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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1117**

Robert F. Holmgren d/b/a R. W. Docks and Slips,
Appellant,

vs.

Chicago Title Insurance Company,
Respondent.

**Filed June 16, 2009
Affirmed
Minge, Judge**

Ramsey County District Court
File No. 62-CV-07-2184

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Considered and decided by Stauber, Presiding Judge; Minge, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges the district court's dismissal of his action for failure to state a claim for which relief can be granted. Because the various claims are barred by collateral estoppel, res judicata, or the statute of limitations, we affirm.

FACTS

This action is a continuation of an ongoing, increasingly spirited dispute between appellant Robert F. Holmgren d/b/a R.W. Docks and Slips (Docks) and respondent Chicago Title Insurance Company over title-insurance coverage for a 272-unit boat-slip/boat-dock condominium development on Lake Superior at Bayfield, Wisconsin. In part, the troubled history of this controversy is caused by evolving positions taken by the state of Wisconsin concerning such dock developments in its public waters. In 2001, this court considered an appeal of litigation initiated in May 2000 in Hennepin County District Court. *R.W. Docks & Slips v. Chicago Title Ins. Co.*, No. C3-014-413, 2001 WL 856431, at *1 (Minn. App. July 31, 2001). The appeal now before us is a separate action based on Docks' amended complaint dated January 25, 2008, which was filed and heard in Ramsey County District Court. In this appeal we are asked to determine whether the causes of action stated in the 2008 amended complaint are barred by collateral estoppel, res judicata, the statute of limitations, or mootness.

Because the underlying facts of this controversy are set forth in our earlier opinion, we do not repeat them in this opinion. Matters that arose after the record in that case was closed or are otherwise new or important to this decision will be set forth in the course of our analysis.

DECISION

I.

The basic issue is whether the district court erred in dismissing Docks' case for failure to state a claim for which relief can be granted. Appellate review of a case

dismissed for failure to state a claim on which relief may be granted is limited to whether the complaint sets forth a legally sufficient claim for relief. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). This court reviews a claim's legal sufficiency de novo, accepting the facts of the complaint as true and construing all reasonable inferences in favor of the nonmoving party. *Id.* If it is clear that no relief can be granted under facts that can be proved consistent with the allegations, dismissal will be affirmed. *Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 454 (Minn. 2006).

Breach of Contract

The first count in the 2008 action makes a claim for relief under a breach-of-contract theory. Because Docks previously litigated a breach-of-contract claim in its 2000 Hennepin County action, the issue is whether the district court was correct in determining that Docks' claim for relief under a breach-of-contract theory was barred by res judicata or collateral estoppel.

Res judicata is a finality doctrine that mandates that there be an end to litigation and requires that parties "assert all alternative theories of recovery in the initial action." *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 482 N.W.2d 771, 773-74 (Minn. 1992). Under the doctrine of res judicata, a subsequent claim is barred when

- (1) the earlier claim involved the same set of factual circumstances;
- (2) the earlier claim involved the same parties or their privies;
- (3) there was a final judgment on the merits;
- (4) the estopped party had a full and fair opportunity to litigate the matter.

Hauschildt v. Beckingham, 686 N.W.2d 829, 840 (Minn. 2004). In analyzing whether a claim is barred, res judicata analysis focuses on whether the subsequent claim arises out

of the same set of factual circumstances as the earlier claim, and “whether the same evidence will sustain both actions.” *Id.* at 840-41 (quotation omitted).

Collateral estoppel is similar to *res judicata*, but, in contrast, collateral estoppel applies to specific legal issues. *Hauschildt*, 686 N.W.2d at 837. For collateral estoppel to apply

- 1) the issue must be identical to one in a prior adjudication;
- 2) there was a final judgment on the merits; 3) the estopped party was a party or was in privity with a party to the prior adjudication; and 4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Care Inst., Inc.-Roseville v. County of Ramsey, 612 N.W.2d 443, 448 (Minn. 2000).

The lawsuit that Docks initiated in 2000 in Hennepin County included a breach-of-contract claim alleging that Chicago Title, under the terms of the title-insurance policy, was obligated to defend Docks against the alleged challenge to Docks’ title by the state of Wisconsin, and that Chicago Title wrongfully refused to do so. *R.W. Docks & Slips*, 2001 WL 856431, at *2. The breach-of-contract count in Docks’ January 25, 2008 amended complaint claims relief by arguing that Chicago Title breached its duty under the insurance policy by failing to defend Docks from Wisconsin’s attack on Docks’ title to 71 of the boat slips. Although Docks alleges that it submitted a new claim to Chicago Title in 2004 and that Chicago Title’s denial of the 2004 claim gave rise to appellant’s current lawsuit, this claim is based on the same title-insurance policy and raises the same breach-of-contract issues litigated between Docks and Chicago Title in the Hennepin County action. *Id.*

