

STATE OF MICHIGAN
COURT OF APPEALS

SKALNEK PROPERTIES, L.L.C.,
Plaintiff-Appellant,

UNPUBLISHED
July 17, 2012

v

RICHARD SKALNEK and CLEAN CARS, INC.,
Defendants-Appellees.

No. 304730
Oakland Circuit Court
LC No. 2011-118277-CB

Before: O'CONNELL, P.J., AND JANSEN AND RIORDAN, JJ.

PER CURIAM.

Plaintiff, SkalneK Properties, L.L.C. (SkalneK Properties), appeals as of right the trial court's order granting summary disposition to defendants, Richard SkalneK and Clean Cars, Inc. (Clean Cars). We affirm.

I. BACKGROUND FACTS

A. Previous Litigation

Richard and Stephen SkalneK owned a number of family businesses, including SkalneK Ford, Inc., Clean Cars Finance Company, Inc. (Clean Cars Finance), SkalneK Properties, and Clean Cars. SkalneK Properties was a business that owned and leased real property and Clean Cars was a business that bought, sold, and leased used cars and trucks. As co-owners of SkalneK Properties, Richard and Stephen each had the full authority to borrow money and incur liabilities on behalf of the company, lease property, and initiate and pursue litigation on behalf of the company.

Consistent with the stated purpose of the company, SkalneK Properties purchased real property in 2007 in Imlay City, Michigan and obtained a mortgage on the property. SkalneK Properties then entered into a lease agreement with Clean Cars, intending that property become a used car lot. Pursuant to the lease agreement, Clean Cars agreed to pay lease payments in the amount of the monthly mortgage payment, pay the costs incurred for acquiring, maintaining, and operating the property, and agreed that any improvements to the property exceeding \$2,000 require SkalneK Properties' written approval. Richard then decided to improve the property, paving it and installing lights, which amounted to approximately \$45,000. Subsequent to the improvements, Richard, on behalf of SkalneK Properties, signed a promissory note agreeing to pay Clean Cars \$45,245 and seven percent interest.

Soon after the promissory note was executed, Richard and Stephen's working relationship deteriorated. In 2008, Stephen filed a complaint against Richard, alleging improper shareholder oppression, breach of fiduciary duties, and unjust enrichment. Stephen argued that Richard was trying to force Stephen to redeem shares in Clean Cars and Clean Cars Finance, Richard was substantially interfering with Stephen's interest in Skalne Ford, and Richard was improperly appropriating corporate funds for himself and his family members. In the context of the case, Stephen was deposed, and testified that he was aware of the loan that Skalne Properties owed to Clean Cars for the improvements to the Imlay City property.

In 2009, while the 2008 case was still pending, Stephen, individually and derivatively of Clean Cars and Clean Cars Finance, filed another complaint against Richard. Seeking the dissolution of Clean Cars and Clean Cars Finance, Stephen asserted that the corporate books were in disarray, he no longer wanted to be part of Clean Cars and Clean Cars Finance, he was deadlocked with Richard on fundamental matters, he did not want Skalne Properties to extend collateral for lending to Clean Cars and Clean Cars Finance, and Richard had breached his fiduciary duty. Stephen explicated that he and Richard were deadlocked about whether, and to what extent, Skalne Properties should be used to secure its loan obligations to Clean Cars and Clean Cars Finance.

Ultimately, a settlement agreement and mutual release was entered on December 31, 2009, between Stephen, Richard, Clean Cars, Clean Cars Finance, and Skalne Ford. The parties agreed that Stephen's stock in Clean Cars and Clean Cars Finance would be redeemed upon certain contingencies, including an agreement that Skalne Properties would be used to secure the borrowings of Clean Cars and Clean Cars Finance for at least six years. Additionally, Stephen agreed to release and forever discharge Richard from all claims whatsoever, known or unknown, including claims relating to the formation, management, or operation of Clean Cars and Clean Cars Finance. An evaluation of the assets and liabilities of Clean Cars and Clean Cars Finance was conducted and accounted for the loan from Skalne Properties to Clean Cars.

