

STATE OF MICHIGAN
COURT OF APPEALS

DAIMLERCHRYSLER CORPORATION and
DAIMLERCHRYSLER MOTORS COMPANY,
L.L.C.,

UNPUBLISHED
July 25, 2006

Plaintiffs-Appellants,

v

HADLER PUBLIC RELATIONS, INC.,

No. 266608
Wayne Circuit Court
LC No. 02-229070-CK

Defendant-Appellee,

and

GOLDEN EAGLE INSURANCE COMPANY and
COMMERCIAL UNION INSURANCE
COMPANY,

Defendant.

Before: Whitbeck C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

In this contract case, plaintiffs appeal as of right from the trial court's order granting summary disposition in favor of defendant and denying plaintiffs' motions for partial summary disposition under MCR 2.116(C)(7). Relying on a judgment issued in a separate action in California, the trial court determined that plaintiffs' present action was barred by the doctrine of collateral estoppel. Because the trial court did not err when it granted defendant's motion for summary disposition based on collateral estoppel, we affirm.

Plaintiffs argue that the parties did not litigate the essential issue in this case in the California action and, therefore, the trial court erred in determining that plaintiffs were collaterally estopped from maintaining this contract action. The contract at issue is a "Services Agreement" between plaintiffs¹ and defendant under which defendant agreed to promote

¹ Pursuant to a contract amendment plaintiff DaimlerChrysler Corporation assigned its rights and
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plaintiffs' vehicles in the movie and television industries through the administration of a "Studio Vehicle Program." Plaintiffs provided vehicles to defendant, while retaining title, for defendant to lend or lease to production companies and their executives for the purpose of obtaining favorable exposure for plaintiffs and their vehicles. The agreement has an insurance provision that requires defendant to obtain insurance to protect itself and plaintiffs "against any risk of damage to property or injury to persons (including death) arising out of or in connection with [defendant's] performance under this Agreement" The agreement also has an indemnity clause that states that defendant will defend and indemnify plaintiffs from "all claims, demands, liabilities, losses, damages, legal proceedings, judgments, decrees, and expenses of any kind including attorney's fees, arising out of or resulting from any act, omission, or negligent work of [defendant] or its employees, agents or contractors in connection with the performance of services under this Agreement"

In March 2000, plaintiffs asked defendant to provide Kristen McCallum with a vehicle for her to use to drive to a snowboarding event at Mammoth Mountain in California. McCallum had submitted a proposal to plaintiffs to handle the marketing for the promotion of plaintiffs' vehicles in the snowboarding industry. She was attending the event to discern the feasibility of some aspects of her proposal. At plaintiffs' request, defendant delivered a 2002 Jeep Liberty to McCallum for her use. On the way to Mammoth Mountain, McCallum was involved in an automobile accident with another vehicle. Three occupants of the other vehicle were injured and two others were killed. The decedents' estates and the injured persons brought a wrongful death and negligence lawsuit in California (the Moore suit) against McCallum, her employer, plaintiffs, and other unidentified defendants. Defendant refused to defend and indemnify plaintiffs in the Moore lawsuit, which precipitated the instant action. Plaintiffs allege that defendant breached the Services Agreement by failing to indemnify them in the Moore lawsuit and by failing to obtain the requisite insurance liability limits.

While this litigation was pending in Michigan, defendant's insurance company, Commercial Union Insurance Company (CU) filed a declaratory action in California against plaintiffs' insurance company, DaimlerChrysler Insurance Company (DCIC), seeking a determination regarding the priority of the parties' insurance obligations, among other relief. CU filed a motion for summary adjudication in the California court asserting that the undisputed facts showed that DCIC's coverage was primary and that its coverage was excess. DCIC responded by arguing that the language of the competing insurance policies was irrelevant because of the applicability of the indemnity clause in the Services Agreement between the instant parties, which overrode the insurance policies. The California court determined that, under the undisputed facts, the plain language of the insurance policies provided that DCIC's coverage was primary and CU's was excess. The court also held that DCIC failed to present any evidence to create a triable issue of fact with regard to the applicability of the indemnity clause. The court found that the undisputed facts showed that the accident did not arise out of defendant's performance of the Services Agreement and thus, the existence of the indemnity clause was irrelevant. The California Court of Appeals affirmed on the same basis, except that it

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duties under the agreement to its affiliate, plaintiff DaimlerChrysler Motors Company, L.L.C. For purposes of this litigation, there is no distinction between these entities.

stopped short of squarely stating that the indemnity clause was inapplicable, and instead only stated that DCIC had failed to present any evidence to create a factual issue concerning its applicability.

