

STATE OF MICHIGAN
COURT OF APPEALS

B & B GROUP, LLP,

Plaintiff/Counter-Defendant/Third-
Party Plaintiff-Appellant,

v

GREAT OAKS REAL ESTATE, LLC,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellee,

and

LOOKWELL LTD PARTNERSHIP,

Third-Party Defendant-Appellee,

and

CAROLYN WALTMAN, JOHN H. WALTMAN,
CITY OF AUBURN HILLS, and LAPEER ROAD,
LLC,

Third-Party Defendants.

UNPUBLISHED

January 12, 2006

No. 255888

Oakland Circuit Court

LC No. 2003-053116-CH

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

This is the second of two suits between these parties concerning eleven acres of vacant land in Auburn Hills for which several tax deeds were issued.¹ In both, real estate investment firm Great Oaks prevailed over competing real estate investment firm B&B, which appeals as of

¹ Despite B&B's filing of the two matters in the same circuit and, for some months, being contested at the same time, the trial court did not consolidate the actions. On appeal, see Docket No. 254731 for the opinion in the companion case.

right. Because the trial court did not err in dismissing B&B's claim against Great Oaks' predecessor, Lookwell, under the doctrine of res judicata, and did not err in granting summary disposition to Great Oaks and dismissing B&B's claims, we affirm.

The dispute began after Great Oaks acquired the 1995 tax deed on the property at issue, while B&B acquired the 1996 tax deed on the same property. Each party sought to perfect its title. Each party sent out redemption notices required by MCL 211.140. In the first suit, the court ruled that Lookwell had timely redeemed the 1996 tax deed that B&B had acquired. In this second action, B&B alleged that Great Oaks' redemption notices were void and that, therefore, B&B was still entitled to redeem the 1995 tax deed that Great Oaks had purchased. The court disagreed and granted summary disposition to Great Oaks and Lookwell.

On appeal, B&B argues that the trial court erred by granting summary disposition in favor of Lookwell based on res judicata. "The question whether res judicata bars a subsequent action is reviewed de novo by this Court." *Adair v Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). Our Supreme Court reviewed the rules for res judicata at length:

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Id.*, at 121 (internal citations omitted).]

The Court stated that the third prong can be analyzed using either a narrower "same evidence" test or a broader "same transaction" test and that Michigan had adopted the broader, more inclusive test. *Adair, supra* at 123-124. "Because this Court has accepted the validity of the broader transactional test in Michigan, we need not consider as dispositive plaintiffs' assertions that the evidence needed to prove this case is different than was needed in [the prior action]" *Id.*, at 124-125. "[T]he determinative question is whether the claims in the instant case arose as part of the same transaction as did the claims in [the prior action]." *Id.*, at 125.

"Whether a factual grouping constitutes a 'transaction' for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation*, (and) whether they form a convenient trial unit" [*Id.*, quoting 46 Am Jur 2d, Judgments § 533, p 801.]

B&B argues that the two cases are different because they rely on different evidence. B&B specifically asserts that the first case turned on whether Lookwell timely redeemed B&B's 1996 tax deed, and, that in this action the issue is whether B&B held the buyer's interest in the land contract for which Lookwell held the seller's interest. B&B's assertions that the two cases rely on different evidence is not dispositive in light of our Supreme Court's counsel in *Adair* that "we need not consider as dispositive plaintiffs' assertions that the evidence needed to prove this case is different than was needed in [the prior action]" *Adair, supra* at 124-125.

We must apply the transactional test set out in *Adair*. Applying the law to the facts presented reveals that the two suits-which overlapped in time, concerned the identical space: land, shared a common origin: the tax foreclosure deeds on the property, and were motivated by exactly the same desire: to obtain clear title to the land at issue for the price of a tax foreclosure deed-were all part of a common transaction. *Id.*, at 125. Therefore, the two matters constituted one transaction for purposes of res judicata and should have been tried together. B&B's choice to file separate actions does not remove the action from the res judicata doctrine, and the court did not err in granting summary disposition to Lookwell on that basis.

B&B also asserts that the trial court erred in granting summary disposition in favor of Great Oaks because of the sheriff's failure to note the time he received the relevant redemption notice to be served pursuant to MCL 211.140(8).² We review this issue de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In *Le Boeuf v Papp*, 243 Mich 318, 321-324; 220 NW 792 (1928), our Supreme Court held that the failure of a sheriff to note the time when redemption notices were issued for service, as required by the language of a previous version of the statute, did not invalidate notice by publication, a less-preferred, alternative method of service than the personal service at issue. Thus, contrary to B&B's argument, any failure by the sheriff to record the time the return was delivered for service does not invalidate Lookwell's redemption. *Id.*

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis

² Repealed as of December 31, 2003 (2001 PA 94) but in effect at all times relevant to this appeal.