

STATE OF MICHIGAN
COURT OF APPEALS

CURTIS GRANDERSON,

Plaintiff-Appellant,

v

US STORAGE DEPOT DEVELOPMENT,
L.L.C., d/b/a LAKEVIEW APARTMENTS, and
RONALD A. HAGEN, SR.,

Defendants-Appellees.

UNPUBLISHED

April 19, 2012

No. 302004

Wayne Circuit Court

LC No. 10-001703-CK

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order granting defendants' motion for summary disposition on the basis of res judicata. The court concluded that plaintiff's circuit court action was barred by res judicata because of prior proceedings in the 34th District Court. We affirm in part, reverse in part, and remand.

We review de novo the circuit court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo questions of law, including the application of legal doctrines such as res judicata and collateral estoppel. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

In general, res judicata bars a subsequent action when the first action was decided on the merits, the matter contested in the second action was or could have been resolved in the first action, and both actions involve the same parties or their privies. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). However, the doctrine of res judicata applies differently when the first action is a summary proceeding for eviction. MCL 600.5750 states in pertinent part:

The remedy provided by summary proceedings is in addition to, and not exclusive of, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter does not merge or bar any other claim for relief, except [with regard to certain exceptions that are not pertinent in this case.]

After reviewing this and other statutes related to summary proceedings, our Supreme Court in *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 170; 600 NW2d 617 (1999),

concluded “that judgment in these summary proceedings, no matter who prevails, does not bar other claims for relief.” But in *Sewell*, 463 Mich at 577, our Supreme Court explained that with respect to claims actually litigated in summary proceedings, “the limited statutory exception to Michigan’s res judicata rule does not apply.”

In the present case, the circuit court relied on a countercomplaint that plaintiff filed in the prior district court proceedings to conclude that plaintiff’s present circuit court claims were barred by res judicata. A comparison of plaintiff’s circuit court complaint and his district court countercomplaint shows an overlap with regard to some of the claims. The district court countercomplaint alleged that by failing to make repairs, defendant US Storage Depot had breached “the Housing Law of Michigan,” MCL 125.401 *et seq.*, the “Covenants of Habitability Act,” MCL 554.139, and the parties’ lease. Those claims overlap with plaintiff’s circuit court claims alleging breach of the statutory duty in MCL 554.139(1) (count I), breach of contract (count II), and violation of the Michigan Housing Law and Breach of Implied Warranty (referring to MCL 125.401 *et seq.*) (count V). Because plaintiff’s claims alleging the same bases for relief were actually litigated and dismissed in the district court, the circuit court correctly determined that they were barred by the doctrine of res judicata.

However, plaintiff’s circuit court claims alleging negligence (count III), nuisance (count IV), intentional infliction of emotional distress (count VI), and gross negligence (count VII) were not actually litigated in the district court proceedings. Because of the limitations on the application of res judicata to summary proceedings as recognized in *JAM Corp*, 461 Mich 168-169, whether these claims “could have been” litigated in the district court is immaterial. Because the claims were not actually litigated, the circuit court erred by concluding that they were barred by res judicata.

Defendants argue as an alternative basis for affirmance that these remaining claims are barred by collateral estoppel. “[R]es judicata, or merger and bar, precludes relitigation of the same claim while collateral estoppel precludes relitigation of the same issue.” *McCoy v Cooke*, 165 Mich App 662, 666; 419 NW2d 44 (1988). Collateral estoppel “requires that (1) a question of fact essential to the judgment was actually litigated and determined by a valid and final judgment, (2) the same parties had a full and fair opportunity to litigate the issue, and (3) there was mutuality of estoppel.” *Estes*, 481 Mich at 585. “Collateral estoppel applies only when the basis of the prior judgment can be clearly, definitely, and unequivocally ascertained.” *Ditmore v Michalik*, 244 Mich App 569, 578; 625 NW2d 462 (2001).

According to *Sewell*, with respect to a claim that is actually litigated in a summary proceeding, the claim is conclusive on the *issues* actually litigated. Our Supreme Court explained that when it previously stated in *JAM Corp* that a judgment for possession does not bar any other claims for relief, it “was not describing subsequent claims involving the *issues* actually litigated in the summary proceedings.” *Sewell*, 463 Mich at 576 (emphasis added). Thus, in *Sewell*, the district court judgment and writ were “conclusive on the narrow issue whether the eviction was proper.” *Id.* at 576-577. Although the Court did not use the phrase “collateral estoppel,” the discussion of “the preclusive effect of a claim that was actually litigated in the summary proceeding,” on subsequent claims involving the issues actually litigated, invokes the principles of collateral estoppel. *Id.* The decision indicates that “the limited statutory exception to Michigan’s res judicata rule” has no bearing on that preclusive effect. *Id.* at 577.

In this case, however, the record does not demonstrate that collateral estoppel bars plaintiff's remaining claims. Although the parties agree that the district court dismissed plaintiff's counterclaims, the reasons for this dismissal are not apparent in the record that is properly before this Court. We decline to consider the additional materials that the parties have submitted on appeal, as this Court's review is limited to the record presented in the court below. MCR 7.210(A); *Amorello v Monsanto Corp*, 186 Mich App 324, 330; 463 NW2d 487 (1990). Accordingly, we affirm the circuit court's order granting summary disposition with respect to plaintiff's claims alleging breach of the statutory duty in MCL 554.139(1) (count I), breach of contract (count II), and violation of the Michigan Housing Law and Breach of Implied Warranty (referring to MCL 125.401 *et seq.*) (count V). But we reverse the circuit court's dismissal of plaintiff's remaining claims, without prejudice to defendants raising their collateral estoppel argument in a properly supported motion below.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher