

STATE OF MICHIGAN
COURT OF APPEALS

MARK CHABAN,

Plaintiff-Appellant,

v

DAIMLERCHRYSLER CORPORATION,

Defendant-Appellee.

UNPUBLISHED

December 16, 2003

No. 241482

Wayne Circuit Court

LC No. 01-143237-CK

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's 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 submitted a claim for dispute under defendant's Employee Dispute Resolution Process (EDRP), which provided for resolution of disputes through binding arbitration. Plaintiff claimed that intolerable working conditions led to his constructive discharge. He contended that members of management tortiously interfered with his relationship with the corporation in general and engaged in acts that constituted intentional infliction of emotional distress.

The arbitrator found in favor of defendant and dismissed plaintiff's claim. The arbitrator rejected plaintiff's assertion that oral communications from several executives constituted verbal promises regarding job security. Because plaintiff was an at will employee, he could be terminated for any reason, and could not seek damages for constructive discharge. The arbitrator found that the evidence did not support a finding that plaintiff was constructively discharged. The arbitrator concluded that the conditions of plaintiff's employment were lawful and that his employment was consistent with defendant's policies.

Plaintiff filed suit in circuit court, alleging breach of contract, promissory estoppel, wrongful discharge, tortious interference with a business relationship, and intentional infliction of emotional distress. Defendant moved for summary disposition arguing that plaintiff's claims were barred by collateral estoppel because they were litigated in the arbitration proceeding and were decided against plaintiff. In response, plaintiff argued that the arbitrator's decision was not binding because the arbitrator dismissed the case for lack of jurisdiction.

The trial court granted defendant's motion pursuant to MCR 2.116(C)(7). The trial court found that the issues raised in plaintiff's complaint were the same as those raised in the arbitration proceeding, and that the issues were fully and fairly litigated in that proceeding.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Initially, we find that plaintiff's assertions of procedural error are without merit. Defendant's proof of service indicates that plaintiff was served by mail with the motion and brief in support well in excess of nine days prior to the original hearing date of March 15, 2002. Service by mail is complete at the time of mailing. MCR 2.107(C)(3). Plaintiff's argument that the trial court somehow erred by failing to completely familiarize itself with the pleadings prior to the hearing on defendant's motion is completely unsubstantiated.

Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior action culminated in a valid final judgment and the issue was actually and necessarily litigated in that action. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). In the subsequent action, the ultimate issue to be determined must be identical and not merely similar to that involved in the first action. *Eaton County Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v Michigan National Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). The parties must have had a full and fair opportunity to litigate the issue in the first action. *Kowatch v Kowatch*, 179 Mich App 163, 168; 445 NW2d 808 (1989). We review the applicability of the doctrine of collateral estoppel de novo. *Id.*, 34.

Factual findings made during an arbitration proceeding can support application of the doctrine of collateral estoppel. *Cole v West Side Auto Employees Federal Credit Union*, 229 Mich App 639, 645; 583 NW2d 226 (1998). Under the EDRP, the arbitrator's authority was limited to deciding whether the decisions challenged by plaintiff were lawful under applicable federal, state, and local law, and whether those decisions were consistent with defendant's at will employment policy. The arbitrator reviewed the merits of plaintiff's claims within those parameters, and found the claims to be without merit. Plaintiff's assertion that the arbitrator dismissed the case for lack of jurisdiction and did not rule on the merits of his claims is simply inaccurate. Plaintiff's claims were actually litigated in the arbitration proceeding, *VanDeventer*, *supra*, and the parties had a full and fair opportunity to argue their positions in that proceeding. *Kowatch*, *supra*. The trial court correctly determined that collateral estoppel precluded the relitigation of plaintiff's claims.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Janet T. Neff

/s/ Helene N. White