

STATE OF MICHIGAN
COURT OF APPEALS

HTC GLOBAL SERVICES, INC.,
Plaintiff-Appellant,

UNPUBLISHED
July 31, 2014

v

HG DETROIT CONSULTING, L.L.C. d/b/a
HALO GROUP, L.L.C.,

No. 316301
Oakland Circuit Court
LC No. 2012-129478-CZ

Defendant-Appellee.

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Plaintiff HTC Global Services, Inc. (HTC) and defendant HG Consulting, L.L.C. (Halo), compete in the highly specialized realm of information technology. Both companies supply business organizations and governmental entities with technical resources, particularly human talent. Julie Rodriguez, who is at the center of the parties' dispute, is an experienced recruiter and account manager. Rodriguez worked for HTC for several years before joining Halo. According to HTC, Rodriguez breached confidentiality, noncompetition, and nonsolicitation clauses of her HTC employment contract by supplying Halo with proprietary information regarding HTC's customers and personnel assets.

Based on this central contention, HTC filed two separate lawsuits: one against Rodriguez and one against Halo. These cases were resolved in HTC's favor. But HTC remained dissatisfied, and filed this action against Halo. The circuit court determined that the doctrine of res judicata precluded litigation of this case, which we will call Halo II. Because the same core transactions and facts underlie all three cases, we affirm.

I. BACKGROUND

When Rodriguez joined HTC in 2007, she signed an employment agreement obligating her to keep confidential information learned at HTC and to use that information solely for HTC's benefit. Rodriguez's contract also included a noncompetition/nonsolicitation clause, prohibiting her from "directly or indirectly solicit[ing] the business of (or otherwise deal[ing] in a manner adverse to the Company with)" any HTC clients for a two-year period after terminating her employment. In July 2010, Rodriguez accepted a position at Halo, triggering her duties under these clauses.

The state of Michigan is an HTC client. HTC's contract with the State affords HTC first priority in placing IT candidates in state employment. In December 2010, the State sought HTC's assistance in filling a position in the Office of Retirement Services (ORS). The State contact suggested to HTC that Rodriguez had located someone named Chuck Wilson to fill the post, and requested that HTC collaborate with its ex-employee to accomplish Wilson's placement. HTC obliged by entering into a subcontracting agreement with Halo, whereby HTC assigned Wilson to the ORS job. Both parties agreed that Halo would in the future refrain from directly placing any other "key personnel" with the State. The alleged breach of this "key personnel" provision of the Wilson subcontract would figure prominently in the litigation yet to come.

The State's desire to fill a "senior project manager" position in the Department of Technology, Management & Budget (DTMB) triggered HTC's dual-lawsuit filings. The State sent the posting for this job only to HTC. When HTC failed to provide a satisfactory candidate, the State submitted the posting to several approved vendors, including Halo. Rodriguez prepared a successful bid on Halo's behalf, recommending Marcia Sweet. The State hired Sweet. HTC deemed Rodriguez's action a breach of the noncompetition clause and complained to Halo. HTC then warned Halo that its submission of Marcia Sweet as a candidate for the position violated the "key personnel" provision of the HTC-Halo subcontract agreement. HTC requested that Halo and Rodriguez withdraw the Sweet recommendation, but both refused.

In December 2011, HTC filed two separate lawsuits in the Oakland Circuit Court. The first named Rodriguez as a defendant, asserting that she breached her HTC employment agreement by soliciting the State (an HTC customer) on Halo's behalf with regard to the senior project manager (Sweet) position. HTC sought damages and an injunction preventing Rodriguez from soliciting HTC's "Customer[s]" for a two-year period. This matter was assigned to Judge Daniel P. O'Brien.

The second complaint named Halo as a defendant, alleging that Halo breached the Wilson subcontract by soliciting the State to fill a key personnel position with Sweet. HTC sought damages and an injunction prohibiting Halo from soliciting and placing any further key personnel with HTC's "Client." We refer to this action, which was assigned to Judge Martha Anderson, as Halo I.

Neither HTC nor Halo moved to consolidate the two actions before one judge, although they agreed that the fruits of discovery would apply in both cases. HTC justifies its decision to proceed on two different fronts on the ground that the claims were based on breaches of separate and unrelated contracts.

According to HTC, discovery revealed that Halo's role in Rodriguez's decision to violate her HTC employment agreement was larger than first anticipated. In July 2012, HTC sought to add Halo as a defendant in the Rodriguez lawsuit, arguing that discovery "has shown that . . . Rodriguez has actively solicited its customers on HALO'S behalf *and with their apparent encouragement and support.*" (Emphasis added.) HTC also sought to add allegations that Rodriguez's solicitation of HTC clients was not limited to the State, but extended to various other clients shared by HTC and Halo. HTC's proposed first amended complaint included an allegation that "during the course of discovery, . . . HTC has learned that since leaving . . . HTC

on July 1, 2010, . . . Rodriguez has solicited a number of . . . HTC's customers within the meaning of Paragraph 2 of the Agreement in addition to [the State]" and named the clients with whom Rodriguez had allegedly violated her contract. HTC continued, "Upon information and belief, . . . Rodriguez and HALO have and will continue to profit from . . . Rodriguez's intentional violation of her legal obligations to . . . HTC." In a proposed amended request for injunctive relief, HTC sought to add allegations that Rodriguez committed her breaches of contract "on behalf of . . . HALO." Therefore, HTC sought injunctive relief to prevent the actions of both Rodriguez and Halo. HTC did not suggest any tort counts regarding Halo's wrongful actions, nor did it seek to add a request for monetary damages from Halo in the Rodriguez suit.

Judge O'Brien permitted Halo to file a brief opposing HTC's attempt to add it as a defendant. Halo argued:

The suit against Halo is pending before Judge Martha Anderson of this Court. It was filed at the same time HTC filed its Complaint against Ms. Rodriguez, which is pending before this Court. HTC also filed and argued, before Judge Anderson, a Motion for Preliminary Injunction against Halo. Judge Anderson denied the motion for injunctive relief pending the outcome of an evidentiary hearing. HTC adjourned the evidentiary hearing three times, the last without date. It would now appear that HTC is judge shopping and believes this Court will be more favorable to its position. This is inappropriate.

For the reasons discussed above and below, if allowed, the amendment would cause undue prejudice to Halo. Halo would be forced to endure the expense of two case evaluations and two trials. Additional discovery will be required. HTC chose to file these matters as separate cases. The cases have proceeded for seven months as separate cases. Now at the close of discovery, and the eve of case evaluation, HTC asks this Court to allow an amendment, which would broaden the issues and add a party, which is already defending a suit against HTC. HTC fails to explain why "justice so requires" the amendment. HTC has a suit pending against Halo. Its request for preliminary injunction against Halo has been denied by Judge Anderson.¹¹ The amendment is futile.

HTC filed no contemporaneous motion in Halo I seeking to amend its complaint to add a claim that Halo aided and abetted Rodriguez's actions or to request injunctive relief to prevent further interference by Halo with Rodriguez's contractual duties to HTC.

Judge O'Brien rejected HTC's attempt to add Halo as a defendant in the Rodriguez suit. He suggested that it would be impractical and confusing to proceed to a jury trial on HTC's breach of contract action against Rodriguez while simultaneously holding a bench trial for

¹ HTC has presented limited documentation to this Court regarding the 2011 lawsuits. We therefore cannot confirm whether Judge Anderson denied HTC's request for a preliminary injunction in Halo I. However, we know that HTC was ultimately successful in that suit.

injunctive relief against Halo. In ruling from the bench, Judge O'Brien stated that HTC's request to add Halo as a party was "unnecessary," explaining:

[I]f [HTC] prevails against Rodriguez and she violates a court judgment, via Halo, redress is available against her. And . . . given the capacity of Halo in this case, if it is named as [HTC] requests, i.e., no cognizable claim against it, if Rodriguez violated a court judgment under that scenario, again via Halo, the Court would have no teeth against Halo. And so the Court again denies that motion.

We take this to mean that HTC would have a future claim against Rodriguez if she continued to violate her employment agreement, and would not need to pursue Halo to ensure Rodriguez's compliance. Judge O'Brien allowed HTC to twice more amend its complaint against Rodriguez to allege that she had solicited a laundry list of HTC clients, and had improperly retained confidential materials when she left HTC's employ.

In the fall of 2012, HTC's actions against Rodriguez and Halo proceeded to separate case evaluation sessions. Both case evaluations yielded awards in HTC's favor, which the parties accepted. Judge O'Brien also entered an injunction against Rodriguez for a two-year period, prohibiting her from soliciting HTC clients and using confidential information gleaned through her HTC employment. Pursuant to the injunction, Judge O'Brien allowed HTC to subpoena records from Halo to ensure Rodriguez's compliance.

On September 20, 2012, HTC filed the current lawsuit against Halo.² Halo II was assigned to Judge Leo Bowman. HTC's complaint asserted that Rodriguez had violated her HTC employment agreement while in Halo's employ and that Halo knowingly encouraged and financially supported Rodriguez in soliciting HTC clients, using confidential information gathered from HTC. HTC accused Halo of making "a concentrated effort to improperly compete with . . . HTC by hiring Rodriguez, encouraging her to solicit . . . HTC's customers and allowing her to procure and utilize . . . HTC's proprietary information." HTC's claims for unfair competition and trade practices and intentional interference with commercial relations related to the placement of Sweet in the senior project manager position, and more generally referred to Rodriguez's solicitation of other clients. The general allegations outlined in the complaint largely mirrored those included in the final amended complaint filed in the Rodriguez suit.

Following the dismissals of the 2011 actions, Halo moved for summary disposition of the 2012 suit. Citing MCR 2.116(C)(7), Halo argued that Halo II was barred by the compulsory joinder rule, MCR 2.203(A), as well as the doctrines of res judicata and collateral estoppel. Halo averred that the current action "arises out of the same transactions and occurrences as the two previous cases and involves identical parties or their privies." Although HTC named other clients involved in Halo's alleged wrongdoing, Halo noted that HTC's more specific claims in

² The Halo II complaint was filed 15 days after the case evaluation was held in the Rodriguez lawsuit, but two weeks before an award was recommended by the case evaluator. The case evaluation was not conducted in Halo I until October 17, 2012. The parties were presumably conducting their final preparations in that matter when HTC filed Halo II.

Halo II regarded only the placement of Sweet, as had the claims raised in the earlier actions. As evidence that HTC was aware of the basis for its current claims in the earlier lawsuits, Halo noted the questions of HTC's counsel during the deposition of Halo's managing partner, Brad Waite. Specifically, HTC's counsel asked Waite to describe the "steps Halo had in place to ensure that Julie Rodriguez was not violating her contract with HTC" and "regarding fair practices in the industry." Halo accused HTC of splitting its claims into three separate actions "in an effort to forum shop."

HTC responded that it was not required to join the two earlier cases because they involved the breach of two separate contracts by two separate defendants. HTC further argued that its earlier suits against Rodriguez and Halo did not involve the same or similar issues as the current suit. According to HTC, the Rodriguez suit involved the breach of Rodriguez's employment contract, while Halo II pertained to "Halo's interference with commercial relationships with third parties, including Rodriguez and certain customers and prospective customers of HTC." The former sounded in breach of contract, HTC pointed out, the latter in tort.

HTC continued that dismissal on res judicata grounds was improper because Halo was not in privity with Rodriguez. Halo's interests were not so entwined with its employees that Rodriguez's defense in the earlier action could bar the current action, HTC insisted. Further, HTC contended, Halo's res judicata challenge should be deemed waived in light of Halo's concerted effort to prevent being named as a party defendant in the Rodriguez suit, vitiating HTC's ability to litigate these claims in unison.

At the summary disposition hearing, Halo asserted that HTC's counsel had admitted knowledge of the claims giving rise to the third case as of July 3, 2012, during the pendency of the first two actions. Despite this knowledge, Halo urged, HTC failed to seek amendment of its complaint in Halo I, deciding to instead pursue the addition of Halo as a defendant in the Rodriguez action. Allowing HTC to bring a new action against Halo when it failed to seek amendment in Halo I would violate the principles of res judicata and collateral estoppel, Halo argued, by permitting multiple and repetitive lawsuits revolving around the same issues.

HTC's counsel, on the other hand, stated that it only "began to get a hint that Halo was more involved than [it] had previously thought" in late June 2012, before filing its motion to amend its complaint in the Rodriguez action. Only later in discovery, HTC claimed, did it learn that Halo hired Rodriguez for the purpose of having her breach the employment agreement. Accordingly, HTC argued that it did not have knowledge of Halo's conduct in December 2011, when it filed the Rodriguez action, and learned the full scope of Halo's conduct too late to amend its complaint. The following exchange occurred:

The Court: Counsel, . . . are you suggesting that at the inception of either of the two cases that were pending before Judge Anderson and Judge O'Brien, that you didn't have an inkling that the reason this corporation had hired Ms. Rodriguez, out of all the other people they could have hired, is that she had intimate knowledge about your business, how you conducted it, and could be of value to them in that regard; are you suggesting . . . you didn't have a clue in that

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Plaintiff's Counsel: No . . . I'm not, Your Honor. And that's not my argument. . . . We had a thought. But you can't file a complaint based on a suspicion or an idea. That's why I asked the questions in the discovery. That's why we got to those issues in July and August in terms of the deposition. We wanted to see what was Julie Rodriguez doing there. What was . . . the idea of having her there. We explored that. But by . . . the end of the summer, . . . the two cases had already gone to case evaluation, and we had already tried to add them to the Rodriguez case.

Judge Bowman granted Halo's motion for summary disposition, ruling that res judicata applied and barred HTC's claims. The court concluded that the final orders issued in the Rodriguez and Halo I cases were "final decision[s] on the merits of all claims raised in the case." The court discerned that the current claims against Halo could have been raised in either the Rodriguez or Halo I action:

Upon review of the Rodriguez Case, this Court notes that it involved allegations that Rodriguez breached the Employment Agreement when she went to work for [Halo] and a request for injunctive relief, which the trial court granted through May 31, 2013. Upon review of [Halo I], this Court notes that it involved allegations that [Halo] breached a subcontractor agreement when it submitted Sweet as its candidate for placement with the State of Michigan and requested injunctive relief. Upon review of the current case, this Court finds that it also involves allegations that Rodriguez breached the Employment Agreement but it implies that defendant encouraged her to solicit and obtain business from [HTC's] customers and only mentions facts specific to the same violation alleged in the prior cases related to [the] State of Michigan.

Judge Bowman highlighted that HTC "knew at the time that it filed the prior cases that Rodriguez left its employment to go work for [Halo] and believed that she violated the Employment Agreement related to a placement with the State of Michigan." While HTC's current complaint made a broad allegation about Rodriguez's and Halo's conduct in relation to other HTC clients, "the only specifics it provides are the same ones provided with the prior cases." And the court in the Rodriguez case retained jurisdiction to ensure Rodriguez's compliance with the injunction, thereby protecting HTC through May 31, 2013.

Judge Bowman further determined that the privity between Halo and Rodriguez was sufficient to support dismissal based on the earlier Rodriguez action. In doing so, the court accepted Halo's arguments in support of such privity: the employer-employee relationship, the fact that Halo could be held vicariously liable for Rodriguez's actions, its interest in the outcome of the Rodriguez suit as it impacted Rodriguez's ability to function in her role at Halo, the impact of the permanent injunction against Rodriguez on her employment at Halo, and HTC's ability, granted during the earlier proceedings, to subpoena records from Halo to ensure Rodriguez's compliance with the court's injunction. This appeal followed.

II. LEGAL STANDARD

Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred “because of . . . prior judgment . . . or other disposition of the claim before commencement of the action.” We review de novo both a circuit court’s decision regarding a motion for summary disposition pursuant to MCR 2.116(C)(7) and questions of law, including the application of a legal doctrine such as res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Dextrom v Wexford Co*, 287 Mich App 406, 428-429; 789 NW2d 211 (2010).]

Adair v Michigan, 470 Mich 105, 121; 680 NW2d 386 (2004), citing *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999), provides the following parameters for the res judicata doctrine:

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. 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.^[3]

III. ANALYSIS

HTC contends that Judge Bowman should not have dismissed its claims in the current action because they could not have been resolved in the earlier actions and because Halo was not in privity with its employee, Rodriguez.⁴

³ It is undisputed that the Rodriguez and Halo I lawsuits were decided on the merits. Accordingly, we need not address that element in this appeal.

⁴ HTC incorrectly asserts that Judge Bowman dismissed the 2012 action based solely on the 2011 Rodriguez action. Judge Bowman expressly stated that the current claims could have been raised in *either* 2011 lawsuit. He discussed the privity element only in relation to the Rodriguez suit as such analysis was unnecessary in relation to Halo I.

Judge Bowman correctly determined that the claims raised in the 2012 action could have been raised and resolved in Halo I. Contrary to HTC's appellate arguments, preclusion on res judicata grounds is not based on a snapshot of the plaintiff's knowledge at the time the complaint is filed. To support dismissal on res judicata grounds, the proponent must establish that the claims could have been "resolved" in the initial action. *Adair*, 470 Mich at 121. A claim may be resolved in an action even if it is unknown at the time of filing the initial complaint. A plaintiff learning additional information during discovery may seek to amend its complaint and "[l]eave shall be freely given when justice so requires." MCR 2.118(A)(2).

The current claims arise out of the same transactions and events as the claims raised in Halo I. "Res judicata bars every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 123. In Michigan, the "same transaction" test governs whether claims are barred by res judicata principles. *Id.* at 124. "The 'transactional' test provides that 'the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.'" *Id.*, quoting *River Park, Inc v Highland Park*, 184 Ill 2d 290, 307-309; 703 NE2d 883 (1998).

"[T]he transactional approach is . . . pragmatic. Under this approach, a claim is viewed in 'factual terms' and considered 'coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; * * * and regardless of the variations in the evidence needed to support the theories or rights.'" [*Adair*, 470 Mich at 124, quoting *River Park*, 184 Ill 2d at 307-309.]

"Whether a factual grouping constitutes a 'transaction' for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in time, space, origin or motivation, [and] whether they form a convenient trial unit" *Adair*, 470 Mich at 125 (quotation marks and citation omitted).

Res judicata clearly precludes HTC's current allegation that Halo and Rodriguez colluded to place Sweet in the senior project manager position in violation of their contracts. Final judgments have been issued awarding HTC monetary and injunctive relief in relation to the Sweet incident. Both Rodriguez and Halo have remunerated HTC and are bound by judgment in that regard. HTC's claim in the current action merely attempts to clothe its past complaints in a new legal theory. See *id.* at 124.

Res judicata also bars HTC's accusation that Halo encouraged and assisted Rodriguez in violating her employment contract and by retaining confidential materials. These claims were discovered before Halo I reached final judgment, and could have been raised in that lawsuit. HTC moved to add Halo as a defendant in the Rodriguez action to assert a claim for injunctive relief based on these facts. Inexplicably, HTC elected against amending its Halo I complaint to raise these allegations against Halo. That choice now prevents HTC from filing a new suit predicated on these claims.

Finally, HTC alleged for the first time in the current suit that Halo hired Rodriguez with the intent that she bring to Halo confidential materials wrongfully taken from HTC, and for the

purpose of having Rodriguez use her inside knowledge to compete with HTC. We agree with Judge Bowman that HTC knew or should have known of this claim based on the facts available during the earlier proceedings and therefore could have brought this claim in Halo I. Notably, HTC's counsel acknowledged that HTC "had a thought" at the time it filed the original actions that Halo hired Rodriguez, at least in part, to obtain the value of her intimate knowledge of HTC's business. HTC has failed to explain why, employing reasonable diligence, this "thought" could not have been "fleshed out" during discovery and timely added its current claims. This is not a case where new facts or a change of circumstances emerged only *after* the prior action concluded, preventing the plaintiff from raising the claim in its initial or even amended complaints. Cf. *Labor Council, Michigan Fraternal Order of Police v Detroit*, 207 Mich App 606, 608; 525 NW2d 509 (1994) (holding that res judicata did not apply where there was a change in circumstance after an opinion resolving the prior action); *In re Pardee*, 190 Mich App 243, 249; 475 NW2d 870 (1991) (stating that res judicata is inapplicable "where new facts and changed circumstances alter the status quo"). Accordingly, we concur with Judge Bowman's determination that HTC's claims in the current suit could have been raised in HTC's 2011 lawsuit against Halo.

HTC also challenges Judge Bowman's conclusion that the current action involves the same parties or their privies as the Rodriguez lawsuit.

To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. The outer limit of the doctrine traditionally requires both a "substantial identity of interests" and a "working functional relationship" in which the interests of the nonparty are presented and protected by the party in the litigation. [*Adair*, 470 Mich at 122 (citations omitted).]

Examples of such parties in interest include "a principal to an agent, a master to a servant, or an indemnitor to an indemnitee," or someone who inherits or acquires the party's interest after judgment is rendered. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 13; 672 NW2d 351 (2003) (citation omitted).

However, Halo had no need to establish privity between itself and Rodriguez to invoke a res judicata defense. As discussed, HTC could have raised its claims in Halo I by seeking to amend its complaint in that case. Given HTC's ability to pursue its current claims in Halo I, we decline to address HTC's privity arguments.

We affirm.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher