STATE OF MICHIGAN

COURT OF APPEALS

W. E. ROZINAK PROPERTIES, LTD.,

Plaintiff-Appellant,

v

LEEMON OIL CO.,

Defendant-Appellee.

UNPUBLISHED
February 19, 2002

No. 226159
Wayne Circuit Court
LC No. 99-912568-NZ

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

The facts and proceedings in this case are somewhat tortuous, but are carefully set out in the well-reasoned opinion of the trial court. For our purposes, it is sufficient to say that the underlying controversy relates to an interest in property owned by plaintiff and on which defendant claimed rights under a mortgage. The issue of the validity of the mortgage has been extensively contested and litigated in numerous courts, state and federal. The trial court granted summary disposition based on res judicata and a mutual release of claims[1]. Our review is de novo. *Village of Dimondale v Grable*, 240 Mich App 553, 563; 618 NW2d 23 (2000).

I. Res Judicata

Plaintiff argues that summary disposition was improperly granted by the lower court under the doctrine of res judicata. Res judicata requires that (1) the first case be decided on the merits; (2) the matter in the second case could have been or was resolved in the first case; and (3) both actions involve the same parties or their privies[2]. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). Res judicata bars subsequent actions between the same parties when the evidence or the essential facts are identical. *Id*. at

[1] The court's opinion refers to both MCR 2.116(C)(7) and MCR 2.116(C)(10). However, only the former applies because the basis for decision is res judicata and release.

[2] There is no claim that the actions involved the same parties or their privies.

375. Michigan courts are very broad in the application of the doctrine of res judicata. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Michigan courts have not only barred claims already litigated under the doctrine of res judicata, but have also barred claims arising from the same transaction that the parties, in the exercise of reasonable diligence, could have raised but did not. *Id*. A voluntary dismissal with prejudice will serve as res judicata for all claims that could have been raised in the first action. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 396; 573 NW2d 336 (1997). Res judicata applies regardless of whether the subsequent action was pursued in a state or federal forum. *McKane v Lansing*, 244 Mich App 462, 466; 625 NW2d 796 (2001).

We find, as did the trial judge, that this case has previously been decided on the merits and that the issues in this case were or could have been resolved in the previous litigation between these parties. The trial court's opinion details the litigation history of the dispute between these parties over the property in question. Included in this history are actions filed by plaintiff against defendant (and others) contesting the mortgage in question in federal district court, bankruptcy court and state circuit court. During this litigation odyssey, plaintiff twice dismissed claims based on the validity of defendant's mortgage and the honesty of its proof of claim in bankruptcy court. Defendant argued in the trial court and argues again here that the two dismissals entitle it to summary disposition on res judicata grounds based on the so-called two dismissal rule. We agree.

Under FR Civ P 41(a)(1), a plaintiff may dismiss an action without prejudice if notice of the dismissal is filed before the defendant files an answer or responsive pleading and only if the plaintiff has never previously dismissed an action based on or including the same claim. *Cooter & Gell v Hartmarx Corp*, 496 US 384, 394; 110 S Ct 2447; 110 L Ed 2d 359 (1990). If the plaintiff invokes FR Civ P 41(a)(1) after previously dismissing an action based on or including the same claim in any federal or state court, the action must be dismissed with prejudice. *Id*. This is known as the two-dismissal rule, which provides that a second voluntary dismissal of a complaint operates as an adjudication on the merits, and will have a preclusive effect in subsequent litigation. *Pacheco de Perez v AT&T Co*, 139 F3d 1368, 1373 (GA 11, 1998).

In this case, plaintiff has brought suit at least three times prior to the filing of this case, and has consistently disputed the validity of an assignment of a mortgage on certain property to defendant, as well as the existence of any debt under the mortgage. Plaintiff brought suit in the United States District Court for the Eastern District of Michigan, and alleged that defendant fraudulently sought to link a debt from one mortgage to another mortgage. Plaintiff alleged that defendant made misrepresentations in order to prevent plaintiff from selling the property so defendant could recoup lost funds. This case was dismissed without prejudice by stipulation of the parties. Plaintiff then brought an adversary case in bankruptcy court against defendant alleging that no debt was owed, and the assignment of the mortgage was invalid because it failed to recite any material consideration. Plaintiff voluntarily dismissed this case under FR Civ P 41(a)(1). Plaintiff brought suit against defendant in the Wayne Circuit Court to quiet title, which was subsequently removed to the bankruptcy court and became a second adversary proceeding. Plaintiff alleged that the mortgage was assigned to defendant without consideration or a mortgage note. Plaintiff again voluntarily dismissed under FR Civ P 41(a)(1).

Plaintiff has consistently contested the validity of the assignment and has previously sought to quiet title on the property, yet each time the cases were dismissed either by stipulation or by voluntary dismissal by plaintiff. Further, in all of the above-mentioned cases, the same nucleus of facts are involved. As pointed out in the trial court's opinion, these cases arose out of the same transaction and the relief sought depended on resolution of the same factual and legal issues, the validity of the mortgage and assignment. Given the broad application of the res judicata doctrine, we find that plaintiff's case was properly barred because it was decided on the merits pursuant to the two-dismissal rule under FR Civ P 41(a)(1), the issues were or could have been decided in the previous litigations and the actions involved the same parties or their privies.

Plaintiff contends that this case provides a new cause of action because defendant filed an allegedly false proof of claim in the bankruptcy court. However, the fact that defendant filed a proof of claim after plaintiff filed for bankruptcy has no bearing on the fact that plaintiff brought proceedings in three other cases regarding defendant's allegedly fraudulent assignment held on the property in question. Thus, the matters raised in this case could have been resolved in the prior cases. Finally, it is undisputed that the parties involved in this action were either the same parties or their privies involved in the prior actions. Plaintiff's claims were barred by res judicata and summary disposition was properly granted under MCR 2.116(C)(7) prior to the close of discovery.

II. Release

Plaintiff's claims were also barred because a stipulated order and mutual release of claims were entered. The stipulated order resolved plaintiff's bankruptcy proceedings in relation to the property in dispute and incorporated the mutual release of claims.

Summary disposition is proper under MCR 2.116(C)(7) if there exists a valid release of liability between the parties. *Adell v Sommers, Schwartz, Silver & Schwartz, PC*, 170 Mich App 196, 201; 428 NW2d 26 (1988). In order for a release to be valid, it must be fairly and knowingly made. *Id*. Representatives for both plaintiff and defendant signed the mutual release of claims. According to the terms of the stipulated order, it is apparent that all claims brought by plaintiff or defendant in relation to the property in question would be barred under the mutual release.

Plaintiff argues that its claims are not barred because it signed the mutual release as a result of economic duress. In order to succeed on a claim of economic duress, plaintiff must establish that it was illegally compelled or coerced to act by fear of serious injury to its reputation or fortunes. *Farm Credit Services v Weldon*, 232 Mich App 662, 681-682; 591 NW2d 438 (1998). However, fear of financial ruin alone is insufficient to establish economic duress; the plaintiff must also establish that the person or entity applying the coercion acted unlawfully. *Id*. at 681-682.

In this case, plaintiff argues that defendant's filing of a proof of claim in bankruptcy court was criminal and that plaintiff entered into the stipulated order and mutual release out of fear of losing a prospective buyer for the property in question. Plaintiff further contends that its cause of action could not be properly raised until the proof of claim was filed. However, plaintiff does not explain how the filing of the proof of claim is different from defendant's filing of a lis

pendens on the same property, which would seemingly have the same effect as the proof of claim had on the sale of the property. Thus, this argument does not defeat the effect of the release.

Affirmed.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Henry William Saad