

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

GLENN S. MORRIS; an individual; and MORRIS,
SCHNOOR & GREMEL PROPERTIES, INC., a
Michigan corporation,

Plaintiffs,

vs.

Case No. 13-10368-CBB

HON. CHRISTOPHER P. YATES

MORRIS, SCHNOOR & GREMEL, INC., n/k/a
Sav Camp, Inc., a Michigan corporation; NEW
YORK PRIVATE INSURANCE AGENCY,
LLC, d/b/a Great Lakes Risk Management, LLC,
a Michigan limited liability company; GH
INSURANCE AGENCY, LLC, d/b/a Great Lakes
Risk Management, LLC, a Michigan limited
liability company; and ROCKFORD INSURANCE
AGENCY, LLC, d/b/a Great Lakes Risk
Management, LLC, a Michigan limited liability
company,

Defendants.

OPINION AND ORDER DENYING DEFENDANTS' MOTION FOR
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7) AND (10)

When Plaintiff Glenn Morris and his former business partner, R. Judd Schnoor, were still on speaking terms, they set up a web of companies through which they ran an insurance business. And when litigation between the two men ensued, each one fully understood how to use those business entities to best advantage. After a court-imposed sale of the insurance business by Morris, Schnoor fell behind in his payments to Morris and then transferred every valuable asset from the insurance business, thereby depriving Morris of the ability to readily collect the overdue payments. Most of the insurance business's assets wound up with Defendant New York Private Insurance Agency, LLC

(“NYPIA”), so Morris and his fellow plaintiff, Morris, Schnoor & Gremel Properties, Inc. (“MSG Properties”), chased down the assets in protracted litigation that is described in a 59-page unpublished opinion from our Court of Appeals. See Morris v Schnoor, Nos 315006, 315007, 315702 & 315742 (Mich App May 29, 2014). The instant case constitutes the next generation of that litigation. Here, Plaintiffs Morris and MSG Properties have advanced claims for fraudulent transfer, civil conspiracy, and common-law fraud in their seemingly never-ending effort to obtain recompense for the financial wrongs done to them by Schnoor and those in league with him. The defendants have moved for summary disposition under MCR 2.116(C)(7) and (10) as to all of the claims in the complaint, but the Court concludes that those claims must be resolved on the merits. Accordingly, the parties’ legal version of the 100 Years’ War must continue.

I. Factual Background

The defendants have requested summary disposition pursuant to MCR 2.116(C)(7) and (10). “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” Maiden v Rozwood, 461 Mich 109, 119 (1999). “The contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant.” Id. In reviewing a motion for summary disposition under MCR 2.116(C)(10), in comparison, the 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. (citation omitted). Thus, the Court shall outline the factual background of this dispute by referring in the first instance to the allegations set forth in the complaint, and then making revisions based upon the evidence supplied by the competing parties.

Beginning in 2007, the insurance business of Plaintiff Morris and Judd Schnoor evolved into an umbrella organization known as Morris, Schnoor & Gremel, Inc. (“MSG”), a Grand Haven office known as GH Insurance Agency, LLC (“GH Insurance”), and a Rockford office known as Rockford Insurance Agency, LLC (“Rockford Insurance”). Initially, MSG interacted with GH Insurance and Rockford Insurance in a traditional parent-subsidary relationship, sharing assets and resources along the way. When NYPIA purchased the assets of MSG, NYPIA obtained the two subsidiaries, *i.e.*, GH Insurance and Rockford Insurance, and continued the traditional parent-subsidary relationship with both entities. But the world changed on December 27, 2012, when the Court rendered decisions that awarded damages of more than a million dollars to Plaintiffs Morris and MSG Properties and against NYPIA, MSG, and others. From that point forward, the people in charge of NYPIA had more than a million reasons to keep assets away from those two entities subject to judgments, and in the hands of the judgment-free subsidiaries, *i.e.*, GH Insurance and Rockford Insurance.

In due course, Plaintiffs Morris and MSG Properties completed the process of obtaining their judgments against NYPIA and MSG, so Morris and MSG Properties then undertook efforts to collect upon the sizable judgments. Realizing that a successful insurance agency receives periodic payments from insurance companies for the policies the agency sells, the plaintiffs issued garnishments for the collection of those periodic payments destined for NYPIA or its predecessor, MSG. But Morris and MSG Properties discovered that the insurance companies made most of the periodic payments to GH Insurance or Rockford Insurance, not to NYPIA and MSG. To make matters worse for the plaintiffs, they learned that GH Insurance and Rockford Insurance were keeping the periodic payments, rather than passing them on to their parent company. As a result, Morris and MSG Properties were stymied in their effort to collect on their judgments through the garnishment process.

