

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

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TECHNICOLOR VIDEOCASSETTE OF  
MICHIGAN, INC.,

UNPUBLISHED  
August 4, 2005

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

No. 252220  
Court of Claims  
LC No. 02-000249-MT

Defendant-Appellant.

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Before: Cooper, P.J., and Fort Hood and R. S. Gribbs\*, JJ.

MEMORANDUM.

Defendant Department of Treasury appeals as of right from the trial court order granting plaintiff Technicolor Videocassette of Michigan, Inc.'s motion for summary disposition pursuant to MCR 2.116(C)(7) based on res judicata. We reverse and remand for further proceedings consistent with this opinion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review a trial court's determination regarding a motion for summary disposition de novo.<sup>1</sup> Res judicata precludes a subsequent action on the same claim 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."<sup>2</sup>

Plaintiff previously successfully challenged a Single Business Tax ("SBT") assessment in 1988 and 1989, on products sold to Buena Vista Pictures Distribution, Inc. ("BVPD") that plaintiff shipped to BVPD's customers in California. At that time, plaintiff shipped its product directly from its Livonia duplication facility to customers in California. Plaintiff's challenge was successful in that case because the Michigan Tax Tribunal found that plaintiff's connection to

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<sup>1</sup> *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004).

<sup>2</sup> *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004).

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

California subjected it to taxation in California. In 1990, plaintiff began shipping its product to its Westland storage facility, and charging BVPD a “facility fee,” before shipping its product to customers in California. Defendant assessed an SBT liability against plaintiff, claiming that plaintiff’s sale of its product occurred in Michigan. Defendant argued that plaintiff delivered the product to BVPD at plaintiff’s storage facility in Michigan. Plaintiff paid the tax and sued in the Court of Claims for a refund.

The trial court improperly granted plaintiff’s motion for summary disposition based upon res judicata. Although the current action involves the same parties and same claim as the prior action, which was decided on the merits, defendant’s basis for assessing the tax in the current action could not have been resolved in the prior action. Plaintiff only began shipping its product from its storage facility after the tax period involved in the prior action.<sup>3</sup>

Further, before the court granted plaintiff’s motion for summary disposition, defendant moved to discover two contracts between plaintiff and BVPD relevant to whether plaintiff’s sale of its product to BVPD occurred in Michigan. The court denied the motion as unnecessary. However, because res judicata does not bar the current action, the record should be developed to determine whether there is a genuine issue of material fact that the sale occurred in Michigan. Accordingly, the discovery of the requested contracts is necessary to the resolution of this case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood  
/s/ Roman S. Gribbs

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<sup>3</sup> Similarly, the current case is not barred by collateral estoppel. The elements of collateral estoppel are: “(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) mutuality. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004), quoting *Storey v Meijer, Inc*, 431 Mich 368, 373 n 3; 429 NW2d 169 (1988) (some alterations in original). The issue of whether the product was delivered to BVPD at the storage facility in Michigan could not have been litigated, or determined by a valid and final judgment, in the prior action.