STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JOHN MICHAEL JONES and
OUTBACK PROPERTY
MANAGEMENT, LLC,

Plaintiffs,

Case No. 2015-1987-CB

vs.

WESTMINSTER, LLC and
LEONARDO ROBERTS,

Defendants.
_____/

OPINION AND ORDER

Plaintiffs have moved for partial summary disposition pursuant to MCR 2.116(C)(10). Defendants have filed a response and request that the motion be denied.

I. Factual and Procedural History

Plaintiff John Michael Jones ("Plaintiff Jones") is a licensed realtor and broker in the State of Michigan. Plaintiff Jones is also a member and manager of Plaintiff Outback Property Management, LLC ("Plaintiff Outback"). On or about July 1, 2010, Plaintiff Jones and Defendants entered into a contract entitled "Global Release of All Claims" ("GRC") pursuant to which, *inter alia*, Defendants agreed not to institute any action against Plaintiffs or file any complaints with any governmental agency of professional boards. (See Defendants' Exhibit A.)

In 2013, Plaintiffs filed a lawsuit against Defendants in the Macomb County Circuit Court, case no. 2013-627-CK ("First Case"). In the First Case, Plaintiffs alleged that Defendants breached the terms of the GRC by initiating Michigan Department of

Licensing and Regulatory Affairs ("LARA") complaints against Plaintiff Outback. The First Case was ultimately resolved after the Court conducted an evidentiary hearing and entered an Order holding:

> The Court has determined that the LARA complaint filed by Defendants against Outback Property Management, LLC, necessitating a complaint to be filed against [Plaintiff Jones] which in so doing violating the [GRC]. Judgment shall enter in favor of the [Plaintiff Outback] in the amount of $15,618.95.

(*See* Defendants' Exhibit C.)

Plaintiff's judgment in connection with the First Case was subsequently satisfied. (*See* Defendants' Exhibit D.) In addition to granting Plaintiffs a judgment for the damages caused by Defendants' breach of the GRC, the Court entered an order requiring Defendants to "seek withdrawal of the [LARA] complaint, filed by them, against Plaintiff John Jones only, from the Michigan Department of Regulatory Affairs...". (*See* October 7, 2013 Order entered in the First Case.)

On December 20, 2015, Plaintiffs filed their amended complaint in this matter ("Complaint"). Among the various allegations within the Complaint, Plaintiffs allege that Defendants have not complied with the October 7, 2013 Order entered in the First Case, and that they have continued to suffer damages as a result of Defendants breach of the GRC. The Complaint contains several claims, including a claim for breach of contract based on Defendants alleged breaches of the GRC (Count II).

On March 15, 2016, Plaintiffs filed their instant motion for partial summary disposition in which they seek summary disposition of Count II. Defendants have since filed a response and request that the motion be denied. On April 4, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

III. Arguments and Analysis

In their motion, Plaintiffs contend that Defendants were previously found to have breached the GRC, and that collateral estoppel operates to bar Defendants from defending against Count II since that claim they only seeks to recover damages Plaintiffs have suffered since the First Case concluded.

In response, Defendants do not dispute that they cannot re-litigate whether they breached the GRC by filing the LARA complaint. Rather, Defendants contest whether Plaintiffs can file a separate action to recover damages they have allegedly suffered as a result of the past breach since the First Case was resolved. Specifically, Defendants assert that Plaintiffs' breach of contract claim is barred by res judicata.

"Res judicata bars relitigation of claims that are based on the same transaction or events as a prior suit." *Ditmore v. Michalik*, 244 Mich App 569, 576; 625 NW2d 462 (2001). In *Ditmore*, the Michigan Court of Appeals summarized the doctrine as follows:

> Res judicata relieves parties of the cost and vexation of multiple lawsuits, conserves judicial resources, and encourages reliance on adjudication. Res judicata applies when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first.

In this case, it is undisputed that the First Case was decided on the merits, that a final decision was entered, and that this matter and the First Case involve the exact same parties. Accordingly, the issue before the Court is whether the matter in this case, i.e. damages suffered since the First Case was resolved, was or could have been resolved in the first. *Id.* at 576.

"Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 160-163; 294 NW2d 165 (1980). Further, this Court's broad application of res judicata operates such that once a final order is entered the claim that is extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of transactions, out of which the claim arose. *Jones v State Farm Mutual Auto Ins Co*, 202 Mich App 393, 397; 509 NW2d 829 (1993), mod on other grounds, *Patterson v Kleiman*, 447 Mich 429; 526 NW2d 879 (1994). Moreover, "[r]es judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *TBCI, PC v. State Farm Mut Auto Ins Co*, 289 Mich App 39, 43; 795 NW2d 229 (2010).

In this case, the facts and evidence surrounding the underlying breach of the GRC are identical. The only difference between the claim in this matter and the breach of contract claim in the First Matter is that Plaintiffs now specifically seek a determination

that Defendants are also liable for the damages caused to Plaintiffs since the First Case was resolved as a result of the past breach. However, the Michigan Court of Appeals in *Fritz v Delfield Co*, unpublished opinion of the Court of Appeals, decided June 3, 2003 (Docket No. 238630) held that where a party could have sought a determination of the parties' rights under the contract, including a right to future damages, by filing a declaratory action, but they failed to do so, res judicata operates to bar that plaintiff from bring a second action to seek such a determination and recover damages. *Id.* at 4. Based upon this state's broad application of res judicata and the existence of Plaintiff's unexercised right to litigate and determine their right to future damages, the Court is satisfied that Count II of Plaintiff's complaint must be dismissed.

IV. Conclusion

Based on the foregoing, Plaintiff's motion for summary disposition of Count II of their complaint is DENIED. Further, Defendants' request for summary disposition of Count II pursuant to MCR 2.116(I)(2) is GRANTED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: MAY 25 2016

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge