

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES L. DOYLE, and PATRICIA JACKSON  
NUSBAUM, trustee of the FREDERICK W.  
JACKSON TRUST,

UNPUBLISHED  
October 14, 2008

Plaintiffs,

and

KENNETH A. PICKL and MARGO L. PICKL,

Plaintiffs-Appellants/Cross-  
Appellees,

v

No. 279893  
Otsego Circuit Court  
LC No. 2006-011836-CK

GEORGE E. MICHAELS, CHRISTINE E.  
MICHAELS, JOSEPH N. IMPASTATO, and  
MARIAN A. IMPASTATO,

Defendants-Appellees/Cross-  
Appellants.

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Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

Plaintiffs, Kenneth A. and Margo L. Pickl, appeal as of right the trial court's order granting summary disposition in defendants' favor. Defendants cross-appeal from that portion of the trial court's order denying their request for sanctions. We affirm.

This case involves a lengthy and complex history, much of which need not be detailed here. A complete recitation of the background facts in this case can be found at *Pickl v Michaels*, unpublished per curiam opinion of the Court of Appeals, entered August 27, 2002 (Docket No. 224206). The salient facts concerned with the matter presently before the Court are set forth below.

In 1991 or 1992, defendants, George Michaels and Joseph Impastato, were granted interest in a certain parcel of real property as payment for their legal services to the property owner. A partition action with respect to the property was commenced in 1993. During that

action, the above defendants quitclaimed their interests in the property to themselves and their respective wives. The partition action ended when the parties entered into a consent judgment. The 1995 consent judgment provided that interest in the real property at issue would lie with defendants, George Michaels and Joseph Impastato, and Fred Jackson. The three individuals thereafter agreed to sell the property to Kenneth and Margo Pickl (hereinafter “plaintiffs”) and signed a purchase agreement setting forth the same. Despite attempts to close on the property, the sale never occurred.

Several months after the sale fell through, plaintiffs brought suit against defendants. In their 1996 complaint, plaintiffs alleged that when the purchase agreement was signed, George Michaels and Joseph Impastato represented that they were signing the agreement on behalf of themselves and their respective wives. Plaintiffs further alleged that despite this representation, the above defendants refused to close on the property as agreed due to, according to plaintiffs, George Michaels and Joseph Impastato’s assertion that their wives were unwilling to participate in the sale and had not signed the purchase agreement. Plaintiffs’ causes of action consisted of breach of contract, fraud/misrepresentation, and malpractice/breach of fiduciary duty.

The matter proceeded to a bench trial in 1998, at the conclusion of which the trial court, among other things, voided George Michaels and Joseph Impastato’s interest in the property and entered a judgment in favor of plaintiffs. This Court ultimately reversed that portion of the trial court’s ruling and remanded the matter back to the trial court. *Pickl v Michaels*, unpublished per curiam opinion of the Court of Appeals, entered August 27, 2002 (Docket No. 224206).

On remand, plaintiffs moved to amend their complaint to add a claim under the Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 et seq. Plaintiffs sought to assert that George Michaels and Joseph Impastato’s actions in quitclaiming the property at issue to themselves and their wives violated the UFTA in that the actions were performed with the intent to hinder, delay, or defraud others. The trial court denied plaintiffs’ motion to amend, vacated its previous judgment, and dismissed plaintiffs’ complaint in its entirety holding that “the deeds giving ownership interest in the subject property to the defendants and restoring their property rights are deemed valid and enforceable.” Plaintiffs thereafter appealed the dismissal and the trial court’s refusal to allow plaintiffs to amend their complaint. This Court affirmed. See, *Pickl v Michaels*, unpublished per curiam opinion of the Court of Appeals, entered March 22, 2005 (Docket No. 251496). With respect to the trial court’s denial of plaintiffs’ motion to amend, this Court noted that plaintiffs filed the motion years after the original judgment had been entered and seven months after this Court had rendered an opinion in the previous appeal. This Court also noted that plaintiffs completely failed to explain the delay in attempting to amend the complaint. *Id.*

Plaintiffs filed the present action on August 25, 2006, seeking quiet title to the property at issue and relief from a partition judgment concerning the property entered in a prior case. Plaintiffs also alleged claims sounding in the UFTA. Defendants moved for summary disposition of plaintiffs’ complaint on several grounds, and the trial court initially granted summary disposition in defendants’ favor finding that all of plaintiffs’ claims were barred by the applicable statutes of limitations and by application of res judicata principles. The trial court also denied defendant’s request for sanctions. On reconsideration the trial court clarified that plaintiffs’ quiet title action had been brought within the limitations period, but was nevertheless barred by res judicata and again denied defendants’ request for sanctions.

On appeal, plaintiffs contend that the trial court's dismissal of their UFTA claims on the basis of res judicata was in error, as the denial of their motion to amend their complaint to add UFTA claims was not a decision on the merits. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). The trial court's application of the doctrine of res judicata is also reviewed de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

The doctrine of res judicata bars a subsequent action when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008). The doctrine bars all matters that, with due diligence, should have been raised in the earlier action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

We first note that in its June 25, 2007 opinion and order granting defendants' motion for summary disposition, the trial court determined that all of plaintiffs' claims, including those brought under the UFTA, were barred by the applicable statutes of limitations. In doing so, the trial court correctly noted that limitations period governing the UFTA claims is six years (See MCL 566.39(a)). The trial court thereafter indicated that the plaintiffs were allegedly "wronged" when defendants misrepresented their wives' interest in the property at issue and were harmed at least when they could not close on the property in November or December of 1995. The trial court concluded that because plaintiffs' action was brought more than six years after they were harmed by the allegedly fraudulent conveyance, the limitations period had run and the UFTA claim was barred. The trial court then went on to indicate that all of plaintiffs' claims were also barred by res judicata.

In its July 25, 2007 opinion and order on reconsideration, the trial court reiterated that because the plaintiffs did not seek to amend their complaint to add the UFTA claims until the statutory period had already run, the UFTA claims were barred. Here, plaintiffs challenge the trial court's ruling only with respect to its application of res judicata to plaintiffs' UFTA claims. Plaintiffs do not address that portion of the trial court's ruling wherein the court held that the UFTA claims were barred by the statute of limitations. That being true, even if this Court were to agree that res judicata was inapplicable, the claims would still be barred by the trial court's ruling on statute of limitations grounds. Plaintiffs' claims would not be revived in any event. This appeal, then, is moot.<sup>1</sup>

Moreover, while this Court previously affirmed the trial court's denial of plaintiffs' motion to amend their complaint to add UFTA claims based upon undue delay, it could just have easily affirmed based upon the fact that the statute of limitations on such claims had already run. Again, plaintiffs were allegedly harmed by the alleged wrong as of December 1995 at the latest. Plaintiffs did not move to amend their complaint until 2003—well after the statutory six-year

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<sup>1</sup> An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief. *Michigan Nat Bank v St. Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

period governing UFTA claims had run.<sup>2</sup> In addition, given this Court's prior statement that the attempt to amend the complaint to add a UFTA claim in 2003 was untimely<sup>3</sup>, it is perplexing how one could imagine that a new lawsuit against the same parties that raises those same claims would be deemed timely three years later. This appeal appears to be a thinly veiled attempt to circumvent this Court's prior rulings.

Finally, were we to review the merits of plaintiffs' claim on appeal, we would still be compelled to affirm. Again, *res judicata* bars not only matters that were brought in the previous action, but also matters that, with due diligence, *could and should have been raised* in the earlier action. See, *Dart, supra*. Plaintiffs were well aware that George Michaels and Joseph Impastato had quitclaimed their interest in the subject property to themselves and their respective wives, as evidenced by their assertion that they believed these defendants to be signing the purchase agreement on behalf of their wives and themselves, and the fact that the deeds reflecting the transfer of interest were recorded in 1994—prior to the purchase agreement having been signed. Plaintiffs have neither denied knowing that the transfer of interest occurred, nor proffered any explanation as to why they could not have challenged the transfer in their 1996 lawsuit against defendants. That being true, *res judicata* would serve to bar plaintiffs' UFTA claims.

On cross appeal, defendants contend that the trial court erred when it failed to award sanctions where the plaintiffs' claims lacked merit and failed to comply with the court rules. We disagree.

Contrary to defendants' assertion otherwise, the trial court did not decline to award sanctions based simply on a finding that plaintiffs' action was not frivolous. In its June 2007 opinion and order, the trial court declined to award sanctions to defendants because there was no indication that plaintiff filed the action with the intent of annoying and harassing defendants. The trial court also found that plaintiffs presented a reasonable legal basis for their claims and that such claims had arguable legal merit. Had the complaint presented only UFTA claims, we may be inclined to agree with defendants that sanctions were appropriate. However, plaintiffs also sought to quiet title to the property and for relief from the partition judgment. Given the extensive litigious history concerning the property at issue and the various findings that have been made throughout the years concerning the property, we, like the trial court, cannot unequivocally state that the instant proceedings were brought for an improper purpose in violation of MCR 2.114(D) or that the proceeding was frivolous as set forth in MCR 2.114(F)

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<sup>2</sup> In their response to defendants' cross appeal and at oral argument, plaintiffs asserted that the trial court had determined that a 15-year period of limitations governs actions to quiet title. That may be true, but the UFTA sets forth a specific limitation period for claims based, as plaintiffs' specifically were, on the UFTA. Moreover, plaintiff did not appeal the trial court's ruling with respect to any of the applicable statutes of limitation, or its rulings with respect to plaintiffs' quiet title claim. Plaintiffs have only appealed the trial court's ruling concerning the application of *res judicata* to their UFTA claims.

<sup>3</sup> This property has been the subject of protracted litigation between these parties since 1996 and plaintiffs were well aware of George Michaels and Joseph Impastato's transfer of title to the property to themselves and their wives as of 1995.

(sanctions for which are provided for at MCR 2.625(A)(2)). This does not, however, preclude defendants from seeking appellate sanctions under MCR 7.216(C).

Affirmed.

/s/ Patrick M. Meter  
/s/ Joel P. Hoekstra  
/s/ Deborah A. Servitto