Docks further argues that this court’s 2001 decision has been overruled by the Wisconsin courts, and therefore should have no res judicata or collateral estoppel effect. We disagree. In 2001, this court held specifically that, if there was a challenge to Docks’ title, an unambiguous exclusion in the policy applied. *Id.* The policy exceptions included “[r]ights of the public in any submerged portions of the subject premises lying below the ordinary high-water mark of Lake Superior” and

[p]ublic rights of the United States, . . . Wisconsin, or any of their agencies . . . to any portion of the subject premises, constituting the bed or the waters of Lake Superior or the banks, shores or dock lines, wharves, piers, protection walls, bulkheads or other structures

Id. at *3. Our earlier ruling on the application and reach of this policy provision is the rule of the case. *Id.* Because Docks’ breach-of-contract count seeks relief based on an issue and claim identical to Docks’ previous claim for relief and is between the same parties, and because our earlier decision was decided on the merits, both the rules of collateral estoppel and res judicata bar this count of the present litigation.

Breach of Good Faith

The second count in Docks’ 2008 amended complaint alleges that Chicago Title breached the implied covenant of good faith and fair dealing owed to appellant under the title-insurance policy. The primary thrust of this count is that Chicago Title has been aware since 1994 or 1995 that the state of Wisconsin, through the Wisconsin Department of Natural Resources (WDNR) and the Wisconsin Attorney General, proscribed ownership of dock condominiums as a violation of the state’s public trust doctrine but failed to disclose this information and that this failure to disclose, together with the

continuing refusal to honor claims on the insurance policy or to defend Docks' interests, constitutes actionable bad faith. Like Docks' breach-of-contract claim, Docks' breach-of-good-faith claim involves the same alleged conduct complained of in the 2000 suit. Indeed, the pleadings in the current lawsuit disclose that Docks itself was aware of the Wisconsin position in the mid-1990s and even notified Chicago Title of Wisconsin's position in that timeframe. Because Docks' breach-of-good-faith claim seeks relief based on the same conduct as Docks' previous claim for relief, the previous litigation involved the same parties, there was a judgment on the merits, and Docks' own pleadings disclose that this was not a new matter, we conclude that the district court did not err in determining that this claim was barred by the doctrine of res judicata.

II.

The second issue is whether this court should address the fraudulent-concealment and fraud-on-the-court claims as separate causes of action even though they were not presented as separate causes of action in the 2008 amended complaint. The amended complaint only alleges breach-of-contract and breach-of-good-faith counts. On appeal, Docks argues that the numerous supporting arguments for the breach-of-good-faith count constitute separate causes of action that are adequate, independent bases for granting him relief. The rules of civil procedure require that a pleading must put the opposing party on notice by "contain[ing] a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. On a motion for judgment on the pleadings, this court construes a complaint liberally. *Ryan v. Lodermeier*, 387 N.W.2d 652, 653 (Minn. App. 1986). Because we

construe complaints liberally, we will review Docks' fraudulent-concealment and fraud-on-the-court arguments as independent claims for relief.¹

Fraudulent Concealment

Docks' claim of fraudulent concealment alleges that Chicago Title fraudulently concealed the position of WDNR and the Wisconsin Attorney General's office that marina condominiums on public waters were not permitted because of the public trust doctrine. Docks' complaint alleged that Docks informed Chicago Title in 1995 that the ownership of their boat slip condominium was in violation of the public trust doctrine and that Docks faxed Chicago Title a letter from WDNR indicating the department's position that the boat slip condominium was in violation of the public trust doctrine. Docks' complaint clearly acknowledges that Chicago Title was made aware by Docks of WDNR's position regarding dock condominiums as early as 1995. Parallel allegations were made about informing Chicago Title about the position of the Wisconsin Attorney General. Because the record from the earlier litigation discloses that Docks had an opportunity to litigate this issue in 2000, we conclude that the fraudulent-concealment claim was without merit on its face. In fact, this was a major premise of the 2000 litigation.²

¹ We acknowledge Docks' assertions regarding other matters. However, even under the minimal notice-pleading requirements, Docks' complaint does not contain a short and plain statement claiming relief under an unjust-enrichment theory. Further, Docks' additional arguments that Chicago Title sought unconstitutional legislation and that Chicago Title failed to respond to Docks' offer to resolve the litigation do not present a valid cause of action, and we do not address these arguments as separate claims for relief.

² Both Minnesota and Wisconsin have six-year statutes of limitation for breach-of-insurance-contract claims. Minn. Stat. § 541.05, subd. 1(1) (2008); Wisc. Stat. § 893.43

Fraud Upon the Court

Docks' claims of fraud upon the court allege that Chicago Title made fraudulent misrepresentations to the district and appellate courts during the 2000 litigation. Specifically, Docks alleges that Chicago Title fraudulently represented to the court that Docks was only prohibited by WDNR from dredging the undeveloped boat slips and Docks' title to the other boat slips was not directly challenged.