After the judgment in the California declaratory action was final, defendant in this case filed a motion for partial summary disposition pursuant to MCR 2.116(C)(7), arguing that the doctrine of collateral estoppel barred plaintiffs' claims in this action. Plaintiffs responded that the doctrine did not apply because the essential issue in this case and the issue presented in the California action were different, and that the California courts did not necessarily determine the issue in this case. Plaintiffs had also previously filed a motion for summary disposition pursuant to MCR 2.116(C)(10), in which they argued that the undisputed facts showed that defendant breached its duties to indemnify plaintiffs and obtain the proper insurance. Plaintiffs also filed a motion for partial summary disposition seeking a determination of the applicability of collateral estoppel in their favor and a determination of the merits of their claims. The trial court found that the doctrine of collateral estoppel applied. Accordingly, it granted defendant's motion for summary disposition and denied plaintiffs' motions for partial summary disposition without addressing the merits of plaintiffs' motions.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). The applicability of collateral estoppel is a question of law that this Court also reviews de novo. *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000). Collateral estoppel is intended to relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication by preventing inconsistent decisions. *Monat v State Farm Ins Co*, 469 Mich 679, 692-693; 677 NW2d 843 (2004). "Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full (and fair) opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Id.* at 683-685 (internal quotations and citation omitted). Stated another way, "[c]ollateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006). The issues must be identical and not merely similar. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). An action resolved on summary disposition is a determination on the merits and can trigger applicability of the doctrine of collateral estoppel on relitigation as long as the other elements are met. *Detroit v Qualls*, 434 Mich 340, 356-357; 454 NW2d 374 (1990).

Plaintiffs argue that the essential issue in this case is not identical to the issue presented in the California action, nor was it necessarily determined by the California courts.² The parties agree that the essential issue in this case is whether the accident arose out of defendant's

² Plaintiffs do not challenge the trial court's determination that there was privity between the parties in the two actions or that the California judgment was final.

performance of the Services Agreement because the applicability of the indemnity and insurance provisions depend on the resolution of this question. The submitted evidence discloses that DCIC raised this issue in the California declaratory action. Plaintiffs assert that the California courts only decided the issue of insurance priority and did not decide the indemnification clause's applicability. Plaintiffs acknowledge, however, that the California courts decided that DCIC did not meet its burden of proof in showing that a genuine issue of material fact existed regarding the applicability of the indemnification clause.

The question this case raises is whether a determination that no genuine issue of material fact exists means that the California courts "necessarily decided" the issue. We hold that it does. To be necessarily determined in the first action, a judgment must have depended on the finding. *Eaton Co Bd of Co Rd Comm'rs, supra* at 377. Here, the California courts had to determine whether DCIC met its burden of showing that the indemnity provision applied in order to decide if the question before it, the priority of insurances, could be determined as a matter of law. Had DCIC met its burden, the issue of the indemnity provision's applicability would have had to go to trial and the trial court would have had to deny CU's motion for summary disposition because the outcome of the trial issue would determine whether the indemnity provision or the insurance contracts controlled. Viewed in this manner, the California trial court necessarily determined the issue of the Services Agreement's applicability when it decided as a matter of law that DCIC failed to show the prerequisite facts for indemnity to apply so as to augment its insurance policy determinations.

The California trial court ruled that DCIC had the burden of establishing the elements of indemnity when DCIC interposed the indemnity agreement in defense of the insurance determination. While DCIC disagreed and appealed the decision, the California Court of Appeals specifically affirmed the lower court's ruling, stating, "[t]he trial court granted judgment in favor of [CU] based on the determination that [DCIC] was the primary insurer and it had failed to offer evidence that the facts of the loss triggered application of an indemnity agreement. We affirm." *Commercial Union Ins Co v DaimlerChrysler Ins Co*, unpublished opinion per curiam of the California Court of Appeals, issued June 2, 2005 (Docket No. B174413), slip op at 2. Because the California courts did render determinations regarding the indemnification clause's applicability, the trial court properly determined that plaintiffs are collaterally estopped from litigating the applicability of the indemnity and insurance provisions in the present action.

Finally, because the trial court did not err in its application of collateral estoppel to this case, it also properly declined to consider the merits of plaintiffs' own motion for summary disposition pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio