STATE OF MICHIGAN

COURT OF APPEALS

HRT ENTERPRISES,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
July 26, 2012

No. 304057
Wayne Circuit Court
LC No. 09-016475-CC

Before: METER, P.J., and FITZGERALD and WILDER, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(7)[1] to defendant based upon the doctrine of res judicata. We affirm.

This Court has previously described the underlying facts of this case in *HRT Enterprises v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 2007 (Docket No. 268285):

> HRT purchased real estate located in the city of Detroit commonly known as "11111 and 11118 French Road" in 1983. The property is located across French Road from Detroit City Airport. French Road runs parallel to existing Runway 15/33. The property is approximately 11 acres in size and contains an existing building that is approximately 188,000 square feet in size.

[1] The court's order erroneously indicates that defendant's motion for summary disposition was brought pursuant to MCR 2.116(C)(8) and (10). The motion was brought pursuant to MCR 2.116(C)(7) and (10). Nonetheless, the order states that the motion was granted "for the reasons stated on the record. "On the record, the court referred to the fact that the case had already been litigated and resulted in a jury verdict of no cause of action.

> The front of the existing building is located approximately 525 feet from the centerline of Runway 15/33 and is within the "building restriction line" imposed under Federal Aviation Administration (FAA) regulations. However, the airport has been operating under a waiver from the FAA with regard to the building since 1972. The waivers were renewed in 1988, but the city was expected to take appropriate action by "removing, lowering, relocating, marking or lighting, or otherwise mitigating these airport hazards . . ." The city proposed to acquire properties and eliminate structures to clear an area 750 feet from the existing runway centerline when it acquired FAA funds to do so. According to the FAA, applications to fund such a proposal are considered "on a priority needs basis."
>
> In 1991, the Detroit city council approved acquisition of land surrounding the airport to remove any existing hazards on the property near the airport. The city did in fact condemn some of the properties in the area. However, the FAA did not provide federal funds to the project in an amount sufficient to allow the city to condemn HRT's property. Because the city did not know if or when it would receive FAA funding, the city advised HRT in 1992, in response to a letter from Rusen [one of the owners of HRT]:
>
> "Until such time as you receive a duly authorized written notification of the city's intent to acquire your property, you should proceed to conduct your business as dictated by sound business judgment. . . .
>
> In the event all relevant procedures are complete and the necessary approval obtained, the City still must identify a funding source for acquisition of property and/or improvements to Detroit City Airport. Accordingly, the City cannot predict with any reasonable degree of certainty, the time from [sic] for acquisition, if any, of your properties."
>
> The airport expansion did not occur, nor did funding for acquisition of the property. Plaintiff brought this action [in 2002] in inverse condemnation against defendant city of Detroit, alleging that the filing of the airport layout plan and the threat of potential condemnation of the property affected its property so adversely as to amount to taking without just compensation. [Internal footnotes omitted.]

On September 28, 2005, a jury rendered a verdict of no cause of action.[2]

Plaintiff filed the present action in inverse condemnation on July 6, 2009, after a federal court dismissed plaintiff's inverse condemnation claim for lack of jurisdiction. The allegations in plaintiff's complaint, which contains claims of inverse condemnation and violations of procedural and substantive due process, are remarkably similar to the allegations in the complaint filed in the 2002 action. The complaint alleges, however, that the delay in purchasing

[2] This Court affirmed, and the Supreme Court denied plaintiff's application for leave to appeal. *HRT Enterprises v City of Detroit*, 480 Mich 1134; 745 NW2d 786 (2008).

plaintiff's property since the jury verdict in 2005, and defendant's actions between 2005 and the filing of the 2009 complaint, are new facts that did not exist at the time of the prior action.

Defendant moved for summary disposition on the basis of res judicata and collateral estoppel, asserting that the complaint filed in this action is no different than the complaint that was filed in 2002 and that the facts and circumstances are no different than the facts and circumstances at that time. In response, plaintiff argued that res judicata was inapplicable because the continued delay in purchasing plaintiff's property represented a new fact that developed since the previous litigation. Following a hearing on the motion, the trial court granted summary disposition in favor of defendant after finding that "this case has already been litigated once. The jury entered a no-cause of action . . . in a 2005 case."

The sole question presented by plaintiff is whether the trial court erred by concluding that the doctrine of res judicata bars the present inverse condemnation action. We review de novo motions for summary disposition. *Tellin v Forsyth Twp*, 291 Mich App 692, 698; 806 NW2d 359 (2011). We also review de novo as a question of law the applicability of res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

The doctrine of res judicata precludes multiple lawsuits alleging the same cause of action. *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). The concerns behind res judicata are economy of judicial resources, finality of litigation, and relieving parties of the cost and vexation of multiple lawsuits. *Pierson Sand & Gravel, Inc v. Keeler Brass Co.*, 460 Mich 372, 380; 596 NW2d 153 (1999). Application of res judicata requires that (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. *Richards v Tibaldi*, 272 Mich App 522, 530–531; 726 NW2d 770 (2006). "This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Washington*, 478 Mich at 418.

The 2002 action involved the same parties as the present case, the case was decided on its merits, and plaintiff raised in that case the argument that defendant had inversely condemned plaintiff's property and denied it substantive and procedural due process as a result of defendant's actions with regard to the planned expansion of Detroit City Airport. Absent plaintiff's reference to the fact that defendant has not yet purchased plaintiff's property, there are no new facts or arguments that would preclude the application of the doctrine of res judicata. The facts on which plaintiff relies[3] are facts that existed and were ongoing at the time of the previous litigation, yet the jury found that plaintiff did not have a cause of action. Accordingly,

[3] For example, the airport expansion plan, media messages regarding the planned airport expansion, piecemeal acquisition of properties in the acquisition area, failure to purchase plaintiff's property, blight in the city, and the closing of McNichols Road.

the trial court properly concluded that res judicata barred the present action because there were no new facts in evidence.[4]

Affirmed.

/s/ Patrick M. Meter
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

[4] Plaintiff's contention that a comment made by the federal judge when dismissing plaintiff's federal lawsuit for lack of jurisdiction was binding on the trial court in this case is without merit.