

STATE OF MICHIGAN
COURT OF APPEALS

LARRY SALISBURY,

Plaintiff-Appellant,

v

ERNEST OZANICH and CITY OF ECORSE
BUILDING DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED
October 17, 1997

No. 187684
Wayne Circuit Court
LC No. 94-436401-AW

Before: Fitzgerald, P.J., and Markey and J. B. Sullivan*, JJ.

MEMORANDUM.

Plaintiff appeals as of right the summary dismissal of his request for a writ of mandamus on the ground that the issuance of the writ was barred by the doctrines of res judicata and collateral estoppel. We reverse and remand.

The trial court erroneously granted summary disposition in favor of defendant city. Because defendant was not a party to the prior suit, or a privy of a party to the prior suit, the doctrines of res judicata and collateral estoppel are inapplicable. *Andrews v Donnelly (After Remand)*, 220 Mich App 206, 209; 559 NW2d 68 (1996); *Apcoa, Inc v Dep't of Treasury*, 212 Mich App 114, 120; 536 NW2d 785 (1995).

The trial court also erroneously dismissed defendant Ozanich from the instant action. The record is insufficient to support a grant of summary disposition in reliance on either the doctrine of res judicata or collateral estoppel in light of the absence in the record of evidence from which it can be ascertained that the matter to be resolved was determined, or could have been determined, in the prior case. *Andrews, supra*; *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). Moreover, although defendant Ozanich is not subject to the compulsion of a writ of mandamus, his interest in protecting his property from being razed provides a sufficient interest to warrant his continued presence in the action as a real party in interest. MCR 2.201.

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

Reversed and remanded. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Joseph B. Sullivan