

STATE OF MICHIGAN
COURT OF APPEALS

MRL RESIDENTIAL LEASING, INC.,
a Michigan corporation,

UNPUBLISHED
June 21, 1996

Plaintiff-Appellant,

v

No. 179423
LC No. 94-469575 CZ

INVESTAID CORPORATION, a Michigan
corporation, and MIRIAM SANDWEISS,

Defendants-Appellees.

MRL RESIDENTIAL LEASING, INC.,
a Michigan corporation,

Plaintiff-Appellant,

v

No. 180783
LC No. 94-469575 CZ

INVESTAID CORPORATION, a Michigan
corporation, and MIRIAM SANDWEISS,

Defendants-Appellees.

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

In these consolidated appeals, plaintiff MRL Residential Leasing, Inc. (plaintiff MRL, hereinafter), appeals as of right the order of the circuit court granting summary disposition in favor of defendants and the subsequent order imposing sanctions against plaintiff and plaintiff's counsel. We affirm.

* Circuit judge, sitting on the Court of Appeals by assignment.

The present action concerns the attempts of the successive owners of 30943 Clubhouse Lane, Farmington Hills, Michigan (the property, hereinafter) to avoid foreclosure. The original owner of the property, Teresa Mitan, filed one suit in Oakland Circuit Court and twice filed for bankruptcy in her attempts to avoid foreclosure. When these efforts proved fruitless, she executed a quit claim deed in favor of present plaintiff MRL, a shell corporation owned by her sons, attorney Keith Mitan and Kenneth Mitan.

Plaintiff MRL instituted the present suit, and then filed for bankruptcy as well. Plaintiff MRL's bankruptcy action has since been dismissed, with attorney Keith Mitan being sanctioned in the amount of \$11,607, leaving, as far as we know, only the present suit.

The present action, alleging tortious interference with contract and seeking injunctive relief and an accounting, was originally assigned to Oakland Circuit Judge Robert C. Anderson. Because the original Mitan action had been handled by Oakland Circuit Judge John J. McDonald, defendant Investaid moved to reassign the present case to Judge McDonald, which motion was granted.

Defendant Investaid then moved for summary disposition on the grounds of res judicata. Judge McDonald, being familiar with the original Mitan action and, necessarily, the factual underpinning of the present case, granted the motion. Judge McDonald also imposed sanctions against MRL and Keith Mitan, jointly and severally, in the amount of \$9,579. Plaintiff now appeals as of right, both the order granting summary disposition and the order awarding sanctions. We affirm. Additionally, we impose sanctions against plaintiff MRL and attorney Keith Mitan, jointly and severally, for the bringing of a vexatious appeal.

Plaintiff first contends that Judge McDonald erred in granting summary disposition in favor of defendant Investaid on the basis of res judicata. Res judicata bars a subsequent action between the same parties where the evidence or essential facts are identical to the former action. *Eaton County Road Comm'rs v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994). It requires (1) that the first action be decided on the merits, (2) that the matter contested in the second case was or could have been resolved in the first, and (3) that both actions involve the same parties or their privies. *Id.*, pp 375-376.

Plaintiff challenges only the third element, that both actions involve the same parties or their privies. We find that plaintiff Teresa Mitan in the original action and present plaintiff MRL are substantially identical, meaning that the doctrine of res judicata is applicable. As set forth in *In re Estate of Humphrey*, 141 Mich App 412, 434; 367 NW2d 873 (1985), parties need be only substantially identical for the doctrine to apply. In its broadest sense, privity has been defined as "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." *Wildfong v Fireman's Fund Ins Co*, 181 Mich App 110, 115; 448 NW2d 722 (1989). Here, we find the coincidence of interests and substantial identity between the plaintiffs in the Mitan action and the present action are sufficient to

satisfy the requirements of res judicata. Therefore, we find no error in Judge McDonald's grant of summary disposition in favor of defendant Investaid.

Plaintiff also argues that defendant Investaid's motion to reassign the present action to Judge McDonald should not have been granted. MCR 8.111(D), entitled "Actions Arising Out of Same Transaction or Occurrence," provides, in relevant part, as follows: "[I]f an action arises out of the same transaction or occurrence as a civil action previously dismissed or transferred, the action must be assigned to the judge to whom the earlier action was assigned" Here, it is undisputed that both the present action and the Mitán action arose out of the same transaction or occurrence. Further, the Mitán action ended in the dismissal of Mitán's cause of action. Therefore, we hold that the present action was properly reassigned to Judge McDonald.

Finally, plaintiff argues that sanctions were not warranted in the present action. A trial court's finding that a claim was frivolous will not be reversed on appeal unless clearly erroneous. *Attorney General v Acme Disposal Co*, 189 Mich App 722, 728; 473 NW2d 824 (1991). Given that the original Mitán action was dismissed for the failure to state a claim on which relief could be granted and that the present plaintiff, a sham corporation, filed a nearly identical action, we find no clear error in the circuit court's conclusion that the present action was frivolous within the meaning of MCL 600.2591(1); MSA 27A.2591(1).

Defendant Investaid has also requested sanctions on appeal. As set forth in MCR 7.216(C), entitled "Vexatious Proceedings,"

- (1) The Court of Appeals may, on its own initiative or the motion of any party, assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
 - (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal.

Plaintiff's arguments are no more meritorious on appeal than they were below. Indeed, they remain patently frivolous. Therefore, we impose sanctions against plaintiff MRL and attorney Keith Mitán, jointly and severally, in the amount of defendants' actual damages incurred in defending this appeal. The matter is remanded for a determination of defendants' actual damages. See MCR 7.216(C)(2); *Richardson v DAIIE*, 180 Mich App 704, 709; 447 NW2d 791 (1989).

Affirmed and remanded for a determination of defendants' actual damages on appeal.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Timothy P. Pickard