

STATE OF MICHIGAN
COURT OF APPEALS

SDI OPERATING PARTNERS, LP,

Plaintiff-Appellant,

v

COMERICA BANK & TRUST, F.S.B., as personal representative of the ESTATE OF JEANNE KIEFER, the ESTATE OF MORTON KIEFER, KENNETH MODELL, as personal representative of the ESTATE OF DOROTHY MODELL, and the ESTATE OF SAUL MODELL

Defendant-Appellees.

UNPUBLISHED

June 13, 1997

No. 179166; 179379

Wayne Circuit Court

LC No. 93323612

Before: Wahls, P.J., and Young, and H.A. Beach*, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appealed from the lower court's orders granting defendants' respective motions for summary disposition. Plaintiff alleges that defendants' estates are liable for the reclamation and environmental cleanup costs that plaintiff incurred regarding land that it purchased from defendants.¹

Since instituting this appeal, however, the plaintiffs settled with defendant Kenneth Modell and the Estate of Saul Modell in Docket No. 179166 such that the parties stipulated to the dismissal of that appeal. On August 8, 1996, in Docket No. 179379, defendant Comerica Bank & Trust, F.S.B., filed supplemental authority with this Court consisting of an opinion from the Florida Court of Appeals regarding plaintiff's claim against the Estate of Jeanne Kiefer, which was probated in Florida. The Florida Court of Appeals held the claim was barred, as it had been filed beyond the two year limitations set within the statute of repose for claims against estates, section 733.710, Florida Statutes (1991). *Comerica Bank & Trust, FSB, Personal Representative of the Estate of Jeanne Kiefer, v SDI Operating Partners, LP*, 670 S 2d 163 (Fl Ct App, 1996).

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

We held the matter in abeyance, on our own motion, to allow the parties to brief whether the Florida court's action has rendered plaintiff's appeal moot, and if any questions remained for resolution on appeal. Only appellee has filed a brief, contending that the Florida judgment should be honored under the Full Faith and Credit Clause, US Const, art 4, § 1, as it operates as res judicata on the plaintiff's litigation in this State. *See Van Pembroke v Zero Mfg Co*, 146 Mich App 87; 380 NW2d 60 (1985). We agree with appellee and hold that the Florida court's decision renders the question presented in this matter moot because any claim that our courts would allow against the estate could not be enforced in Florida where the estate was probated.

Affirmed.

/s/ Myron H. Wahls

/s/ Robert P. Young, Jr.

/s/ Harry A. Beach

¹ The owner, who purchased the land from plaintiff, discovered the environmental pollution, and sued plaintiff, defendant, and other parties. After settling with plaintiff, that owner assigned its cause of action against defendants and plaintiff was substituted as the plaintiff in the underlying action and served complaints on the defendant estates or their personal representatives, where applicable.