

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

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ARVINMERITOR, INC., f/k/a MERITOR  
AUTOMOTIVE, INC., f/k/a ROCKWELL  
INTERNATIONAL CORPORATION,

UNPUBLISHED  
February 15, 2005

Plaintiff-Counterdefendant-  
Appellant,

and

ROBERT J. VAN DUREN,

Plaintiff-Appellant,

v

CITY OF ALLEGAN,

Defendant-Counterplaintiff-  
Appellee,

and

STATE TREASURER, DEPARTMENT OF  
TREASURY, DEPARTMENT OF NATURAL  
RESOURCES, and DIRECTOR OF THE  
DEPARTMENT OF NATURAL RESOURCES,

Defendants-Appellees.

No. 252135  
Allegan Circuit Court  
LC No. 03-034038-CZ

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Before: Schuette, P.J., and Fitzgerald and Bandstra, JJ.

PER CURIAM.

This case involves a property dispute and arises out of an action filed by plaintiffs ArvinMeritor, Inc. (Meritor) and its president, Robert J. Van Duren (Van Duren), seeking a writ of mandamus directing defendants, Michigan Department of Treasury (MDT), State Treasurer Jay B. Rising, Michigan Department of Natural Resources (MDNR), and MDNR Director K.L. Cool (hereinafter collectively referred to as the state defendants), to recognize Meritor's redemption of the disputed property and the resulting statutory revival of title to the property in Van Duren. The trial court refused to grant the requested writ of mandamus, and ruled that Van

Duren had no interest in the property and that Meritor's interest was limited to its recorded right of access. We affirm.

### I. Facts and Procedural History

This case involves approximately 16.88 acres of land formerly occupied by a manufacturing plant owned by Rockwell International. In 1997 Meritor succeeded to the rights and obligations of Rockwell. The site in question was designated as a "superfund site" by the United States environmental protection agency. Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601 *et seq.*, Meritor, as Rockwell's successor, became responsible for conducting an environmental investigation and performing remedial action on the site under the supervision of the EPA. On December 21, 1990, Rockwell transferred the property to Allegan Industrial Redevelopment Corporation (AIRC) via quitclaim deed and entered into an environmental agreement with AIRC that recognized Rockwell's continuing environmental obligations. This agreement, which was never recorded, contained a right of access to perform the required testing and remedial action. On December 31, 1991, AIRC transferred the property to Van Duren via a quitclaim deed.

In 1993 the city of Allegan (the city) began a condemnation action to acquire title to 1.89-acres of the property for use in connection with its wastewater treatment plant. The city recorded a declaration of taking on November 1, 1993. A stipulation to the taking was recorded on March 28, 1994. Van Duren reserved the right to contest the amount of compensation and Rockwell retained an easement to access and maintain its monitoring wells. On May 3, 1994, pursuant to the General Property Tax Act, MCL 211.1 *et seq.*, and as part of a sale to recover the unpaid 1991 property taxes, the property was bid to the State of Michigan. See MCL 211.67a. On May 2, 1995, the first redemption period expired, absolute title vested in the state, and a deed was quitclaimed for that purpose.

On December 29, 1995, Van Duren and the city entered into a Settlement Agreement in which the city agreed to pay Van Duren \$162,000 as compensation for the taking. Van Duren agreed to transfer "all his rights, title and interest in the subject property that was not taken pursuant to the above-described condemnation action." Van Duren quitclaimed his interest in the entire property to the city. On March 14, 1996, MDT held a foreclosure hearing on the parcel pursuant to MCL 211.131e. Although MDT sent notice of the hearing to Van Duren, it did not send notice to Meritor. Van Duren's redemption interest, which had been transferred to the city via the quitclaim deed, expired thirty days after the hearing. On June 28, 1996, MDNR conveyed the property to the city via a quitclaim deed.

On May 2, 2000, Meritor filed a complaint for declaratory and injunctive relief (the declaratory action) against MDT, MDNR, and the city, in which it claimed that it had a right to participate in the March 14, 1996, foreclosure hearing and that it had a right to redeem the entire property from the 1994 tax sale. MDT, MDNR, and the city asserted that Meritor was not entitled to notice and did not have a redemption right in the property. On October 28, 2002, the trial court held that Meritor had a right to be notified of and to participate in the foreclosure hearing. The trial court also held that Meritor had a redemption right in the condemned 1.89-acres of land under MCL 211.131e for the purpose of preserving its easement. A judgment incorporating the holdings of the October 28, 2002, order was entered on November 14, 2002. That order was not appealed.

On December 2, 2002, Meritor entered into an option agreement with Van Duren whereby Van Duren granted Meritor the right to purchase any interest that he may acquire as the result of Meritor exercising its right of redemption. Meritor's admitted goal was to obtain control of the property in order to prevent a substantial increase in the environmental cleanup costs associated with the city's planned use of the property. On March 5, 2003, Meritor paid \$71,877 to the Allegan County treasurer to redeem the entire property. On March 6, 2003, Meritor notified MDT that it had redeemed the property and asked MDT to certify the redemption to MDNR. On April 8, 2003, the treasurer sent an application for reconveyance of the property to MDT. On June 18, 2003, MDT sent a letter to the treasurer rejecting the application and directing the treasurer to describe the redeemed property as the 1.89-acre parcel condemned by the city and limiting the party to whom the redemption deed should be issued to Meritor. On June 24, 2003, the treasurer sent a second application for reconveyance in compliance with MDT's instructions.

On July 18, 2003, Meritor and Van Duren filed a complaint for writ of mandamus and for a declaration of rights related to the property (the mandamus action). Plaintiffs also asked the trial court to declare that the redemption deed revived Van Duren's title and to quiet title in Van Duren. The trial court granted plaintiffs' motion for an order to show cause why a writ of mandamus should not issue. Following the show cause hearing the trial court ruled that plaintiffs' mandamus action was barred by res judicata because of the earlier declaratory relief action and that plaintiffs' interest in the property is limited to Meritor's right to redeem the 1.89-acre parcel to protect its easement.

## II. Res Judicata

Plaintiffs first contend that the trial court erred in holding that res judicata barred plaintiffs' action.

This Court reviews a trial court's grant or denial of a writ of mandamus for an abuse of discretion, *White-Bey v Corrections Dep't*, 239 Mich App 221, 223; 608 NW2d 833 (1999), but reviews de novo the applicability of the doctrine of res judicata. *Adair v State of Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004). The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. *Id.* at 121. A subsequent action is barred when (1) the first action was decided on the merits, (2) the matter contested in the subsequent action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Michigan courts have broadly applied the doctrine to not only bar claims already litigated, but also to bar every claim arising out of the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.*

The proper test for the application of res judicata is the transactional test. *Adair, supra* at 124. Under this test, a claim is viewed in "factual terms" and considered "coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to plaintiff; ... and regardless of the variations in the evidence needed to support the theories or rights." *Id.* (citation omitted). 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.* at 125 (emphasis in original).

The issue in the declaratory action was whether Meritor was a party entitled to notice under the statute and, if so, whether it had a right to redeem the property. In the declaratory action, the trial court ruled that Meritor had the right to be notified of the foreclosure hearing of March 14, 1996, under MCL 211.131e, and that this right included a right of redemption pursuant to MCL 211.131e. The trial court limited this right of redemption to protecting Meritor's right of access to the 1.89-acre parcel of the property taken by the city. The trial court rejected Meritor's contention that it had the right to redeem the whole property in the same manner that Van Duren could have done, and held that Meritor had no right to the property itself. The trial court was not presented with the issue raised in the subsequent mandamus action; i.e., what was the statutorily dictated effect of Meritor's limited redemption, because Meritor had not actually exercised the redemption. Indeed, Meritor could not exercise its right to redeem until after the trial court had affirmatively determined that it had such a right. The mandamus action arose out of actions occurring after the resolution of the judgment in the declaratory action and was not part of the same transaction. The fact that the judgment in the declaratory action affects the result in the mandamus action is irrelevant.

Further, *res judicata* will bar an action on the same transaction only where the parties to the subsequent action are in privity. *Id.* at 121. "To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Id.* at 122. This requires both a substantial identity of interests between the nonparty and the party to the previous litigation and a working functional relationship, such that the interests of the nonparty are presented and protected by the party involved in the litigation. *Id.* In the previous litigation, Meritor litigated the issue of whether it had a right of redemption and argued that it should be able to redeem and obtain title to the entire property. Meritor did not attempt to assert or protect the rights of Van Duren. Indeed, Meritor's attempt to quiet title in itself could be seen as an action adverse to the potential interests of Van Duren. In the present case, Van Duren's interest did not exist until Meritor exercised its right of redemption and, therefore, could not have been asserted in the previous litigation. Once Meritor acted upon the court's order in the declaratory action, Van Duren had the right to argue before a court that the statutory effect of Meritor's redemption was to restore his title of May 2, 1995.

The issues involved in the mandamus action were not and could not have been resolved in the declaratory action and Van Duren was not the privy of Meritor. Consequently, the trial court erred when it applied the doctrine of *res judicata* to bar plaintiffs' mandamus action.

### III. Statutory Redemption

Plaintiffs also argue that proper application of the pertinent statutes leads to the conclusion that the trial court erred in ruling that Van Duren had no interest in the subject property. This Court reviews *de novo* the interpretation and application of a statute as a question of law. *Eggleston v Bio-Med Applications*, 468 Mich 29, 32; 658 NW2d 139 (2003). A court issues a writ of mandamus to compel a public body or officer to perform a clear legal duty. *Lee v Macomb Co Bd of Comm'rs*, 235 Mich App 323, 331; 597 NW2d 545 (1999), *rev'd on other grounds* 464 Mich 726 (2001). The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the plaintiff. *White-Bey, supra* at 223. "To obtain a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform, (3) the act

is ministerial in nature, and (4) the plaintiff has no other adequate legal or equitable remedy.” *Id.* at 223-224.

Here, plaintiffs argue that Meritor’s exercise of its right of redemption created an obligation in the state defendants to act according to the terms of the statutes governing redemptions and specifically those found under MCL 211.131c. Although the November 14, 2002, judgment clearly states that Meritor’s right of redemption arises out of MCL 211.131e, plaintiffs argue that MCL 211.131e(1) extends the redemption period provided under MCL 211.131c until the owners of a recorded property interest have been notified of the foreclosure hearing. Thus, they argue that the judgment in the declaratory action giving Meritor a right of redemption pursuant to MCL 211.131e is actually a redemption right under MCL 211.131c. Neither the language of the declaratory judgment nor the statutes in question support this argument.

When interpreting statutes, this Court is obligated to discern and give effect to the Legislature’s intent as expressed in the statutory language. *Gladych v New Family Homes, Inc.*, 468 Mich 594, 597; 664 NW2d 705 (2003). If the language is unambiguous, it is presumed that the Legislature intended the meaning expresses and no judicial construction is required or permitted, but rather the statute must be enforced as written. *Id.* The redemption under MCL 211.131e specifically states that it governs redemptions after the expiration of the redemption period in MCL 211.131c. Consequently, the two separate statutory provisions represent separate and distinct forms of redemption. The plain language of the trial court’s judgment indicates that it intended the MCL 211.131e scheme to apply to Meritor’s right of redemption. Therefore, the applicable statutory redemption scheme is that of MCL 211.131e.

The statutory language requires a redeeming party to pay amounts based upon the taxes assessed against the entire property foreclosed upon, see MCL 211.131e(3), but this does not mean that any payment of that amount will necessarily result in the redemption of the entire property. The statute simply states that a “redemption under this section shall reinstate title as provided in section 131c(4).” MCL 211.131e(3). In its judgment in the declaratory action, the trial court attempted to fashion a remedy for Meritor that would rectify the harm caused by the lack of notice of the foreclosure hearing pursuant to MCL 211.131e. To that end, the trial court granted Meritor redemption rights under MCL 211.131e, but deliberately limited those rights to the 1.89-acre parcel for which it had a recorded interest. Given these limitations, Meritor had the right to redeem the 1.89-acre parcel alone and the statutory redemption properly affected only that parcel. Thus, pursuant to MCL 211.131e(3), the redemption reinstates title to the 1.89-acre parcel as provided in section 131c(4), which states,

A redemption deed issued under this section does not vest in the grantee named in the deed any title or interest in the property beyond that which he or she would have owned, if title to the property had not vested in the state. However, the grantee is entitled to a lien on the property not owned by him or her, for the amount paid upon the redemption or the portion of the amount as may be lawfully charged to those parts or interests, in addition to the lien or other interests the grantee held before redemption.

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The deed ... revives all titles, liens, and encumbrances, with their respective priorities, as would have existed if title to the property had not vested in this state, subject to the lien of the grantee named in the deed as provided in this subsection.

From this language it is clear that Meritor, as the redeeming party, is entitled to a redemption deed. That deed does not grant Meritor any interest beyond what it already held, but it does give Meritor a lien on the subject property and “revives all titles, liens, and encumbrances ... as would have existed if title had not vested in this state.” Because the redemption was limited to the 1.89-acre parcel, Meritor’s redemption deed must be limited to that parcel as would be any lien. Furthermore, the city held title to the 1.89-acre parcel both before the May 2, 1995, grant of title to the state and continuously thereafter. Therefore, this section has no practical effect on the ownership interest of the 1.89-acre parcel, excepting Meritor’s lien for the amount paid to redeem the parcel. Even if Meritor’s right of redemption were not so limited, a redemption of the entire parcel would still not restore title in Van Duren.

Although the trial court erred when it ruled that the action was barred by res judicata, it otherwise correctly determined that Van Duren had no interest in the property and that Meritor’s interest was limited to its right of access to the 1.89 acre parcel taken by the city. The trial court adequately protected Meritor’s interest in recovering its redemption costs by ordering the city to repay Meritor.

Affirmed.

/s/ Bill Schuette  
/s/ E. Thomas Fitzgerald  
/s/ Richard A. Bandstra