

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

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SEVEN LAKES OF NORTHVILLE,

Plaintiff-Appellant,

v

ALTA SORENSON, Trustee under the  
Estate of Arthur M. Thomson, Deceased;  
HELEN DEPOORTER, DONALD THOMSON  
CHARLES SORENSON,

Defendants-Appellees.

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UNPUBLISHED  
January 28, 1997

No. 187420

Wayne Circuit Court  
LC No. 94-415045

Before: Corrigan, P.J., and J.B. Sullivan\* and T.G. Hicks,\*\* J.J.

PER CURIAM.

Plaintiff Seven Lakes of Northville, a Michigan Limited Partnership, appeals as of right the order of the Wayne Circuit Court granting summary disposition to defendants pursuant to MCR 2.116(C)(6) and (7). The court ruled that plaintiff's complaint was barred by the prior actions in the circuit court and specifically by the court's scheduling order in those actions. We affirm.

In 1991, multiple actions were filed in Wayne Circuit Court involving multiple parties and multiple issues concerning real property located in the Township of Northville, County of Wayne, State of Michigan. The property had, for many years, been mined by defendants. In 1989, plaintiff purchased the property intending ultimately to develop it into a residential development. At the time of the purchase, plaintiff and defendants entered into a License Agreement which enabled defendants to continue to mine the property subject to and in accordance with the mining permit issued by the Township of Northville.

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\* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

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

Plaintiff was one of several named defendants in the actions filed in 1991, all of which were assigned to Wayne Circuit Judge Pamela R. Harwood. On October 4, 1993, Judge Harwood held a scheduling conference and subsequently issued a “Scheduling Order and Order of Consolidation” which, there being no objections filed, was entered November 1, 1993. The Order stated that the court had “identif[ied] no less than 41 claims presently pending between the parties, and [had] found common issues of both fact and law . . . between parties who [were], in many instances, common to many of these multiple claims. The Order organized the issues into four groups which “reflect[ed] their logical relationship to one another and the parties they involve.”

The Order directed the parties regarding discovery, pretrial procedure and consolidation for trial. The Order also provided for the filing of additional claims, cross-claims, counter-claim and third-party claims as follows:

IT IS FURTHER ORDERED that motions for leave to file additional claims, cross-claims, counter-claims and third-party claims shall be timely filed for hearing no later than the December 3, 1993 session. The Court shall not entertain such motions beyond that time.

On December 2, 1993, plaintiff filed a Motion to Permit Filing of Cross-Complaint against Alta Sorenson, Trustee of the Estate of Arthur M. Thomson, Deceased, and noticed the motion for hearing the next day, December 3, 1993. The trial court denied plaintiff’s motion as untimely. Subsequent motions by plaintiff were similarly denied. No claim of appeal was filed from the trial court’s denial of plaintiff’s motions. However, on May 9, 1994, plaintiff filed the instant action.

Plaintiff claims that the trial court, now with a successor judge, erred in granting summary disposition because MCR 2.203(E) allows a party to litigate a counterclaim in a separate action. MCR 2.203(E) states:

Time for Filing Counterclaim or Cross-claim. A counterclaim or cross-claim must be filed with the answer or filed as an amendment in the manner provided by MCR 2.118. If a motion to amend to state a counterclaim or cross-claim is denied, the litigation of that claim in another action is not precluded unless the court specifies otherwise.

Plaintiff relies on this Court’s interpretation of that court rule in *Salem Industries, Inc v Mooney Process Equipment Co*, 175 Mich App 213; 437 NW2d 641 (1988). In *Salem*, the defendant filed a complaint in Oakland Circuit Court, and the matter was remanded to the 52nd District Court for trial. The plaintiff then moved for leave to file a counterclaim. That motion was denied as untimely because trial was imminent. The plaintiff then filed a separate action which the circuit court dismissed because of the pending action in the 52nd District Court.

In reversing, this Court noted that a counterclaim arising out of the same transaction or occurrence as the principal claim generally must be joined in one action. *Id.*, 215-216. Citing MCR 2.203(E), this Court then stated that, “if leave to amend to state a counterclaim is denied and the ruling court does not *expressly preclude* a separate action, the party is not bound by the compulsory joinder

rule and is free to raise the claim in another action.” *Id.*, 216; emphasis added. In *Salem*, the denial of the plaintiff’s motion for leave as untimely included nothing more. Therefore, the plaintiff was entitled to maintain its claim.

In marked contrast, albeit without the use of such magic words as “a new lawsuit may not be filed,” the trial court in this case issued an order of compulsory joinder in order “to achieve an efficient resolution” of all the claims as they related to all the parties. That order having been issued, plaintiff’s counterclaim or cross-claims were precluded after the date specified in the order.

Our conclusion is in harmony with MCR 2.401(B)(1)(b) which establishes that a trial court may enter a scheduling order setting time limitations for the processing of a case. *People v Austin*, 209 Mich App 564, 567; 531 NW2d 811 (1995). It is also in harmony with MCR 2.504(B) which permits a court to dismiss any action when a plaintiff fails to comply with its orders. *Ministrelli Construction Co v Monroe County Road Commission*, 153 Mich App 144, 148; 395 NW2d 38 (1986).

Affirmed.

/s/ Maura D. Corrigan

/s/ Joseph B. Sullivan

/s/ Timothy G. Hicks