

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM NAGLER, M.D.,

Plaintiff-Appellant,

v

JAY GARCIA, M.D. and JAY GARCIA, M.D.,  
P.C.,

Defendants-Appellees.

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UNPUBLISHED  
March 13, 2012

No. 301815  
Wayne Circuit Court  
LC No. 10-008981-CZ

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's<sup>1</sup> motion for summary disposition. On appeal, plaintiff contends that the trial court erred in determining that his cause of action was precluded under the doctrine of res judicata. We affirm.

The relevant facts of this case, which have previously been described in a federal district court opinion, are largely undisputed. Plaintiff is the owner and operator of a weight loss practice in Livonia. Defendant is an Obstetrician and Gynecologist and practices in the state of Florida. In addition to his OB/GYN practice, defendant also has experience in weight loss consultation. In 2003, defendant initiated contact with plaintiff, with the apparent intent of creating a business relationship relating to a weight loss practice. While the parties did execute a confidentiality agreement that indicated they were in preliminary negotiations, no further agreements were ever executed. Defendant asserts that he continued to negotiate with plaintiff in good faith but was unable to reach an agreement; plaintiff alleges that defendant ended negotiations after plaintiff gave him access to the materials he needed to launch a weight loss practice. During the negotiation period, the parties concede that plaintiff allowed defendant to use his trademark, "diet results." However, plaintiff alleges that defendant's weight loss practice wrongfully infringed on plaintiff's designated trademark after the negotiation period ended.

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<sup>1</sup> Because defendant Jay Garcia M.D., P.C., is merely the business entity of defendant Jay Garcia, M.D., the two defendants will be collectively referred to as "defendant."

After negotiations broke down and defendant allegedly used plaintiff's trademarked material without permission, plaintiff brought suit in Wayne Circuit Court. Plaintiff's complaint alleged seven separate causes of action: (1) trademark infringement, (2) violation of the Federal Trademark Dilution Act, (3) violation of the Lanham Act, 15 USC § 1125(a), (4) unfair competition, (5) fraudulent inducement, (6) misappropriation of trade secrets and (7) breach of the confidentiality agreement. Thereafter, defendant removed the action to the United States District Court for the Eastern District of Michigan on the basis of diversity and federal question jurisdiction. The District Court took jurisdiction over each claim, regardless of whether it was based in state or federal law.

Defendant moved for summary judgment after he removed the action to federal court. Defendant argued that the confidentiality agreement was unenforceable and that plaintiff had not demonstrated that defendant had misappropriated protected information. He argued that plaintiff's claims for trademark infringement and unfair competition should be dismissed because plaintiff gave defendant permission to use his materials and trademark. The court issued an opinion granting judgment on all counts without holding oral arguments. The court noted that plaintiff's claims relating to trademark infringement could not survive the uncontested evidence that defendant had plaintiff's permission to use the materials in question. The court stated that plaintiff's claims of misappropriation of trade secrets and breach of the confidentiality agreement were not supported by any evidence. Of particular importance to the present appeal, the federal trial court included a footnote stating that plaintiff's response to defendant's motion for summary judgment included a claim that plaintiff was entitled to relief under a theory of quantum meruit. The court stated that it would not address any new theory of liability because plaintiff had not formally sought to amend his complaint and because defendant would be prejudiced because the discovery process had already ended. Despite not being willing to consider the quantum meruit theory, the court noted that any such argument "would likely be futile" because the record indicated that the parties had not reached agreement on the material terms of a contract. *Nagler v Garcia*, unpublished opinion and order of the United States District Court for the Eastern District of Michigan, issued March 17, 2009 (Case No. 05-74007).

After the district court granted defendant's motion for summary judgment, plaintiff appealed the decision to the United States Court of Appeals for the Sixth Circuit. The Sixth Circuit affirmed the district court and held that summary disposition was proper regarding each count of the complaint. The Court also addressed the district court's footnote regarding quantum meruit. While the Court did not address the merits of plaintiff's theory, it stated that the district court properly observed that plaintiff failed to formally move to amend his complaint and that any such motion would be improper because its late timing was an indication that plaintiff was improperly basing his pleadings on the success of defendant's motion for summary judgment. *Nagler v Garcia*, unpublished opinion of the Sixth Circuit Court of Appeals, issued March 25, 2010 (Docket No. 09-1471).

Following the decision of the Sixth Circuit, plaintiff filed a second complaint in Wayne Circuit Court. That complaint again alleged that defendant wrongfully used plaintiff's trademark after negotiations had ended. Plaintiff stated that although there was not a formal agreement in place, defendant was aware that he could not use the trademark and was liable for damages under a theory of quantum meruit.