A party may seek relief from a judgment based on fraud or misrepresentation by bringing a motion under Rule 60.02 or a separate proceeding under Minn. Stat. § 548.14 (2008). *See* Minn. R. Civ. P. 60.02 (imposing a one-year limit on motions to relieve a party from a judgment based on fraud); Minn. Stat. § 548.14 (2008) (“Any judgment obtained in a court of record by . . . any fraudulent . . . representation of the prevailing party, may be set aside in an action . . . in the same judicial district within three years after the discovery by the aggrieved party of such perjury or fraud.”). Under both rule 60.02 and section 548.14, Docks' challenge to the judgment is barred by the limitations periods.

The time limits within which a judgment may be set aside for after-discovered fraud upon the court are greater than those for ordinary fraud.³ *See Maranda v. Maranda*,

(2008). “The limitations period begins to run when an insured has an identifiable claim against the insurer.” *Amdahl v. Stonewall Ins. Co.*, 484 N.W.2d 811, 813 (Minn. App. 1992), *review denied* (Minn. July 16, 1992). Because the amended complaint indicates that Docks was aware of this position in 2000, the current action, which is based on an initial complaint served in May 2007, is also barred by the statute of limitations.

³ There is a distinction between judgments based on ordinary fraud or misrepresentations and “fraud on the court.” *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989). While our supreme court has explicitly refused to formally define “fraud on the court,”

449 N.W.2d 158, 166 (Minn. 1989) (stating that the six-year delay in seeking to reopen the judgment in that case “probably reaches the outer limits of reasonableness” regarding when a motion to reopen for fraud on the court); *see also* Minn. R. Civ. P. 60.02 (placing no specific limit on when motions to reopen for fraud on the court can be made). However, in 2001, this court held that, because Chicago Title was entitled to rely on the unambiguous exclusion in the policy, Docks’ claim would have failed *even if* the court accepted Docks’ assertion that the state of Wisconsin and WDNR’s answer challenged title to the condominiums. *R.W. Docks & Slips*, 2001 WL 856431, at *3. Therefore, even if Chicago Title did misrepresent WDNR’s challenge to Docks’ title, Docks’ claim still failed on alternative grounds in the earlier litigation, and the alleged misrepresentation would have had no effect on the ultimate decision of this court in 2001. Regardless, we note that, in the 1990s, appellant was aware of the position of WDNR. Appellant not only brought this position to the attention of Chicago Title, but also to the attention of the Hennepin County District Court in the 2000 litigation. Thus, on its face, this claim of fraud on the court is not meritorious. We conclude that the district court did not err in determining that Docks failed to state a claim for which relief can be granted on these grounds.

fraud on the court has been characterized as “a scheme to interfere with the judicial machinery performing the task of impartial adjudication, as by preventing the opposing party from fairly presenting [their] case” *Id.* (quoting *Pfizer, Inc. v. Int’l Rectifier Corp.*, 538 F.2d 180, 195 (8th Cir. 1976)). An example of such fraud is when “a party intentionally misleads or deceives the court as to the identity of a litigant.” *Halloran v. Blue & White Liberty Cab Co.*, 253 Minn. 436, 443, 92 N.W.2d 794, 798 (1958). In contrast, the “mere failure to disclose to an adversary, or the court, matters which would defeat a party’s claim or defense is not such extrinsic fraud as will justify or require a vacation of the judgment.” *Id.* at 442-43, 92 N.W.2d at 798.

III.

The third issue is whether the district court erred in dismissing the 2008 amended complaint in light of appellant's pending discovery requests. A district court's denial of a request for a continuance in order to conduct discovery is reviewed under an abuse-of-discretion standard. *Cherne Contracting Corp. v. Wausau Ins. Cos.*, 572 N.W.2d 339, 346 (Minn. App. 1997), *review denied* (Minn. Feb. 19, 1998). The Minnesota Rules of Civil Procedure recognize that necessary discovery may delay consideration of a motion for summary judgment in limited circumstances as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present, by affidavit, facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Minn. R. Civ. P. 56.06. This rule only applies to a motion for summary judgment, and not for a dismissal based on the pleadings. *See generally* Minn. R. Civ. P. 56.⁴ Because the district court dismissed the complaint for failure to state a claim for which relief can be granted, Rule 56.06 does not apply, and Docks was not entitled to discovery.

⁴ Even if this court were to determine that this judgment was the equivalent of a summary judgment, the rule still requires that Docks submit an affidavit stating the reasons it cannot demonstrate facts essential to Docks' effort to defeat summary judgment. Docks failed to submit such an affidavit.

Because we have determined that the district court properly dismissed the action on the bases already considered, we do not reach the mootness and statute of limitations issues raised by the parties.

Affirmed.

Dated: