

STATE OF MICHIGAN
COURT OF APPEALS

GORDON GROSSMAN,

Plaintiff-Appellant,

v

ELWOOD COLLINS,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 239780

Wayne Circuit Court

LC No. 01-112954-CK

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were two of several partners in a partnership which owned an apartment complex. In the course of litigation in Oakland County, a receiver was appointed for the business; later, the partnership was dissolved. Pursuant to agreement of the parties, the court entered a stipulated order directing the receiver to sell the apartment complex at auction. The order set forth rules governing the auction and the subsequent sale. One rule was that no one other than a partner could participate in the auction. Plaintiff, defendant, and a group of other partners all participated in the auction. Defendant was backed financially by an outsider, Peter Cubba, who put up the good faith deposit and agreed to pay the ultimate sale price should defendant be the successful bidder. At the time the auction closed, plaintiff was the high bidder at \$12.1 million.

Plaintiff subsequently learned of Cubba's involvement and petitioned the court to re-open the auction on the ground that defendant was no more than an agent for Cubba, the real party in interest, and because Cubba was not authorized to participate in the auction, defendant's participation as his agent constituted a violation of the court's order. Judge Nanci Grant conducted an evidentiary hearing and determined that Cubba's financial participation was not prohibited by the terms of the auction order and issued an order denying plaintiff's motion and directing him to proceed with the purchase for \$12.1 million.

Plaintiff subsequently filed this action, asserting that the stipulated order constituted a contract between the parties which defendant breached by acting as Cubba's agent when Cubba was not allowed to participate in the auction. The trial court dismissed the action, finding that it

was barred by the doctrine of res judicata. “Because res judicata is a question of law, we review de novo its application as well as the court’s action on a motion for summary disposition.” *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

“As a general rule, res judicata will apply to bar a subsequent relitigation based upon the same transaction or events” *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The doctrine “bars relitigation of claims actually litigated and those claims arising out of the same transaction that could have been litigated.” *Huggett v Dep’t of Natural Resources*, 232 Mich App 188, 197; 590 NW2d 747 (1998), aff’d 464 Mich 711 (2001).

The trial court erred in ruling that plaintiff’s complaint was barred by res judicata. The prior suit arose out of a partnership dispute relating to the right to review the books and records of the partnership. That claim was sent to binding arbitration and the court later confirmed the award. The case remained under the court’s jurisdiction because of the receivership and everything that transpired after the award was confirmed related to the dissolution of the partnership, termination of the receivership, and disposition of the partnership’s main asset. This case, on the other hand, involves a breach of contract action which arose in the context of the dissolution proceedings several years after the original complaint was filed, and could not have been added as a counterclaim years later. Nevertheless, in the context of resolving the dissolution proceedings in the prior case, the court necessarily determined the same issue raised in plaintiff’s complaint. Therefore, plaintiff’s claim is barred by the related doctrine of collateral estoppel.

Where res judicata bars a subsequent action based on the same claim as a prior action, collateral estoppel bars a subsequent action when the ultimate issue to be concluded is the same as that litigated in a prior action. *Eaton Co Bd of Co Rd Comm’rs v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). “Collateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding.” *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001); *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995).

In the prior action, plaintiff asserted that defendant had breached the auction order relating to authorized participants by acting as Cubba’s agent and sought a \$900,000 reduction in his final purchase price. The court held an evidentiary hearing on the issue and determined on the basis of the evidence presented that Cubba’s financial backing of defendant did not constitute a breach of the auction order. In the present action, plaintiff’s sole claim is that defendant breached the auction order relating to authorized participants by acting as Cubba’s agent. Whether defendant’s participation in the auction constituted a violation of the auction order is the same issue decided by Judge Grant, who ruled that defendant had not violated the order. Although the court’s ruling was the result of an issue raised in a motion rather than a pleading and the order disposing of the motion was not a final order, the doctrine of collateral estoppel is still applicable. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300; ___ NW2d ___ (2002). This Court will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood