STATE OF MICHIGAN

COURT OF APPEALS

NEW GENESIS MISSIONARY BAPTIST CHURCH,

Plaintiff-Appellant,

v

PRESBYTERY OF DETROIT and CALVIN PRESBYTERIAN CHURCH,

Defendants-Appellees.

UNPUBLISHED

December 6, 1996

No. 184650
LC No. 94-427480-CK

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

In this landlord-tenant dispute, plaintiff, New Genesis Missionary Baptist Church, appeals as of right the order granting summary disposition in favor of defendants, Presbytery of Detroit and Calvin Presbyterian Church, pursuant to MCR 2.116(C)(7) and (C)(8). We affirm.

In 1993, defendant Calvin entered into a five-year lease agreement with plaintiff for the use of a chapel located inside a church owned by Calvin. In March 1994, Calvin advised plaintiff that it was closing the church for financial reasons, and on April 3, 1994, Calvin changed the locks and prohibited plaintiff from further using the chapel. Plaintiff then sued Calvin in district court pursuant to the "lockout" statute, MCL 600.2918; MSA 27A.2918. In the meantime, Calvin merged with Presbytery of Detroit and transferred title of the church to Presbytery. Presbytery was added as a party to the district court action.

After a jury trial, the jury concluded, by special verdict, that a lease existed between the parties, that defendants breached the lease, and that defendants unlawfully interfered with plaintiff's possession of the building. The district court entered a judgment on this verdict.

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

Plaintiff then moved, in the district court, for an injunction in which plaintiff sought to enjoin another tenant from conducting services in the church, obtain an order allowing it to erect an exterior sign, and require defendants to provide plaintiff with keys to the building to permit unlimited ingress and egress. The district court denied the request to enjoin the other tenant's services, denied plaintiff's request for an order regarding a sign (but subsequently vacated that portion of its order), and denied plaintiff unlimited ingress and egress but ordered that defendants arrange for plaintiff to have access to the building and chapel at specified times.

Plaintiff subsequently commenced the present action in circuit court.[1] In count I of its complaint, plaintiff sought, as part of its damages for defendants' violations of the lockout statute, the attorney fees it had expended in the district court proceedings. In count II, plaintiff sought compensatory and punitive damages based upon its claims that defendants unlawfully interfered with its possessory rights by entering into a competing lease with another church, by denying plaintiff the right to erect an exterior sign, and by depriving plaintiff of egress and ingress to the chapel. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) (collateral estoppel) and (C)(8). The trial granted summary disposition of count I pursuant to MCR 2.116(C)(8), and of count II pursuant to MCR 2.116(C)(7). With regard to the claim in count II regarding the exterior sign, however, the trial court granted summary disposition pursuant to MCR 2.116(C)(8) on the ground that plaintiff had no legal basis for its claim.

Plaintiff first argues that the trial court erred in granting summary disposition of count II of the complaint on the basis of collateral estoppel. We disagree. In order for collateral estoppel to apply, the same ultimate issues must have been actually litigated in the first action and determined by a valid and final judgment. *Detroit v Qualls*, 434 Mich 340, 357 n 30; 454 NW2d 374 (1990); *Schlumm v Terrance J O'Hagan, PC*, 173 Mich App 345, 354; 433 NW2d 839 (1988). The issues of whether defendants interfered with plaintiff's possessory rights by leasing another part of the church to another tenant or denying it ingress and egress were actually litigated and resulted in a final judgment adverse to plaintiff. Plaintiff therefore cannot seek damages based upon these claims.

With regard to plaintiff's claim in count II that defendants wrongfully refused to allow plaintiff to place a sign on the exterior wall of the premises, plaintiff provided no facts in support of its claim that it had a legal right to place signs on the exterior wall of the church, nor has plaintiff cited any relevant authority in support of its claim. The lease in the present case did not expressly give plaintiff the right to place a sign on the exterior of the building. Further, *Forbes v Gorman*, 159 Mich 291; 123 NW 1089 (1909), on which plaintiff relies, does not compel a different result where, as here, only a portion of the interior premises of the church was leased to plaintiff.[2] Hence, the trial court properly granted summary disposition of this claim.

Plaintiff next contends that the circuit court denied its state constitutional right to a jury trial by granting defendants summary disposition. Because plaintiff failed to preserve this issue and there are no exceptional circumstances which require review, we decline to address it. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993), *Mich Up & Out of Poverty Now Coalition v Mich*, 210 Mich App 162, 167-168; 533 NW2d 339 (1995).

Plaintiff finally argues that the trial court erred in granting defendants summary disposition of count I of the complaint pursuant to MCR 2.116(C)(8), because attorney fees are available under the lockout statute. We disagree. Although the lockout statute provides for "actual damages or $200.00, whichever is greater, for each occurrence," it is silent with regard to attorney fees. MCL 600.2918(2); MSA 27A.2918(2).

It is well-settled in Michigan that attorney fees "are generally not allowed, as either costs or damages, unless recovery is expressly authorized by statute, court rule, or a recognized exception." *Burnside v State Farm Fire and Casualty Co*, 208 Mich App 422, 426-427; 528 NW2d 749 (1995). Plaintiff acknowledges this rule, but asserts that this Court created a judicial exception in *Deroshia v Union Terminal Piers*, 151 Mich App 715; 391 NW2d 458 (1986). However, no explicit mention of attorney fees appears in that decision, and it is unlikely that this Court would have established such an exception by implication, nor will we do so here. Plaintiff also seeks to rely upon the exception set forth in *Mieras v DeBona*, 204 Mich App 703, 709; 516 NW2d 154 (1994), rev'd on other grounds, 452 Mich 278; 550 NW2d 202 (1996). However, that exception applies only when the attorney fees were expended in a prior lawsuit because of a third party's wrongdoing. That is not the case here, where the parties in the district court were the same as those in the present action. Thus, we affirm summary disposition for defendants of plaintiff's claim for attorney fees.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros

[1]Plaintiff was permitted by MCL 600.2918(4); MSA 27A.2918 to bring a separate action for damages in the circuit court.

[2] In *Forbes*, the parties entered into a written commercial lease under which the plaintiff leased an entire floor or story of a building. The lease expressly provided that the lessee had the right to "place and maintain an electric or other sign or signs on the outside of said building . . . and on top of said building." The Court noted that "the lease of a building, or of one story thereof, conveys to the lessee the absolute dominion over the premises leased, including the outer as well as the inner walls." Unlike *Forbes*, which involved the lease of an entire story of a building, the present case involves only the right to use a chapel within a building. Thus, the present case is factually distinguishable from *Forbes*.