In response to plaintiff's second complaint, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7). Defendant argued that plaintiff's cause of action was precluded by the doctrine of res judicata because it arose from the same transaction as the first lawsuit and could have been raised in plaintiff's first complaint. Defendant alternatively argued that he was entitled to summary judgment because the statute of limitations for plaintiff's claims had expired.

Plaintiff argued in response that res judicata was inapplicable because the quantum meruit claim was a claim based in state law and was never within the exclusive jurisdiction of the district court and the court declined to otherwise exercise jurisdiction over the claim. Finally, he argued that res judicata was inapplicable because the district court did not remand the quantum meruit claim to state court for adjudication.

The state trial court held a hearing on the motion for summary disposition on December 3, 2010. The court explained that because plaintiff's previous action was litigated in federal court, the trial court was required to apply federal law when determining whether plaintiff's second action was precluded by res judicata. The court described the district court's ruling in detail and noted that plaintiff's statement that the district court refused jurisdiction over the quantum meruit claim because it arose in state law was inaccurate. Rather, the court stated that because the district court took pendent jurisdiction over the other state claims, it was likely that it would have also taken jurisdiction over the quantum meruit claim had it been timely filed.<sup>2</sup> The court granted defendant's motion for summary disposition after it found that the doctrine of res judicata applied where the previous action had been decided on its merits and involved the same parties and where the present action could have been previously brought. The court noted that it also believed plaintiff's second cause of action was barred by the statute of limitations, which did not toll while the action was pending in federal court.

Plaintiff now appeals the trial court's holding by way of right. Plaintiff argues that the court erred in determining that the doctrine of res judicata bars the present action. We disagree.

A trial court's decision to grant summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo. *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). "The applicability of the doctrine of res judicata is a question of law that is also reviewed de novo." *Id.*

Generally speaking, "[r]es judicata applies when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first." *Stoudemire*, 248 Mich App at 334. The purpose of the doctrine is "to

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<sup>2</sup> As we will discuss below, the federal district court did *not* take pendent jurisdiction over the claims that arose in state law. Rather, the court took diversity jurisdiction over those claims. While the distinction is important to the resolution of this matter, the trial court's inaccurate statement regarding the nature of the federal court's jurisdiction did not result in a legal error and was inconsequential.

relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication.” *Richards v Tibaldi*, 272 Mich App 522, 530; 726 NW2d 770 (2006). “Michigan broadly applies the doctrine of res judicata to advance its purposes.” *Begin v Michigan Bell Telephone Co*, 284 Mich App 581, 600; 773 NW2d 271 (2009). “Thus, under Michigan's broad approach to res judicata, the doctrine ‘bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.’” *Id.*, quoting *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

The doctrine of res judicata also applies when the original action was brought in federal court and is followed by a subsequent action in state court. *McKane v Lansing*, 244 Mich App 462, 466; 625 NW2d 796 (2001). As our Supreme Court has explained,

‘If a plaintiff has litigated a claim in federal court, the federal judgment precludes relitigation of the same claim in state court based on issues that were or could have been raised in the federal action, including any theories of liability based on state law. The state courts must apply federal claim-preclusion law in determining the preclusive effect of a prior federal judgment.’ [*Pierson Sand and Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380-381; 596 NW2d 153 (1999), quoting 18 Moore, Federal Practice, § 131.21[3][d], p 131-50.]

Under federal law, res judicata applies when the following four elements have been met:

(1) A final decision on the merits in the first action by a court of competent jurisdiction; (2) The second action involves the same parties, or their privies, as the first; (3) The second action raises an issue actually litigated or which should have been litigated in the first action [and]; (4) An identity of the causes of action. [*Sanders Confectionary Prods v Heller Fin, Inc*, 973 F2d 474, 484 (CA 6, 1992).]

Here, each of the elements of res judicata under either federal or state law has been met. The federal district court entered a final decision on the merits of each of plaintiff's pled claims. The second action involves the same parties as the first action. The second action raises an issue, quantum meruit, which should have been litigated in the first action. Finally, there is an identity of the causes of action, which simply means that the two actions arose out of the same transaction or occurrence. *Browning v Levy*, 283 F3d 761, 771-774 (CA 6, 2002); *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 712-713; 762 NW2d 529 (2008).

On appeal, plaintiff attempts to analogize his case with *Pierson* in order to support his contention that the trial court erred in applying res judicata. In *Pierson*, the plaintiffs filed an action in federal district court that sought relief under both federal and state law. The federal district court apparently took pendent, or supplemental, jurisdiction over the state law claims. The plaintiffs eventually amended their complaint so that only the federal claims remained. Subsequently, the trial court granted a motion for summary judgment in favor of defendants. *Pierson Sand and Gravel, Inc.*, 460 Mich at 375-376. Thereafter, plaintiff filed a complaint in Ingham Circuit Court, which set forth a number of causes of action arising from state law. The lawsuit filed in state court arose from the same transaction as the lawsuit that had been filed in federal court. The defendants moved for summary disposition, arguing that res judicata barred

the subsequent action because the state law claims could have been brought in federal court. Both the trial court and this Court held that *res judicata* did not apply. *Id.* at 377-378. Our Supreme Court affirmed. In doing so, the Supreme Court explained that because the federal district court had dismissed each of the federal claims, it likely would not have retained pendent jurisdiction over any of the state claims had they been maintained throughout the original action. *Id.* at 383-384. The Court noted that a special exception exists to the general rule of *res judicata*, which prevents the application of that doctrine if “it is ‘clear that the federal court would have declined’ to retain jurisdiction of the state claims.” *Id.* at 385, quoting 1 Restatement Judgments, 2d, § 25, comment e, illustration 10, p. 214.

Plaintiff now argues that, much like the federal district court in *Pierson*, the federal district court in this case would not have accepted jurisdiction over his state law claim for quantum meruit. The record does not support that argument. Plaintiff brought several claims that were derived from state law in his original complaint, and the federal district court addressed the merits of each of those claims. The court stated that plaintiff's common-law unfair competition claim could not survive summary judgment in light of evidence that plaintiff gave defendant permission to use the trademarked material. The court also stated that it believed plaintiff abandoned his claim for common-law claim of unfair competition where both the complaint and the response to the motion for summary judgment failed to explain the legal or factual basis for that claim. Next, the court found that summary judgment was proper regarding plaintiff's claim of fraud, as plaintiff failed to show that defendant intended to not fulfill certain promises he made. Likewise, the court explicitly found that the state law claims of misappropriation of trade secrets and breach of the confidentiality agreement could not survive the summary judgment motion.

Where the federal district court considered each of the state law claims that plaintiff included in his complaint, there is no reason to believe that the court would not have considered a quantum meruit claim had it been timely pled. Plaintiff's claim that the trial court “refused” *jurisdiction* of that claim is inaccurate. As described above, plaintiff raised the theory of quantum meruit for the first time in his response to defendant's motion for summary judgment. Plaintiff never formally moved to amend his complaint. It is true that had plaintiff moved to amend his complaint after the motion for summary judgment was filed, the motion would likely have been denied. However, that fact does not evidence the federal court's desire to not address a state law claim. A denial of a tardy attempt to amend a complaint is not tantamount to a refusal to accept jurisdiction. Rather, as the court made clear in its opinion, it reasonably believed that defendant would have been prejudiced by such a late amendment, considering that the discovery period had already ended. Likewise, the court believed that any such amendment would “very likely” be futile because plaintiff had not yet shown that the parties had reached an agreement on all the material terms of a contract.

Further, regarding plaintiff's argument that *res judicata* should not apply because the federal district court did not fully address the merits of the quantum merit claim, we cannot agree. *Res judicata* does not require that the court in which the *first* action was filed addressed the merits of the contents of the *second* cause of action. Rather, *res judicata* applies if the contents of the second action should have been brought with the first action and if the first action was decided on its merits. Here, the claim for quantum meruit was not formally brought before the federal district court, but the claims that were brought before that court were decided on their

merits. Any decision of that court to not rule on the merits of a potential quantum meruit claim has no effect on this Court's res judicata analysis.

Much of plaintiff's confusion regarding whether res judicata applies to the present case may come from his mistaken belief that the trial court exercised pendent jurisdiction over the state claims in this case. The federal district court's opinion clearly states that it had jurisdiction over all of plaintiff's claims as a result of the federal questions involved and the diversity of citizenship of the parties. In *Pierson*, our Supreme Court had reason to believe that the federal district court would not have accepted jurisdiction over the state law claims after the federal claims had been dismissed because that court only had pendent jurisdiction of the state law claims. Here, there is no evidence that this federal district court judge had any apprehension in fully resolving the dispute between these parties where the court had diversity jurisdiction over the claims that arose in state law. Had the quantum meruit claim been brought in a timely manner, it would have been resolved on its merits, just as plaintiff's other claims based in state law were resolved on their merits. Plaintiff cannot utilize the narrow exception outlined in *Pierson* to shield himself from the consequence of his choices during the litigation of the first action.

Because the elements of the doctrine of res judicata have all been met in this case, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(7). As a result, it is unnecessary for this Court to address the issues relating to the statute of limitations.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Henry William Saad