On October 31, 2013, Plaintiffs Morris and MSG Properties filed this lawsuit in an attempt to break down the walls between the judgment debtors, *i.e.*, NYPIA and MSG, and their subsidiaries that receive the payments from insurance companies, *i.e.*, GH Insurance and Rockford Insurance. In essence, the plaintiffs contend that the judgment debtors are fraudulently using their subsidiaries to shield from collection the streams of payments that rightfully should be swept up by garnishments. The defendants – parents and subsidiaries alike – have responded by seeking summary disposition pursuant to MCR 2.116(C)(7) and (10) on the theory that the doctrine of *res judicata* precludes the plaintiffs from proceeding on the claims set forth in their complaint.¹

II. Legal Analysis

In moving for summary disposition, the defendants have cited MCR 2.116(C)(7) and (10). When reviewing a motion under MCR 2.116(C)(7), the Court “must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties.” RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). If the Court finds that no factual dispute exists, whether a “claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide.” See id. “If a factual dispute exists, however, summary disposition is not appropriate.” Id. When reviewing a motion pursuant to MCR 2.116(C)(10), the Court must “consider ‘the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.’” See Ramin v Allstate Ins Co, 495 Mich 316, 325 (2014). The Court must grant summary disposition “if there is no genuine issue

¹ The moving defendants do not include Defendant MSG. That is, only NYPIA, Rockford Insurance, and GH Insurance have joined the motion for summary disposition. Nevertheless, MSG would almost certainly be entitled to the same relief available to the other defendants, so the Court has chosen to refer to all four of the defendants collectively.

regarding any material fact and the moving party is entitled to judgment as a matter of law.” Id. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” West v General Motors Corp, 469 Mich 177, 183 (2003). Applying these standards, the Court must decide whether the defendants have established a right to summary disposition.

The defendants insist that the “claims alleged in this action arise out of the same transaction or occurrence which was the subject of the two previously adjudicated actions,” so those claims are all barred by *res judicata*, which ““was judicially created in order to “relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.””” Pierson Sand and Gravel, Inc v Keeler Brass Co, 460 Mich 372, 380 (1999). In simple terms, *res judicata* “bars a subsequent action between the same parties when the evidence or essential facts are identical.” Dart v Dart, 460 Mich 573, 586 (1999). More precisely, “res judicata bars a subsequent action when ‘(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.”” Estes v Titus, 481 Mich 573, 585 (2008). Here, the defendants’ argument fails on the second element.

Plaintiffs Morris and MSG Properties assert that the defendants began using the subsidiaries, Defendants GH Insurance and Rockford Insurance, in a corporate shell game *after* the Court issued its rulings on December 27, 2012, and rendered judgments against Defendants NYPIA and MSG in the underlying litigation. In contrast, the underlying litigation involved claims about the transfer of assets from Judd Schnoor’s insurance business for the purpose of siphoning those assets from MSG to NYPIA in 2008 – four years before the conduct in the instant case began. Although GH Insurance

and Rockford Insurance came into existence by 2008, they played no role in the fraudulent transfers, civil conspiracy, and common-law fraud until after the Court entered judgments against NYPIA and MSG in the underlying litigation. Then, and only then, did NYPIA begin to use its subsidiaries, *i.e.*, GH Insurance and Rockford Insurance, to shield its assets from the collection efforts of Morris and MSG Properties. Consequently, the claims in the instant case rest upon a factual predicate entirely separate from the factual predicate for the claims in the underlying litigation.

Our Supreme 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.” See Adair v State of Michigan, 470 Mich 105, 121 (2004). Here, however, Plaintiffs Morris and MSG Properties could not have advanced their instant claims when they were in the maw of the underlying litigation. The “transaction” at issue in the underlying litigation involved the 2008 transfer of assets from MSG to NYPIA. In contrast, the “transaction” at issue in the instant case involves ongoing efforts to shift assets and revenue streams from NYPIA as a parent company to its subsidiaries, *i.e.*, GH Insurance and Rockford Insurance. This distinction renders the doctrine of *res judicata* inapplicable here. As our Supreme Court put it: “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[.]” Adair, 470 Mich at 125 (emphasis omitted). The Court’s experience with the underlying litigation leads ineluctably to the conclusion that the claims in the instant case are not related in time, origin, or motivation to the claims in the underlying litigation. Therefore, the Court must deny the defendants’ motion for summary disposition under MCR 2.116(C)(7) and (10), at least insofar as that motion depends upon invocation of the doctrine of *res judicata*.

The defendants suggest that the Court must stay its hand by virtue of MCR 7.208(A), which forbids a trial court to set aside or amend a judgment while the case is on appeal. First and foremost, the Court does not intend to take any action in the instant case that would modify judgments entered in the underlying litigation. Second, our Court of Appeals has already affirmed the judgments in the underlying litigation *in toto*, see Morris v Schnoor, Nos 315006, 315007, 315702 & 315742 (Mich App May 29, 2014), so the Court cannot possibly interfere with the decision-making process of our Court of Appeals at this juncture.² Finally, even while the underlying cases are on appeal, the Court retains authority to oversee post-judgment collection efforts. See MCR 7.209(A)(1) (“[A]n appeal does not stay the effect or enforceability of a judgment or order of a trial court unless the trial court or the Court of Appeals otherwise orders.”). Thus, to the extent that the instant case involves post-judgment collection efforts, the Court may proceed.

III. Conclusion

For all of the reasons stated in this opinion, the Court must deny the defendants’ motion for summary disposition under MCR 2.116(C)(7) and (10). Because the doctrine of *res judicata* does not bar the claims at issue here, those claims must be resolved on the merits.

IT IS SO ORDERED.

Dated: December 30, 2014



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

² The Court recognizes that the various appeals are still awaiting action in our Supreme Court on applications for leave to appeal from the decision of our Court of Appeals.