

STATE OF MICHIGAN
COURT OF APPEALS

MARTIN GOSSAGE,

Plaintiff-Appellant,

v

JEFFREY MILAS, ANTOINETTE MCFARLEN,
and DOUGLAS BUK,

Defendants-Appellees,

and

FRANKLIN AMERICAN MORTGAGE,

Defendant.

UNPUBLISHED

March 3, 2020

No. 347984

Macomb Circuit Court

LC No. 2018-000952-CZ

Before: SHAPIRO, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Plaintiff appeals from the circuit court’s order granting summary disposition in favor of defendants Jeffrey Milas, Antoinette McFarlen, and Douglas Buk (jointly “defendants”). Plaintiff argues that the circuit court improperly granted summary judgment to Milas and McFarlen on the basis of res judicata. We affirm in part and reverse in part.¹

I. BACKGROUND

This case arises out of a land contract between plaintiff and Milas. After Milas agreed to sell the property at issue to plaintiff, plaintiff made the required monthly installment payments for

¹ Defendant Buk, the attorney for appellees throughout the litigation, was also named but was dismissed for lack of service. Plaintiff does not appeal that dismissal.

several years before stopping. Milas eventually initiated summary proceedings in the district court, and on November 13, 2017, the parties entered into a consent judgment of possession after land contract forfeiture. The document used to record the consent judgment was a form created by the State Court Administrative Office (SCAO). It indicated that Milas had a right to possession of the property, an order of eviction was able to be issued upon 90 days after entry of the consent judgment if plaintiff did not pay the total remaining arrearage, and that the arrearage owed to Milas was \$36,115. A handwritten portion of the consent judgment further provided that “[t]he parties agree that the payoff amount of the land contract is \$121,855 which shall be good for 120 days from date of judgment.”

Ninety days after entry of the consent judgment, Milas applied for an order of eviction, alleging that plaintiff failed to pay him the requisite arrearage within 90 days as necessary for redemption of the property under the consent agreement. The district court agreed, and issued an order of eviction. On March 5, 2018, a show-cause hearing was held on Milas’s motion to stay the eviction order. The district court stayed the eviction order before the hearing, and scheduled the show-cause hearing to determine whether to issue an immediate order of eviction.

The issue at the hearing was whether the expiration of the 90-day redemption period allowed Milas to evict plaintiff from the property. Plaintiff argued that the consent judgment’s handwritten provision allowed him to fully pay off the contract within 120 days of the entry of the consent judgment, and because that time had not yet expired, Milas had improperly and untimely applied for eviction. According to plaintiff, he and Milas knew when negotiating the consent judgment of possession that plaintiff intended to pay off the full contract amount of \$121,855 for the property. Plaintiff argued that the consent judgment included the full payoff amount because the parties never contemplated that plaintiff would merely redeem the property. Milas, on the other hand, argued that the consent judgment clearly delineated the separate redemption amount, which allowed him to apply for eviction if plaintiff failed to pay \$36,115—the amount that would “bring this thing up to date”—within 90 days. Because plaintiff had not paid the redemption amount, Milas was exercising his right to evict under the consent judgment.

The district court agreed with Milas, finding that the transcript of the consent judgment hearing established that the consent judgment required an initial redeeming payment of \$36,115 within 90 days. The district court found that 90 days had passed, and thus an immediate order of eviction would be issued. Following the hearing, the district court lifted the stay and entered a second order of eviction. The district court later denied plaintiff’s motion for reconsideration of that order. According to plaintiff, after the hearing he brought the full payoff amount to the office of Milas’s counsel, Douglas Buk. Buk allegedly refused to accept the money, claiming that he no longer had to accept any money because of the order of eviction.

Plaintiff filed a complaint in the circuit court, and later filed an amended complaint, alleging breach of contract and fraudulent misrepresentation against Milas, Buk, and Milas’s wife, McFarlen. Specifically, plaintiff alleged that Milas breached the consent judgment by acting so as to prevent plaintiff from obtaining financing and paying off the sum due within 90 days. He claims that this was done with fraudulent intent so that defendants could void the land contract because the value of the property had significantly increased beyond the price set forth in the land contract. Plaintiff claims that McFarlane allegedly participated in the fraud by encumbering title to the

property with a mortgage executed in January 2017, which plaintiff claims prevented him from obtaining financing to redeem the property.

Plaintiff and defendants filed competing motions for summary disposition. The preclusive effect of the district court proceedings was addressed by the parties in their briefs. The court found that plaintiff's claims were barred by the doctrine of res judicata, concluding that plaintiff was essentially challenging the district court's rulings against him. Plaintiff filed for a motion for reconsideration of the order, raising additional arguments pertaining to the application of res judicata in this case. The circuit court denied the motion, and this appeal followed.

II. DISCUSSION

Plaintiff argues that the circuit court erred when it granted summary disposition and denied his motion for reconsideration on the grounds of res judicata. We conclude that plaintiff is barred from relitigating the issue of whether he had the right to pay the balance of the land contract even after he failed to redeem the property within 90 days, and therefore the circuit court correctly granted summary disposition of the breach-of-contract claim. However, because the district court did not rule on defendants' alleged obstruction of payment during the 90-day redemption period, we conclude that plaintiff is not barred from pursuing a claim of fraud on that matter.²

"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). Typically, res judicata applies to bar all claims that were raised or *could have* been raised in a prior proceeding decided on the merits. *Cadwell v Highland Park*, 324 Mich App 642, 643 n 1; 922 NW2d 639 (2018). But plaintiff correctly points out that the doctrine of res judicata is more limited in summary proceedings. MCL 600.5750 provides what the Supreme Court has described as a "limited statutory exception" to the application of res judicata to summary proceedings.³ *Sewell v Clean Cut Mgt*, 463 Mich 569, 577; 621 NW2d 222 (2001). In this context, a subsequent claim by either

² We review de novo a circuit court's decision to grant summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Under MCR 2.116(C)(10), summary disposition is appropriate "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). There is genuine issue of material fact if "the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* We also review de novo the applicability of preclusion doctrines such as res judicata. See *Minicuci v Scientific Data Mgt*, 243 Mich App 28, 34; 620 NW2d 657 (2000). We review a circuit court's decision on motion for reconsideration for an abuse of discretion. *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

³ The statute provides in part: "The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge or bar any other claim for relief" MCL 600.5750.

party is precluded only if the claim involves an issue that was “actually litigated” in the summary proceedings. See *id.* at 576.

With this standard, we consider each of plaintiff’s claims. The breach-of-contract claim was actually litigated by the district court. Plaintiff alleges that Milas breached the consent judgment, i.e., a contract, by filing for eviction proceedings before the alleged 120-day period for full payoff of the property had elapsed. However, the district court determined the meaning of the consent judgment and concluded that Milas’s actions were consistent with that meaning, i.e., that there was no breach. Thus, the instant claim for breach of contract was fully litigated in the district court and so may not be pursued in this case.

Plaintiff’s argument that his breach-of-contract claim was not ripe at the time of show-cause hearing is without merit. “A claim is not ripe if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Huntington Woods v Detroit*, 279 Mich App 603, 615-616; 761 NW2d 127 (2008) (quotation marks and citation omitted). According to plaintiff’s interpretation of the consent judgment, he had 120 days to procure and deliver the full payment amount for the property, a total of \$121,855, to Milas. Milas initiated a district court proceeding to obtain an order of eviction shortly after 90 days. Therefore, Milas allegedly breached the consent judgment not when the 120 days expired, but rather, at the moment that Milas sought eviction of plaintiff *before* 120 days had passed. Therefore, the issue underlying plaintiff’s breach-of-contract claim was ripe for adjudication during the district court proceeding.⁴

As noted, plaintiff’s remaining claim is for fraudulent misrepresentation. He alleges that Milas and Buk purposely avoided communicating with him and acted in bad faith to prevent him from completing the tasks necessary to obtain financing and make the payoff within the 90-day redemption period. Neither the facts nor the law concerning such a claim were discussed by the district court and its ruling was based solely on the terms of the consent judgment. We acknowledge that plaintiff raised this argument at the show-cause hearing but such allegations were not relevant to the issue then before the court, i.e., whether the consent judgment permitted plaintiff to pay off the land contract even after the redemption period expired. Indeed, to determine whether or not there was a question of fact regarding fraud the district court would have had to permit discovery and conduct an evidentiary hearing rather than a summary proceeding. However, the Legislative intent behind MCL 600.5750 “was to remove the incentive for attorneys to ‘fasten all other pending claims to swiftly moving summary proceedings.’ ” *Sewell*, 463 Mich at 576, quoting *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 169; 600 NW2d 617 (1999). For these reasons, we conclude that plaintiff’s fraudulent-misrepresentation claim based on the allegations that defendants obstructed payment was not actually litigated and was not relevant to the district court’s ruling. Accordingly, the circuit court improperly dismissed that claim on the grounds of *res judicata*.

⁴ Plaintiff’s contention that there was no order entered in the district court that he could have appealed from is also without merit. Plaintiff could have appealed the district court’s second order of eviction to the circuit court. See MCL 600.5753; MCR 7.103(A). There, plaintiff could have argued for his interpretation of the consent judgment that was rejected by the district court in entering that order.

III. CONCLUSION

The circuit court properly granted summary disposition as to plaintiff's breach-of-contract claim. However, the court erred in dismissing plaintiff's fraudulent-misrepresentation claim.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Michael J. Kelly