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

ANN ARBOR SUPER SOILS INC., d/b/a
Bateson Company,

Plaintiff,

vs.

GRAND EQUIPMENT COMPANY, LLC,

Defendant.
_____/

Case No. 15-09169-NZB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(7)

This dispute about a bulldozer jumped the tracks in the 62-A District Court, which led to the *res judicata* fight now before the Court. What began as a small-dollar collection case by Defendant Grand Equipment Company, LLC [1] ("GEC") in 62-A District Court morphed into a large-dollar case when Plaintiff Ann Arbor Super Soils, Inc. ("Super Soils") presented a counterclaim for much more than the district court's jurisdictional limit. But Super Soils failed to follow the procedure set forth in MCR 4.002 to transfer the action from the 62-A District Court to the Kent County Circuit Court, so Super Soils wound up filing the instant action in circuit court, then unsuccessfully defending the original collection action in district court, and then coming back to the circuit court for relief on what began as its counterclaim in district court. The Court must grant summary disposition to GEC under MCR 2.116(C)(7) because the instant case is plainly barred by the doctrine of *res judicata*, so Super Soils has no right to proceed on its claim against GEC in the Kent County Circuit Court.

[1] Defendant GEC has changed its name to J&M Capital, LLC, but the complaint does not so identify the defendant and the controlling documents in the case all refer to GEC, so the Court shall simply refer to the defendant as GEC.

Defendant GEC has cited MCR 2.116(C)(7) and (10) in its motion for summary disposition. Both rules permit the Court to consider the entire record, rather than just the pleadings. See Maiden v Rozwood, 461 Mich 109, 119-120 (1999). Summary disposition is appropriate pursuant to MCR 2.116(C)(7) if a claim is barred by *res judicata*, see Beyer v Verizon North, Inc, 270 Mich App 424, 435-436 (2006), and "there is no factual dispute[.]" RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 687 (2008). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). Such 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." Id. Applying these standards, the Court shall decide whether GEC is entitled to summary disposition.

In 2013, Plaintiff Super Soils hired Defendant GEC to repair a bulldozer. When Super Soils refused to pay for those repairs, GEC filed suit in the 62-A District Court requesting the outstanding balance of $16,674.20 under the parties' contract. But Super Soils filed a counterclaim in the district court, demanding $147,446 for "the loss of use of the" bulldozer and "an ongoing loss of $11,342.00 per month until the defective repairs are corrected." On September 30, 2015, 62-A District Judge Pablo Cortes denied Super Soils's request to transfer the entire dispute to the Kent County Circuit Court because Super Soils had failed to make a proper request under MCR 4.002. Undaunted, Super Soils filed a complaint in this Court setting forth the very same claim as its counterclaim in the 62-A District Court. Super Soils also moved to consolidate the new circuit court action with the pending case in the 62-A District Court, but the Court denied that motion on October 16, 2015, based upon the impending trial in district court.

On January 11, 2016, after a bench trial in the 62-A District Court, Judge Steven M. Timmers rendered a verdict of $14,861.25 in favor of Defendant GEC and against Plaintiff Super Soils. That verdict ultimately was reduced to an "Order of Judgment" entered in the district court in January of 2016. After the district court case ended, Super Soils returned to the Kent County Circuit Court to seek redress on the cause of action that began as a counterclaim in the district court. Curiously, that claim demands damages of nearly $200,000 for loss of use of the bulldozer, but the complaint in the instant case does not identify the legal theory supporting that claim. In any event, GEC has moved for summary disposition, arguing that the claim – whatever it may be – is barred by *res judicata*.

Plaintiff Super Soils's assertion of its claim in the 62-A District Court coupled with its failure to correctly transfer the action from district court to the Kent County Circuit Court left that claim in district court,[2] where it was subsumed in the litigation that ended in a verdict on January 11, 2016, and a judgment entered later that month. The doctrine of *res judicata* fits this situation like a glove. Simply put, *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 very same parties

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[2] Even Plaintiff Super Soils's inability to correctly transfer the case to the circuit court under MCR 4.002 did not entirely foreclose Super Soils from pursuing its counterclaim in the district court. Super Soils could have demanded damages in an amount within the district court's jurisdiction, see MCL 600.8301(1); Hodge v State Farm Mutual Auto Ins Co, No 149043, slip op at 1-2 (Mich June 6, 2016) ("the allegations in the complaint establish the amount in controversy" for district-court jurisdiction), or Super Soils could have sought a setoff or recoupment for its consequential damages. See McCoig Materials, LLC v Galui Construction, Inc, 295 Mich App 684, 695 (2012). Therefore, the Court cannot conclude that Super Soils's error deprived the 62-A District Court of the ability to grant relief on Super Soils's counterclaim.

involved in the instant case contested the earlier case in the 62-A District Court, where the very same claim asserted in the instant case was advanced as a counterclaim. The district-court record leaves no doubt whatsoever that the action there was decided on the merits. Accordingly, *res judicata* bars Super Soils from pursuing its claim in the instant case in the Kent County Circuit Court or anywhere else, so the Court must grant GEC's motion for summary disposition under MCR 2.116(C)(7).

IT IS SO ORDERED.

This is a final order that resolves the last pending claim and closes the case.

Dated: August 16, 2016

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