

Affirmed and Memorandum Opinion filed June 30, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00053-CV

MICHELLE RAMSEY, Appellant

V.

PALM HARBOR HOMES, INC., Appellee

**On Appeal from the 234th District Court
Harris County, Texas
Trial Court Cause No. 2009-35701**

MEMORANDUM OPINION

Appellant Michelle Ramsey appeals the trial court's grant of summary judgment in favor of Palm Harbor Homes, Inc. We affirm.

I

Michelle Ramsey purchased a manufactured home from Palm Harbor Homes, Inc. in January 2001. In 2004, Ramsey sued Palm Harbor over alleged defects in the home, claiming statutory fraud, breach of implied warranty of "good and workmanlike service," and breach of contract. The parties signed an agreed order compelling arbitration, and in 2005 Trey Bergman of Bergman ADR Group in Houston arbitrated the case. Ramsey, who appeals this case pro se, was represented by counsel at arbitration and put on evidence

and an expert witness in support of her claim. The arbitrator, however, concluded that Ramsey was not entitled to any recovery against Palm Harbor.

Ramsey filed a motion to vacate the arbitrator's award, which the trial court denied. The trial court then entered a judgment confirming the arbitration award. Ramsey appealed the trial court's ruling to this court, but the appeal was ultimately dismissed. In 2009, Ramsey filed a second suit against Palm Harbor in the 234th District Court. Although still seeking a recovery based on the home's alleged defects, Ramsey made two new allegations—that the home was constructed without insulation, which resulted in exorbitant electricity bills, and that the home had become contaminated with “set up mold.” Ramsey also urged new statutory allegations. In its answer, Palm Harbor raised affirmative defenses of accord and satisfaction, resolution by arbitration and the arbitrator's award, estoppel, res judicata, statute of limitations, and waiver. Palm Harbor then filed a motion for summary judgment. The trial court granted Palm Harbor's motion and entered final judgment against Ramsey stating that “all claims are res judicata having been resolved by the Arbitration Award issued August 12, 2005, and Plaintiff is estopped from re-litigating these claims.”

Ramsey appealed the trial court's judgment to this court. We then received notice that Palm Harbor had petitioned for voluntary bankruptcy. Pursuant to section 362(a) of the Bankruptcy Code, all proceedings in this appeal were stayed. *See* 11 U.S.C. § 362(a); Tex. R. App. P. 8.2. The case was abated. On April 27, 2011, the United States District Court for the District of Delaware issued an order granting limited relief from the automatic stay for the purpose of allowing this court to render a decision in this case. Accordingly, we ordered the case reinstated on June 2, 2011.

II

In her appeal, Ramsey asks that we reverse the trial court's grant of summary judgment and further grant her a trial by jury. She contends the arbitration award against her should not stand because the arbitrator was biased against her, and she further requests

“reasonable” damages in the amount of “\$15 million–20 million,” and that a record of repossession be removed from her credit report. Palm Harbor maintains the trial court properly granted summary judgment against Ramsey because the 2005 arbitration award resolved all issues between the parties.

We review the trial court’s grant of summary judgment de novo. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 156–57 (Tex. 2004). A movant must establish its right to summary judgment by showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985). We take as true all evidence favorable to the non-movant, and we indulge every reasonable inference and resolve any doubts in the non-movant’s favor. *Joe*, 145 S.W.3d at 157. We review a summary judgment for evidence that would enable reasonable and fair-minded jurors to differ in their conclusions. *Wal-Mart Stores, Inc. v. Spates*, 186 S.W.3d 566, 568 (Tex. 2006) (per curiam). A defendant is entitled to summary judgment on an affirmative defense if the defendant conclusively proves all the elements of the affirmative defense. *Frost Nat’l Bank v. Fernandez*, 315 S.W.3d 494, 508–09 (Tex. 2010), *cert. denied*, 131 S.Ct. 1017 (2011); *see* Tex. R. Civ. P. 166a(b), (c).

Res judicata precludes re-litigation of claims that have been finally adjudicated, or that arise out of the same subject matter and that could have been litigated in the prior action. *Amstadt v. U.S. Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996). Res judicata is an affirmative defense. Tex. R. Civ. P. 94. The party asserting the defense must prove: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *Amstadt*, 919 S.W.2d at 652. We apply a transactional approach to res judicata. *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 631 (Tex. 1992). Under that approach, the subject matter of a suit is based on the factual matters that comprise the gist of the complaint. *Id.* at 630. Any claim that arises out of those facts should be litigated in the same action. *Id.*

In its motion for summary judgment, Palm Harbor attached a copy of Ramsey's original petition to the 190th District Court; the agreed order compelling arbitration signed by the parties' respective counsel; the arbitrator's award decreeing Ramsey was not entitled to recover against Palm Harbor; the 190th District Court's order denying Ramsey's motion to vacate the arbitration award; the 190th District Court's order dismissing Ramsey's suit with prejudice; and an affidavit from the attorney who represented Palm Harbor in the 2004 lawsuit summarizing the litigation. In both the 2004 and 2009 original petitions, Ramsey alleges defects to the manufactured home she purchased from Palm Harbor in 2001. In her 2004 petition, she seeks recovery on several theories, including statutory fraud, breach of implied warranty of "good workmanlike service" in the home's installation, and breach of contract. She also lists a range of alleged defects supposedly revealed by an inspection, including:

Wall panels and trim separating throughout the structure. Cabinet finish was chipping and the kitchen cabinet was broken. The front exterior wood trim had water damaged [sic]. The carpet fiber turning colors in the master bedroom and family room. Wall panels separating and trim coming loose. Master bathroom door separating. Exterior window trim had water penetration at 45-degree cuts. Exterior skirt cracking prematurely and the Closet brackets do not work properly. Hall bath floor, sub-floor is buckling. Kitchen ceiling is separating at drywall.

Power surges are visible with lights on. Circuit breaker tripping for family and master bedrooms. Exterior wall outlet boxes are not sealed and air penetration occurring throughout the structure.

Air handler closet is not sealed properly. System is causing an electrical power surge on startup and excessive noise at floor ducts. The cooling system is not working properly.

Master commode was defective from improper installation. Utility room washing machine drain was not properly sealed.

All appliances not functioning well.

In her 2009 petition, however, Ramsey focuses on two complaints not specifically referred to in her 2004 petition. First, she complains the home was installed without insulation,

resulting in exorbitant electricity bills. Second, she complains the home had “set up mold,” which “made everyone sick” and forced her family to move out. Ramsey further urges that her claim be considered under the “Unsafe Environmental Act” and not the “Deceptive Trade Act,” noting the respective statutes are “two different things.”

It is clear that both of Ramsey’s lawsuits arise out of alleged defects to the same manufactured home. Palm Harbor offered summary-judgment evidence conclusively establishing the existence of the 2004 litigation and demonstrated that the facts alleged in the 2009 lawsuit encompassed the same subject matter as the earlier action. In her response to Palm Harbor’s motion for summary judgment, Ramsey does not address why the judgment in the 2004 lawsuit should not bar her 2009 suit. After Palm Harbor conclusively established that the subject matter forming the basis of Ramsey’s 2009 lawsuit had already been litigated in 2004, it was incumbent upon Ramsey to introduce evidence raising a genuine issue of material fact that the defects and conduct alleged in the 2009 original petition could not have been litigated with the exercise of due diligence in the 2004 suit. *See* Tex. R. Civ. P. 166a(c); *Amstadt*, 919 S.W.2d at 652. She failed to do so.

Because we agree with the trial court that res judicata bars the claims presented in Ramsey’s 2009 petition, we overrule Ramsey’s sole issue.

* * *

For the foregoing reasons, we affirm the trial court’s judgment.

/s/ Jeffrey V. Brown
Justice

Panel consists of Justices Anderson, Frost, and Brown.