B. Current Litigation

Then, in 2011, Skalne Properties filed this instant action against Richard and Clean Cars, alleging breach of fiduciary duty and breach of contract and requesting a declaratory judgment and injunction. Skalne Properties claimed that the loan to Clean Cars for the property improvements was improper and occurred only on Richard's behest. In response, Richard and Clean Cars filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(7), claiming that the settlement agreement prohibited further litigation and res judicata barred this lawsuit. The trial court granted the motion for summary disposition, stating that res judicata applied because Stephen was aware of the loan in the previous litigation, the loan was factored into the former arbitration agreement, and Stephen was a 50 percent owner of the companies and could have raised the issue in the prior litigation. Skalne properties now appeals.

III. STANDARD OF REVIEW

“This Court reviews de novo a trial court’s decision on a motion for summary disposition” as well as “a trial court’s decision on the applicability of res judicata.” *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 42; 795 NW2d 229 (2010). “When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), all well-pleaded allegations must be accepted as true and construed in favor of the nonmoving party, unless contradicted by any affidavits, depositions, admissions, or other documentary evidence submitted by the parties.” *Pierce v Lansing*, 265 Mich App 174, 177; 694 NW2d 65 (2005).

IV. ANALYSIS

“Michigan broadly applies the doctrine of res judicata[.]” *Begin v Mich Bell Tel Co*, 284 Mich App 581, 600; 773 NW2d 271 (2009), in order “to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation[.]” *Id.* at 599. Res judicata applies to bar a subsequent action when: (1) the first case was decided on the merits, (2) the first case and the second case involve the same parties or their privies; and (3) the matter in the second case was, or could have been, resolved in the first case. *Id.*

While it is undisputed that the first element of res judicata has been established, the parties disagree about whether the latter two elements of res judicata have been demonstrated. In regard to the second element, “a privy includes a person so identified in interest with another that he represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee.” *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 12-13; 672 NW2d 351 (2003). While Stephen was the plaintiff in the previous cases and Skalne Properties is plaintiff in this case, exact identity is not required, as “[t]he parties to the second action need be only substantially identical to the parties in the first action[.]” *Id.* at 12.

Furthermore, the requirements of “a substantial identity of interests and a working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation[.]” have been met in this case. *Peterson Novelties, Inc*, 259 Mich App at 13 (international quotations and citation omitted). Stephen is a coowner of Skalne Properties and, pursuant to the operating agreement, he had the full authority to initiate and pursue litigation on behalf of the company. As this Court held in *Peterson Novelties, Inc*, 259 Mich App at 13, when the owner of a company is a plaintiff in one action and the company is plaintiff in another, res judicata applies if the owner had control of the company during the litigation. Moreover, Skalne Properties was a family owned company, and this Court has specifically stated that “we do not hesitate to find that plaintiffs [the owners] and their family-owned corporation are sufficiently related so as to fulfill the privity requirement in the doctrine of res judicata.” *Wildfong v Fireman’s Fund Ins Co*, 181 Mich App 110, 116; 448 NW2d 722 (1989). Furthermore, “[i]t is very clear to us that in each case against defendants plaintiffs were asserting and protecting their individual rights.” *Id.* at 116.

In regard to the final element, Michigan courts have broadly found that res judicata bars “not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Sewell v Clean Cut*

Mgmt, Inc, 463 Mich 569, 575; 621 NW2d 222 (2001) (citations and internal quotations omitted). This is known as the same transaction test, focusing on “whether the facts are related in *time, space, origin, or motivation*, and whether they form a convenient trial unit.” *Begin*, 284 Mich App at 601 (emphasis in original) (internal quotations and citations omitted). With reasonable diligence, the claims relating to the loan could have been raised in the previous litigation. Stephen, the plaintiff in the previous cases, knew of the loan during the previous litigation. The loan was also specifically addressed in the previous litigation, as it was included as an asset of Clean Cars during the evaluation. Furthermore, the previous cases involved claims relating to Richard’s improper use of Clean Cars and use of Skalne Properties to secure Clean Cars’ financial obligations. Therefore, there is no genuine issue of material fact regarding whether the facts of this case were related “in time, space, origin, or motivation” to the facts underlying the previous cases. See *Begin*, 284 Mich App at 601 (emphasis omitted).

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Michael J. Riordan