bifurcated, with the district court hearing the possession aspect, while supplemental money damage claims were transferred to circuit court. The affirmative defenses were stricken from the district court case. The district court awarded possession to plaintiff.

Plaintiff moved for summary disposition in the circuit court, asserting that the ownership and lease actions had been resolved in the district court action, and only damages remained to be calculated. The circuit court granted the motion on collateral estoppel grounds.

For collateral estoppel to apply, the ultimate issue to be concluded in the second action must be the same as that involved in the first. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The issues must be identical and the ultimate issues must have been both actually and necessarily litigated. *Id.* To be necessarily determined in the first action, the issue must have been essential to the resulting judgment. A finding upon which the judgment did not depend

cannot support collateral estoppel. *Eaton Co Bd of Road Comm'rs v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994).

Prior to bifurcation, defendant filed affirmative defenses, including one that stated that there was an oral agreement under which plaintiff advanced money to pay the land contract vendor on behalf of defendant and plaintiff was to be paid from royalties. Plaintiff moved to strike this affirmative defense, along with the others, arguing that it was outside the scope of the district court's jurisdiction. The district court granted the motion and the affirmative defenses were stricken.

The issue that appears to have been argued in district court was that the royalty payments were intended to serve as a purchase price for the property. Plaintiff argued alternate grounds for rejecting defendant's purchase argument, both that the oral agreement did not exist and that a written agreement was necessary to meet the statute of frauds. The district court did not necessarily determine that the oral agreement did not exist. Where the affirmative defenses were stricken in the district court action, plaintiff failed to establish that the issue of rent was actually presented. The trial court erred in granting summary disposition where there was no showing that the issue was actually and necessarily litigated. *Qualls, supra*.

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

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell