

STATE OF MICHIGAN  
COURT OF APPEALS

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ANN ARBOR SUPER SOILS, INC., d/b/a  
BATESON COMPANY,

UNPUBLISHED  
October 19, 2017

Plaintiff-Appellant,

v

GRAND EQUIPMENT COMPANY, LLC, a/k/a  
J&M CAPITOL,

No. 334652  
Kent Circuit Court  
LC No. 15-009169-CB

Defendant-Appellee.

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Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Plaintiff Ann Arbor Super Soils, Inc. (plaintiff),<sup>1</sup> appeals as of right an order granting a motion for summary disposition filed by defendant Grand Equipment Company, LLC (defendant).<sup>2</sup> The trial court based its decision on MCR 2.116(C)(7) (res judicata). We affirm.

On October 2, 2015, plaintiff filed a complaint in the Kent Circuit Court alleging the following: Plaintiff delivered a bulldozer to defendant for repair in September 2013 and picked up the bulldozer on February 26, 2014. Plaintiff immediately discovered that “the workmanship was defective, the main drive gears were improperly welded, the right lift cylinder for the blade was leaking hydraulic oil and the cross brace attached on the left side of the blade was broken.” Defendant came to correct the defective workmanship “months later” but did not finish the corrections.

Plaintiff claimed that the fair-market value of the loss of the use of the machine was \$10,700 a month, for a total of \$192,600 as of the date of the filing of the complaint. Plaintiff

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<sup>1</sup> As explained *infra*, Ann Arbor Super Soils, Inc., was the defendant in a district-court case that is pertinent to this appeal. For purposes of this opinion and for the sake of consistency, we refer to this party as “plaintiff” and to Grand Equipment Company, LLC, as “defendant.”

<sup>2</sup> We note that plaintiff misspelled the name of J&M Capital in its claim of appeal. Our caption retains the spelling used in the claim of appeal.

also noted that defendant filed a complaint in the 62-A District Court requesting damages of \$16,698.35<sup>3</sup> and plaintiff filed a counterclaim in that court.

Also on October 2, 2015, plaintiff filed, in the circuit court, a motion to consolidate both lawsuits into one circuit-court suit. The court denied this request, citing MCR 2.505(A). From the bench, the court stated that it could not consolidate the cases because one was pending in the circuit court and one was pending in the district court, whereas the court rule referred to consolidation of cases pending before “*the*” court. The court stated that the circuit and district courts were two separate entities.<sup>4</sup>

On March 25, 2016, defendant filed a motion for summary disposition under MCR 2.116(C)(7) and (10). Defendant argued, in pertinent part, that plaintiff’s suit was barred by the doctrine of res judicata. Defendant attached to its motion several documents showing that (1) its district-court complaint was based on plaintiff’s failure to pay for repairs on the bulldozer, (2) plaintiff’s April 3, 2015, counterclaim set forth, materially, the same allegations as the circuit-court complaint, and (3) on January 27, 2016, the district court entered judgment for defendant in the amount of \$14,861.25. As demonstrated by the transcript in the lower-court record, the district court found, at a January 11, 2016, trial, that defendant’s bill was appropriate but also found that \$1,837.10 should be subtracted for substandard repairs, reducing the total to \$14,861.25 from \$16,698.35.

In response to defendant’s motion for summary disposition, plaintiff argued that res judicata did not apply because the issue of plaintiff’s damages for loss of use of the bulldozer was not decided in the district-court case.

The motion hearing began on May 6, 2016, and the circuit court asked the parties for further briefing. On May 10, 2016, defendant filed a supplement to its motion for summary disposition, to which it attached numerous invoices sent to plaintiff by defendant. The motion hearing resumed on June 17, 2016. The circuit court took the matter under advisement and issued an opinion on August 16, 2016. The court first noted that plaintiff, when sued by defendant in the district court, “failed to follow the procedure set forth in MCR 4.002” to transfer the case to the circuit court and thus filed a separate action in the circuit court. The court stated that plaintiff “unsuccessfully defend[ed] the original collection action in district court[] and then [came] back to the circuit court for relief on what began as its counterclaim in district court.” The court stated that defendant was clearly entitled to summary disposition under MCR 2.116(C)(7) because plaintiff’s suit was barred by res judicata. The court noted that “[t]he doctrine of res judicata fits this situation like a glove,” emphasizing that plaintiff’s assertion of its claim in the district court, coupled with its failure to correctly transfer the action to the circuit court, left the claim in the district court, where it was adjudicated to a judgment.

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<sup>3</sup> This claim related to unpaid invoices.

<sup>4</sup> On September 30, 2015, the district court had denied plaintiff’s motion to transfer the district-court case to the circuit court, finding that plaintiff had not properly filed an affidavit under MCR 4.002.

We review de novo a trial court’s decision regarding a motion for summary disposition under MCR 2.116(C)(7). *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). Similarly, “[t]he applicability of res judicata is a question of law that is reviewed de novo.” *PT Today, Inc v Comm’r of Office of Financial & Ins Servs*, 270 Mich App 110, 146; 715 NW2d 398 (2006).

“A party’s claim is barred by the doctrine of res judicata when (1) the prior action was decided on the merits, (2) the decree in the prior action was a final decision, (3) the matter contested in the second case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies.” *Id.*

Plaintiff’s sole argument is that the measure of damages incurred by plaintiff was not decided in the district-court case and in fact could not have been, given the jurisdictional monetary limit applicable to district courts. Plaintiff contends that the district court was duty-bound to recognize the limits of its own jurisdiction and either dismiss plaintiff’s claim or transfer it to the circuit court.<sup>5</sup> Plaintiff emphasizes that parties cannot stipulate to subject-matter jurisdiction. Plaintiff contends that the district court only dealt with the collection action for work performed on the bulldozer and should have transferred the other claim (for loss of use of the bulldozer) to the circuit court sua sponte, based on a lack of jurisdiction.

Plaintiff’s argument is without merit. The crux of plaintiff’s complaint in the circuit court, and the crux of the counterclaim in the district court, was defective workmanship. The district court ruled that it did not have a problem with defendant’s billing “if [the work] was done completely and properly . . . .” The court then stated that it was going to reduce the billing by a certain amount because of a defect in some sprockets. It then proceeded to award defendant its total bill, minus \$1,837 for some defective work. As such, the district court largely rejected plaintiff’s argument about defective workmanship but decided to compensate plaintiff for \$1,837 worth of repairs—thus ruling on the issue in question.

We cannot agree with plaintiff’s argument that the district court could not possibly have ruled on the issue because it lacked subject-matter jurisdiction. Indeed, the district court had jurisdiction in that it could have granted recoupment for any amount due to plaintiff based on its counterclaim. See *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 696; 818 NW2d 410 (2012) (“[r]ecoupment decreases the plaintiff’s recovery by reducing any judgment in its favor by any claim the defendant may have to damages arising out of the same contract or transaction”). In addition, the district court could have granted damages for loss of months of use up to \$25,000. In fact, in its counterclaim, plaintiff set forth two requests for damages: \$147,446 for past loss of use, and \$11,342 for loss of use commencing on April 1, 2015. We decline to rule, under the specific circumstances of this case, that res judicata cannot apply because the district court lacked subject-matter jurisdiction.

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<sup>5</sup> Notably, plaintiff admits that “[t]he parties were forced to try the matter in District Court because [of] an initial procedural error . . . .” (Emphasis added.)

Affirmed.

/s/ Mark T. Boonstra  
/s/ Patrick M. Meter  
/s/ Michael F. Gadola