

STATE OF MICHIGAN
COURT OF APPEALS

FRANCIS & HIGH PROPERTIES LLC,
Plaintiff-Appellant,

UNPUBLISHED
November 17, 2015

v

HAPPY’S PIZZA FRANCHISE LLC and
HAPPY’S PIZZA #19, INC.

No. 323133
Jackson Circuit Court
LC No. 14-001522-CZ

Defendants-Appellees.

Before: GADOLA, P.J., and HOEKSTRA and M. J. KELLY, JJ.

PER CURIAM.

In this action for money damages arising under a lease agreement, plaintiff Francis & High Properties, LLC appeals as of right a circuit court order dismissing plaintiff’s claim with prejudice based on the determination that plaintiff’s claim was barred by res judicata due to a previous action brought by plaintiff in district court. Because plaintiff waived any demand for damages over the district court’s \$25,000 jurisdictional limit and plaintiff’s subsequent efforts to obtain additional damages are barred by res judicata, we affirm.

Plaintiff is the owner of a commercial property used by defendant Happy’s Pizza # 19 (Happy’s #19) to operate its pizza business. Defendant Happy’s Pizza Franchise, LLC (HPF) is the franchisor of Happy’s Pizza #19. All three parties entered into a lease agreement relating to the property. When Happy’s Pizza #19 failed to pay rent as required by the agreement, plaintiff filed a demand for possession and a complaint for non-payment of rent in district court. Notably, plaintiff’s complaint in district court also included a claim for money damages in the amount of \$139,544.80 based on an acceleration clause in the lease agreement.

In its answer to plaintiff’s district court complaint, HPF asserted, in part, that “the District Court does not have jurisdiction as to Plaintiff’s Complaint for monetary damages as it exceeds the jurisdictional limit.” The district court held a hearing to consider HPF’s arguments, at which time plaintiff agreed to forgo its claim for damages in excess of the district court’s \$25,000 jurisdictional limit. In particular, plaintiff’s counsel stated: “Starting with the jurisdictional limit, um, I put the amount of the summary of the lease in there. *But, we are only pursuing the amount of the jurisdictional limit of the Court, which is 25,000*, so that shouldn’t be a problem.” Consistent with these representations, plaintiff then filed a document entitled “Motion for Summary Proceeding and Supplemental [sic] Complaint,” in which plaintiff made a demand for a

money judgment up to the district court's jurisdictional limit of \$25,000. Plaintiff specifically requested "Money Judgment . . . in the amount of \$24,000 for the rental months of February 2013 through September 2013 at a rental rate of \$3,000 per month, and \$3,000 every month thereafter until the jurisdictional limit amount of \$25,000 is entered." The district court eventually ruled in plaintiff's favor and entered a money judgment against defendants in the amount of \$25,000.

Following the conclusion of the district court proceedings, plaintiff then commenced an action in circuit court to recover \$337,825.76 in money damages based on defendants' asserted breach of the lease agreement and the applicability of the acceleration clause. However, the circuit court dismissed the action with prejudice based on the application of *res judicata*. Plaintiff now appeals by right from the circuit court's order.

On appeal, plaintiff argues that the circuit court erred by dismissing the case based on *res judicata*. Specifically, plaintiff contends that the district court's order and money judgment are void for lack of jurisdiction because the amount in controversy set forth in plaintiff's complaint exceeded the district court's jurisdictional limit. In these circumstances, plaintiff contends that the district court proceedings did not bar subsequent action in the circuit court.

The applicability of *res judicata* is a question of law subject to *de novo* review on appeal. *Duncan v State*, 300 Mich App 176, 194; 832 NW2d 761 (2013). Likewise, whether a court has subject-matter jurisdiction presents a question of law which we review *de novo*. *Kar v Nanda*, 291 Mich App 284, 286; 805 NW2d 609 (2011).

"The doctrine of *res judicata* is employed to prevent multiple suits litigating the same cause of action." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). Specifically, *res judicata* bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). *Res judicata* requires that: (1) the prior action was decided on the merits, (2) the decree in the prior matter was a final judgment, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involve the same parties or their privies. *Glaubius v Glaubius*, 306 Mich App 157, 173-174; 855 NW2d 221 (2014).

"Subject-matter jurisdiction refers to a court's power to act and authority to hear and determine a case." *Usitalo v Landon*, 299 Mich App 222, 228; 829 NW2d 359 (2012). When a court lacks jurisdiction, it must either dismiss the case or transfer it to a court with jurisdiction. *Moody v Home Owners Ins Co*, 304 Mich App 415, 438; 849 NW2d 31 (2014); MCR 2.227(A)(1). Moreover, parties cannot agree to a court's jurisdiction nor can they waive a challenge to subject-matter jurisdiction. *Hillsdale Co Sr Servs, Inc v Hillsdale Co*, 494 Mich 46, 51 n 3; 832 NW2d 728 (2013). Courts have a continuing obligation to *sua sponte* assess jurisdiction over the subject matter of an action, *Moody*, 304 Mich App at 436, and any judgment entered by a court lacking subject-matter jurisdiction is considered void, *Usitalo*, 299 Mich App at 228.

Under MCL 600.8301(1), district courts have exclusive jurisdiction over civil matters where "the amount in controversy does not exceed \$25,000." The "amount in controversy"

refers to “the amount the parties to a lawsuit dispute, argue about, or debate during the litigation.” *Moody*, 304 Mich App at 430. While the amount in controversy can often be ascertained from the parties’ pleadings, courts may look beyond the pleadings to determine the amount in controversy. See *id.* at 430-431, 436-437. See also *Fix v Sissung*, 83 Mich 561, 563; 47 NW 340 (1890).

Aside from disputes where the amount in controversy does not exceed \$25,000, pursuant to MCL 600.8302(1) and (3), district courts also have “equitable jurisdiction and authority concurrent with that of the circuit court with respect to equitable claims arising under chapter 57 of the Revised Judicature Act (RJA), MCL 600.5701 *et seq.*, which concerns proceedings to recover possession of premises.” *Clohset v No Name Corp (On Remand)*, 302 Mich App 550, 560; 840 NW2d 375 (2014). When pursuing proceedings under chapter 57 in district court, a party may join a claim for damages up to the district court’s jurisdictional limits, but it is not required to do so. *1300 LaFayette E Coop, Inc v Savoy*, 284 Mich App 522, 527; 773 NW2d 57 (2009).¹ See also MCR 600.5739(1); MCR 4.201(G)(1)(a)(i). If the plaintiff does not bring a claim for damages in the district court in connection with summary proceedings, “the district court judgment is conclusive only on the question of who has a right to possess the premises,” and it does not bar a subsequent suit for money damages in the circuit court. *1300 LaFayette E Coop, Inc*, 284 Mich App at 530; see also MCL 600.5750. However, if an issue has been litigated in the district court, that issue cannot be relitigated in a subsequent suit in circuit court. See *Sewell*, 463 Mich at 577.

In this case, plaintiff affirmatively exercised the option of joining a claim for money damages to its complaint for possession. See *1300 LaFayette E Coop, Inc*, 284 Mich App at 527. Plaintiff’s complaint specifically requested accelerated rent money damages of almost \$140,000. HPF then challenged the district court’s jurisdiction based on the assertion that plaintiff’s damages exceeded the court’s jurisdictional limit. See MCL 600.8301(1); MCL 600.5739(1). At that time, plaintiff expressly stated that it would seek only \$25,000 in damages, thereby placing the amount in controversy within the district court’s jurisdictional limit.

In particular, plaintiff’s counsel stated: “I put the amount of the summary of the lease in [the complaint]. *But, we are only pursuing the amount of the jurisdictional limit of the Court, which is 25,000 . . .*” Consistent with these representations, plaintiff then filed a supplemental complaint that only sought damages in the amount of \$25,000. Although a party cannot consent to a court’s jurisdiction, *Hillsdale*, 494 Mich at 51 n 3, a party may agree on the amount of damages involved. See generally *Clohset (On Remand)*, 302 Mich App at 566-567; *Wells Fargo Bank, NA v Cherryland Mall Ltd Pship (On Remand)*, 300 Mich App 361, 385; 835 NW2d 593 (2013). By including a claim for accelerated rent damages in its initial complaint in the amount of almost \$140,000 and then expressly limiting its claim for damages to \$25,000, plaintiff

¹ Further, if the parties have reached a consent judgment, the district court has the authority to enter the consent judgment even if it exceeds the district court’s general jurisdictional limit. *Clohset (On Remand)*, 302 Mich App at 562-566.

waived or abandoned any claim for damages beyond \$25,000.² See *Braverman v Granger*, 303 Mich App 587, 609; 844 NW2d 485 (2014).

Thus, because the subject matter before the district court involved a demand for possession and the amount in controversy did not exceed \$25,000, the district court had subject-matter jurisdiction over plaintiff's claim. See MCL 600.8301(1); MCL 600.8302(1) and (3); MCL 600.5739(1). Consequently, the district court's money judgment for \$25,000 is a valid final judgment resolving the question of money damages arising from the lease agreement between the parties. Further, because the issue of money damages was litigated in the district court—culminating in a money judgment of \$25,000 and plaintiff's abandonment of any claim for further damages—res judicata precludes plaintiff from attempting to again litigate this issue in the circuit court.³ See *Sewell*, 463 Mich at 577. Therefore, the circuit court properly dismissed the case based on the application of res judicata.

Affirmed.

/s/ Michael F. Gadola
/s/ Joel P. Hoekstra
/s/ Michael J. Kelly

² Plaintiff did not have to claim money damages in its district court action for possession of the premises. MCR 4.201(G)(1)(a)(i). Plaintiff could have sought possession in the district court and then sought to recover all of its damages in the circuit court pursuant to MCL 600.5750 (“The plaintiff obtaining a judgment for possession of any premises under this chapter is entitled to a civil action against the defendant for damages from the time of . . . demand for possession . . .”). Alternatively, plaintiff could have pursued both back rent and accelerated rent in the district court, and, because the money demand exceeded the court's jurisdictional limit, the district court would have been obligated either to dismiss the case without prejudice or to transfer the money claim portion of plaintiff's claim to the circuit court. MCR 4.201(G)(2)(b). But, instead, plaintiff chose to bring a claim for almost \$140,000 in money damages in district court and to then affirmatively abandon that claim, rather than face removal to circuit court, by agreeing to limit its request for damages to \$25,000.

³ On appeal, plaintiff asserts that the district court's order somehow empowered plaintiff to seek further damages insofar as the district court's order stated that plaintiff “is free to pursue additional damages in the circuit court.” However, as discussed, plaintiff waived any claim to additional damages arising from the lease when it agreed to a limit of \$25,000 in damages. Having waived any further damages, plaintiff cannot rely on the district court's order as a basis for filing suit to relitigate issues that were already resolved.