STATE OF MICHIGAN

COURT OF APPEALS

INTERNATIONAL METAL TRADING, INC., and PAUL TERRAULT, Plaintiffs-Appellants, v CITY OF ROMULUS, RICHARD BALZER, CHARLES KIRBY, RICHARD LANDRY, JOSHUA MONTE, and MICHAEL ST. ANDRE, Defendants-Appellees.	UNPUBLISHED August 13, 2013 No. 310761 Wayne Circuit Court LC No. 12-000130-PD

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition on the basis of res judicata stemming from a prior federal court action.[1] We affirm.

This appeal concerns the res judicata effect of a federal court judgment that granted defendants summary judgment with respect to plaintiffs' claims involving the police seizure of fuel injectors and knock-down crates in March 2007. Plaintiffs' federal action alleged a violation of 42 USC 1983 and common-law conversion. Plaintiffs voluntarily dismissed the latter claim without prejudice, subject to reinstatement depending on the outcome of *Odom v Wayne Co*, 482 Mich 459; 760 NW2d 217 (2008). Ultimately, the district court granted defendants' motion for summary judgment with respect to plaintiffs' § 1983 claim and, noting the outcome in *Odom*, also dismissed plaintiffs' conversion claim. *Int'l Metal Trading, Inc v City of Romulus*, unpublished opinion and order of the United States District Court for the Eastern District of Michigan, issued January 27, 2010 (Case No. 2:08 CV 11605). Plaintiffs appealed to the Sixth Circuit Court of Appeals but did not challenge the dismissal of the conversion claim. The Sixth Circuit affirmed the district court's decision. *Int'l Metal Trading, Inc v City of Romulus*, unpublished opinion of the Sixth Circuit Court of Appeals, issued

[1] The court also determined that some of plaintiffs' claims were barred by the applicable statute of limitations. Plaintiff does not contest the dismissal of those claims.

September 15, 2011 (Docket No. 10-1205). Plaintiffs thereafter filed the present action in Wayne Circuit Court in January 2012. The complaint set forth several claims involving defendants' failure to return the fuel injectors and knock-down crates.

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is "barred because of . . . prior judgment." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In addition, the determination whether res judicata bars a subsequent suit is a question of law that this Court reviews de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

"This Court must apply federal law in determining whether the doctrine of res judicata requires dismissal of this case because the . . . judgment in the prior suit was entered by a federal court." *Beyer v Verizon North, Inc*, 270 Mich App 424, 428-429; 715 NW2d 328 (2006).

> Under federal law, res judicata precludes a subsequent lawsuit if the following elements are present: (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies;[2] (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. [*Id*. at 429 (citations and internal quotation marks omitted).]

"Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v McCurry*, 449 US 90, 94; 101 S Ct 411; 66 L Ed 2d 308 (1980).

Plaintiffs rely on the exception to res judicata discussed in *Pierson*, which recognized a "quite narrow exception to the application of res judicata as a bar to a subsequent state action following a federal action." *Pierson*, 460 Mich at 381 n 10. In that case, the Court considered the preclusive effect that a federal court's pre-trial dismissal of federal claims should have on state law claims that the plaintiff did not include in the federal action, but could have included. The Court determined that state claims that could have been brought in federal court, but were not, should receive the same treatment for res judicata purposes as if they had been brought. The Court agreed that "'it would be unfair to impose a harsher result for unappended state law claims than would have occurred had the claims been raised.'" *Id*. at 383 n 11, quoting *Beutz v A O Smith Harvestore Prods, Inc*, 431 NW2d 528, 532 (Minn, 1988). As a general rule, when "all federal claims are resolved before trial, federal courts will decline to exercise supplemental jurisdiction over remaining state law claims, preferring to dismiss them without prejudice for resolution in the state courts." *Pierson*, 460 Mich at 384. And when state law claims are dismissed without prejudice, res judicata would not bar the plaintiff from bringing those state claims in state court. *Id*. at 382. Therefore, with respect to the state law claims that the plaintiffs

[2] Defendant Balzer was not a party in the federal action. However, plaintiffs do not contend that res judicata applies differently to the claims against him. Evidently, they concede that he is in privity with the other defendants.

did not allege in the federal case, "if the federal court would clearly have dismissed the state claims when it dismissed the federal claims, then the doctrine of res judicata should not apply." *Id*. at 383. In recognition of the general practice of federal courts not to retain supplemental jurisdiction when federal claims are dismissed before trial, the Court held that "when the federal claims are dismissed before trial, the federal court clearly would have dismissed the state claims if there are no exceptional circumstances that would give the federal courts cause to retain supplemental jurisdiction." *Id*. at 384.

Plaintiffs argue that the present case is comparable to *Pierson* and, thus, res judicata does not bar the state claims. According to plaintiffs, even if they had included the state claims in the federal action, the federal court would not have retained supplemental jurisdiction over the state claims when it dismissed the § 1983 claim.

The exception discussed in *Pierson* is inapplicable here because it concerns the federal court's discretionary supplemental jurisdiction. In the present case, plaintiff's federal court complaints invoked the court's jurisdiction based on diversity of citizenship, 42 USC 1332, as well as federal question jurisdiction for the § 1983 claim. The rationale for the exception in *Pierson* is based on (1) the unfairness of treating "unappended state law claims" more harshly than if they had been alleged, and (2) the general practice of federal courts to decline to retain supplemental jurisdiction over state claims after pre-trial dismissal of the federal claim that provided the basis for the court's original jurisdiction. In *Pierson*, the Court "confidently surmise[d]" that federal courts would decline to exercise supplemental jurisdiction where the court dismissed all of the federal claims before trial. *Id*. at 384. However, where the federal court's jurisdiction is based on diversity of citizenship, the dismissal (or absence) of federal claims does not warrant the supposition that the court would dismiss the state claims. "If there is diversity jurisdiction, the district court may not decline to decide the state law claims." *Charvat v NMP, LLC*, 656 F3d 440, 446 (CA 6, 2011). *Pierson*'s exception to the broad application of res judicata involves state claims over which the federal court would likely have declined to exercise supplemental jurisdiction. The rationale for the exception does not apply where the federal court's jurisdiction over the state claims would have been established by diversity of citizenship had plaintiff raised the claims.

Plaintiffs also contend that the amount in controversy as it pertains to their state law claims of both claim and delivery and possession of goods is inadequate to meet the $75,000 threshold for diversity jurisdiction under 28 USC 1332. Rather, plaintiffs assert that the proper value to be used in determining the amount in controversy is the cost of defendant *complying* with the request to return the goods. However, "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation." *Hunt v Wash State Apple Advertising Comm'n*, 432 US 333, 347; 97 S Ct 2434; 53 L Ed 2d 383(1977). Further, that value is measured by the loss to the plaintiff if the relief is denied. See *id.* Here, we are not confronted with any abstract "object of the litigation." The object of the litigation was the return of tangible goods that plaintiffs affirmatively claimed in the federal action were valued in excess of $500,000. Thus, if plaintiffs' claim for relief was denied (i.e., the goods were not returned to plaintiffs), then their loss would clearly exceed the required amount of $75,000. Therefore, because the court had diversity jurisdiction, plaintiffs' claims remain outside the *Pierson* exception to the broad application of res judicata.

Accordingly, the trial court properly granted defendants' summary disposition on the basis of res judicata.

Because res judicata bars plaintiffs' claims, it is unnecessary to address defendants' argument that collateral estoppel provides an alternative basis for affirming the trial court's decision.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens