STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0227

William Rydrych,
Appellant,

vs.

GK Cab Co., Inc., et al.,
Respondents.

Filed November 12, 2013
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge

Hennepin County District Court
File No. 27-CV-12-13236

William Rydrych, Eagan, Minnesota (pro se appellant)

Scott J. Strouts, Minneapolis, Minnesota (attorney pro se and for respondents)

Considered and decided by Smith, Presiding Judge; Worke, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant challenges the district court's grant of summary judgment dismissing his claims against respondents based on application of the doctrine of res judicata. Because some of appellant's purported claims are barred by res judicata and some are not, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

This appeal arises from the district court's summary dismissal of appellant William Rydrych's third lawsuit arising from his claims against respondent Scott Strouts. Because the district court relied upon the doctrine of res judicata in summarily dismissing this third lawsuit, a detailed recitation of what has gone before is in order.

First Lawsuit

In 2006, Rydrych sued Strouts and obtained a personal judgment against Strouts. At that time, Strouts was the sole shareholder of respondent GK Cab Co., Inc. (GK Cab) and respondent Spike Holding Corp., Inc. (Spike) (collectively the cab companies). Strouts owned 3,000 shares in each corporation. After his successful lawsuit against Strouts, Rydrych levied on Strouts's stock in the cab companies on July 18, 2008. On October 8, 2008, two days before the sheriff's sale of the corporate shares, GK Cab and Spike each issued 20,000 new shares, which respondent Blue & White Service Corp. of Minnesota (Blue & White) purchased for cash. Blue & White appointed Strouts as its representative and proxy in voting the new shares for all purposes related to the election of directors, officers, and running the operations of the cab companies.

The sheriff's sale of the levied-upon shares took place as scheduled on October 10, 2008, and Rydrych purchased Strouts's 3,000 shares in both cab companies. Rydrych expected to become the sole owner of each entity as a result of the purchase of those shares. However, due to the dilution of his shares resulting from Blue & White's purchase of the newly issued shares, Rydrych became a 13% shareholder in each entity, while Blue & White became an 87% shareholder in each corporation. Rydrych first

learned of his diluted ownership interest on October 21, 2008, after making a demand to see the cab companies' corporate records. In response, Rydrych brought a postjudgment motion in his original lawsuit against Strouts, attempting to pierce the corporate veils of the cab companies and claiming that the October 8, 2008 transaction was a fraudulent transfer. The motion was denied. Rydrych continued attempting to enforce his unsatisfied judgment.

Second Lawsuit

On July 8, 2010, Rydrych sued the cab companies and Blue & White, alleging trespass upon chattels, conversion of chattels, prejudicial treatment of a shareholder, and breach of fiduciary duty. The district court summarily dismissed the complaint pursuant to Minn. R. Civ. P. 56 on motion of the defendants, and Rydrych appealed to this court. We held that Rydrych had no standing to challenge the October 8, 2008 stock-issuance transaction because he was not a shareholder at the time. *Rydrych v. GK Cab Co., Inc.*, No0. A11-0471, 2011 WL 5829337, at *3 (Minn. App. Nov. 21, 2011). We also held that Rydrych's claims of prejudicial treatment of a shareholder and breach of fiduciary duty related to the time period after the levy but before the sheriff's sale failed for the same reason. *Id.* at *7. Our decision on appeal made evident that Rydrych had no cause of action for the cab companies' activities that occurred before October 10, 2008, the date on which Rydrych became a minority shareholder.

In the second lawsuit, Rydrych also brought claims of prejudicial treatment of a shareholder and breach of fiduciary duty for the time period after the sheriff's sale. *Id.* He made a number of factual allegations in support of his claims, two of which are

relevant to this appeal. First, he challenged respondents' "failure to disclose approval of a write-off of a shareholder loan [from the cab companies] to Mr. Strouts that resulted in reduction of corporate assets" (loan write-off issue). *Id.* Second, he challenged respondents' "failure to notify appellant of shareholder meetings and failure to provide detailed minutes for those meetings" (shareholder-meetings issue). *Id.*

The district court made no findings regarding the loan write-off issue. On appeal, we deemed Rydrych's claims derivative, holding that those claims were properly dismissed for Rydrych's failure to comply with Minn. R. Civ. P. 23.09. *Id.* at *8.[1] Regarding the shareholder-meetings issue, we concluded that, "even if failure to receive notice of [one] annual shareholder meeting is unfairly prejudicial, it would not warrant the extreme remedy of a buyout." *Id.*

Third Lawsuit

After we affirmed the district court's dismissal of the second lawsuit, Rydrych commenced the present lawsuit against the cab companies, Blue & White, and Strouts, alleging several additional instances where respondents failed to observe Rydrych's minority shareholder rights. First, Rydrych alleged that he made several demands for corporate records that were denied in whole or in part.[2] Second, he claimed that shareholder meetings have continued to be held without proper notice, or not held at all.[3]

[1] A derivative claim must be brought on behalf of the corporation and cannot be brought unless the corporation has failed to bring an action to enforce its rights. Minn. R. Civ. P. 23.09.

[2] Demands were allegedly made on April 15, 2010, February 10, 2011, and April 2, 2012.

[3] The alleged meetings are claimed to have occurred on December 31, 2009 (fiscal 2008) and December 31, 2010 (fiscal 2009). Rydrych also alleged in his complaint that no

It is unclear from the record whether Rydrych alleges that additional instances of misconduct occurred since the complaint was filed. Rydrych's allegations are similar to the one instance of the shareholder-meetings issue raised in his second lawsuit, but they occurred after the filing of that lawsuit.

So far as we can tell, and the complaint and the record below are not entirely clear,[4] Rydrych's pro se complaint sets forth counts of (1) prejudicial treatment of a shareholder, and (2) breach of fiduciary duty. In his prayer for relief, Rydrych seeks three alternative remedies: (1) ordering the corporate respondents to purchase his shares in GK Cab and Spike at their present value under Minn. Stat. §§ 302A.467, .751 (2012); (2) ordering that GK Cab and Spike purchase his shares at pre-loan-cancellation values, by reason of his not having received notice of the proposed loan write-off under Minn. Stat. § 302A.473 (2012); or (3) ordering that respondents restore the same cancelled loan to the corporate accounts of GK Cab and Spike. In response, respondents raised 13 affirmative defenses and two counterclaims, and brought a motion to classify Rydrych as a frivolous litigant. The district court issued an order directing the entry of summary judgment in favor of respondents on all claims based on the affirmative defense of res judicata but declined to find Rydrych's claims to be frivolous. This appeal followed.

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meeting was held for fiscal '10, despite being required by the bylaws to be held by February 29, 2012.

[4] This lack of clarity is not the fault of the district court. Rydrych is pro se and his pleadings, while adequate under applicable court rules, are not ideal.

D E C I S I O N

A motion for summary judgment is granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010); *see also Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) (stating that decisions regarding the application of res judicata are reviewed de novo). Additionally, "the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). However, "the party resisting summary judgment must do more than rest on mere averments." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997).

The district court dismissed all of Rydrych's claims based on application of the doctrine of res judicata.[5] All three of Rydrych's lawsuits involving Strouts and the various corporations arise from the original indebtedness of Strouts, which was reduced

[5] We limit our discussion to the application of res judicata as claim preclusion. "Res judicata" is sometimes used loosely to refer to the related doctrine of collateral estoppel. *See Hauschildt*, 686 N.W.2d at 837 ("Although the terms are sometimes used interchangeably, each doctrine is distinct in its effect."). The district court based its decision solely on res judicata, or claim preclusion.

to a judgment that remains unsatisfied.[6] The October 8, 2008 share issuance by GK Cab and Spike has been, to some extent, an issue between the parties in all three suits.[7] But not all claims involving the same parties and some of the same facts as a prior suit are precluded by res judicata.

"Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt*, 686 N.W.2d at 840. Under the doctrine, a party is precluded from raising a claim that was, or could have been, raised in an earlier action. *Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 239 (Minn. 2007). The doctrine applies if "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). All four elements must be met for res judicata to bar an action. *Hauschildt*, 686 N.W.2d at 840. Traditionally, a plaintiff is "required to assert all alternative theories of recovery in the initial action." *Dorso Trailer Sales, Inc. v. Am. Body & Trailer, Inc.*, 482 N.W.2d 771, 774 (Minn. 1992).

Only the first element is in dispute in this appeal. The second lawsuit involved these same parties, resulted in a final judgment, and was fully litigated. The question

[6] Although the record is unclear, it appears that a partial satisfaction may have resulted from the sheriff's sale of stock on October 10, 2008, when Rydrych purchased the levied-upon shares for $100. If the judgment is partially satisfied, much of it remains unpaid.

[7] Respondents argue that the first lawsuit also has preclusive effect on Rydrych's current claims. This argument is without merit and was not relied on by the district court. All of Rydrych's current claims are based on events that postdate the filing of the first lawsuit.

before us is whether the second lawsuit involved the same factual circumstances as those alleged now. The test for determining whether two successive suits involve the same claims is "whether both actions arise from the same operative nucleus of facts." *Nitz v. Nitz*, 456 N.W.2d 450, 451 (Minn. App. 1990) (quotation omitted).

Res judicata does not apply to claims that had not yet arisen at the time that a previous lawsuit was commenced. *Hauschildt*, 686 N.W.2d at 841; *see also Drewitz*, 728 N.W.2d at 239 (explaining that claims that could have been asserted in a previous action are limited to claims that existed at the time the first complaint was served); *Care Inst., Inc.-Roseville v. Cnty. of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000) ("[I]f the right to assert the second claim did not arise at the same time as the right to assert the first claim, then the claims cannot be considered the same cause of action."). Although no longer actionable by themselves, the facts underlying the first claim may be relevant to the second claim. *See, e.g.*, 18 Charles Alan Wright et al., *Federal Practice and Procedure* § 4409 (2d ed. 2002) (discussing when facts that predate a prior lawsuit may be relevant to a new claim). We therefore turn to the issue of whether Rydrych's present claims existed at the time of commencement of the second lawsuit. To the extent that his claims in the present suit existed at the time he commenced the second lawsuit, the doctrine of res judicata precludes litigating those claims now.

In order to determine the scope of the preclusive effect of the doctrine of res judicata on Rydrych's claims, analysis of the underlying substantive law is necessary. The substantive law determines which facts will support a "claim" for the purposes of applying res judicata. We first discuss Rydrych's sections 302A.467 and 302A.751

claims, which are based, in part, on alleged facts that postdate the filing of the complaint in the second lawsuit. We then analyze Rydrych's second and third claims, which rest solely on allegations regarding the loan write-off issue as it pertains to its effect on the corporate balance sheets of GK Cab and Spike.

I.

Minnesota law allows minority shareholders in closely held corporations a cause of action in district court seeking equitable relief where the controlling shareholders "have acted in a manner unfairly prejudicial toward" a minority shareholder. Minn. Stat. § 302A.751, subd. 1(b)(3); *see also U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 379 (Minn. 2011) (holding that "unfairly prejudicial" should be defined broadly as conduct that violates a shareholder's reasonable expectations). A district court may also grant equitable relief under Minn. Stat. § 302A.467 for breaches of fiduciary duty and violations of law.

Majority shareholders in a closely held corporation owe minority shareholders a fiduciary duty. *Pedro v. Pedro*, 489 N.W.2d 798, 801 (Minn. App. 1992), *review denied* (Minn. Oct. 20, 1992). A closely held corporation is a corporation with 35 or fewer shareholders. Minn. Stat. § 302A.011, subd. 6(a) (2012). Breaches of fiduciary duty are considered unfairly prejudicial within the meaning of section 302A.751, subdivision 1(b)(3). *Berreman v. W. Publ'g Co.*, 615 N.W.2d 362, 373 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). Where a fiduciary relationship exists, the law imposes the highest standards of integrity and good faith dealings. *Id.* at 370. Fiduciary duties include dealing "openly, honestly and fairly with other shareholders." *Id.* at 371.

The merits of Rydrych's minority-shareholder claims depend upon whether the continuing failures of GK Cab and Spike to provide notice of meetings or detailed minutes of those meetings, combined with the allegations that were previously made in the second lawsuit, give rise to "conduct that frustrates [Rydrych's] reasonable expectations." *Id.*at 374. Rydrych previously litigated one instance of not having received notice of a shareholder meeting, as well as the loan write-off issue. Respondents argue that this is sufficient to bar his current sections 302A.467 and 302A.751 claims based on res judicata. We disagree.

Although Rydrych claimed a breach of fiduciary duty and unfair and prejudicial treatment in the second lawsuit, those claims were *not* identical to the claims Rydrych asserts now. Rydrych alleges misconduct of GK Cab and Spike that is continuing in nature. "The conclusion that continuing activity generates a new claim need not mean that the earlier activity is irrelevant to the new claim. Although claim preclusion bars reopening the claim advanced in the first action, evidence of the underlying activity may be admissible to prove the new claim." Wright et al., *supra*, at 246. Rydrych's claims under sections 302A.467 and 302A.751 are based on his allegations of continuing wrongs that could not have been litigated in the second lawsuit, as several facts alleged in the current complaint postdate the commencement of the second lawsuit, including some facts that postdate our decision on the prior appeal. The second lawsuit addressed only the adequacy of the meeting notice concerning the 2009 year-end meeting of the cab

companies.[8] We held that failure to give notice of a single annual meeting, even if proven, "would not warrant the extreme remedy of a buyout." *Rydrych*, 2011 WL 5829337, at *8. Whether Rydrych is entitled to that or some other remedy based on facts which he alleges have continued after the filing of the second lawsuit is genuinely in issue in this third suit, and was not and could not have been litigated in the second lawsuit.

Rydrych's present claims under sections 302A.467 and 302A.751 depend upon whether he, as a minority shareholder, can prove sufficient instances of misconduct by GK Cab and Spike, its directors, or controlling shareholders to trigger equitable relief. Our prior decision on appeal of the second lawsuit did not determine that Rydrych could never bring an action for disregard of his minority shareholder rights. We held only that Rydrych's isolated complaint of not having received notice of a single year-end meeting "would not warrant the extreme remedy of a buyout," and therefore did not present a material issue of fact. *Id.* at *8. Rydrych bases his current claims on many more alleged instances of misconduct.

We also consider whether applying the res judicata bar "would work an injustice on the party against whom [it is] urged." *Hauschildt*, 686 N.W.2d at 837. Application of the res judicata bar in this circumstance would deter minority shareholders from bringing potentially meritorious claims. Surely, the premature filing of a minority shareholder claim of misconduct cannot entitle the corporation and its majority shareholders to a "free

[8] Rydrych also discussed the loan write-off issue in his summary-judgment brief and his appeal to this court in the second lawsuit, but we held that the claim as then pleaded by Rydrych was a derivative claim.

pass" to continue to mistreat the minority shareholder. In closely held corporations such as GK Cab and Spike, there may be no suitable market for a minority shareholder's shares. The minority shareholder must rely on sections 302A.467 and 302A.751 to protect his rights in such a situation. Whether the facts alleged in Rydrych's complaint, taken together, entitle him to relief under sections 302A.467 and 302A.751 remains to be seen, but his allegations of continuing corporate misconduct are not barred by the doctrine of res judicata simply because he has sought similar relief from a court for similar conduct by these parties in the past. We conclude that the district court erred in summarily dismissing Rydrych's claims for relief under sections 302A.467 and 302A.751.

We next turn to the loan write-off issue in the context of these claims. We held on appeal of the second lawsuit that this issue could not be used to support sections 302A.467 and 302A.751 claims because, as it was pleaded in that lawsuit, it was a derivative claim. *Rydrych*, 2011 WL 5829337, at *8. It may seem at first blush paradoxical that we now hold that evidence of the loan write-off may be relevant to Rydrych's current sections 302A.467 and 302A.751 claims. Our prior decision on this issue is the law of the case. *Loo v. Loo*, 520 N.W.2d 740, 744 nn.1-2 (Minn. 1994). But, unlike res judicata, the doctrine of law of the case "applies only to litigated issues and does not reach issues which could have been but were not litigated." *Lange v. Nelson-Ryan Flight Serv., Inc.*, 263 Minn. 152, 156, 116 N.W.2d 266, 269 (Minn. 1962). Our decision in the appeal of the second lawsuit explained that Rydrych himself classified the loan write-off issue as a derivative claim, thereby foreclosing its consideration in the

context of his direct claims. *Rydrych*, 2011 WL 5829337, at *8. The district court in the second lawsuit did not even consider the issue. Because Rydrych now raises this issue *directly*, and not as a derivative claim, evidence of the loan write-off may be relevant to his sections 302A.467 and 302A.751 claims.

We held on appeal of the second lawsuit that Rydrych is without standing to contest the corporate actions of the cab companies before October 10, 2008. *Id.*, at *3. Again, our prior decision is the law of the case. *Loo*, 520 N.W.2d at 744 nn.1-2. Based on the imperfect record, there is a genuine issue of material fact regarding when this write-off occurred. Despite the apparent absence of direct evidence on this issue, the district court was required to draw all inferences in favor of the nonmoving party in the context of a motion for summary judgment. *Fabio*, 504 N.W.2d at 761. Just as Rydrych has not definitively established that the loan write-off occurred after October 10, 2008, so too have respondents failed to prove that it happened earlier. Respondents are in the best position to produce evidence on this issue and yet they have presented no documentary evidence of when the loan write-off occurred. Respondents' accountant signed an affidavit stating that he is "of the opinion" that the cab companies have followed all corporate formalities and have "maintained adequate and normal business records." His affidavit goes on to state the he prepared year-end balance sheets and profit and loss statements for the cab companies but that he "cannot presently locate [his] file." A reasonable finder of fact could draw a negative inference from respondents' failure to produce corporate records to definitively demonstrate when the loan write-off occurred. Therefore, summary adjudication of this claim was improper. To the extent that Rydrych

can prove that the loan write-off issue both *directly* violated his minority shareholder rights under sections 302A.467 and 302A.751 *and* occurred after October 10, 2008, the resolution of the second lawsuit does not bar those claims based on the application of res judicata.

Prior Minnesota caselaw supports our conclusion that res judicata does not bar Rydrych's present claims under sections 302A.467 and 302A.751, despite the similarity of his claims to those made in the second lawsuit. "While these two cases involve the same subject matter and *type* of cause of action, they are not the *same* cause of action." *Care Inst.*, 612 N.W.2d at 447 (emphasis in original); *see also Drewitz*, 728 N.W.2d at 239-40 (holding that claims for annual shareholder distributions that did not arise until after previous litigation was commenced were not barred by res judicata); *cf. Hauschildt*, 686 N.W.2d at 837 (stating that res judicata should not "be rigidly applied"). Because Rydrych alleges additional misconduct by GK Cab and Spike with regard to shareholder meetings that postdates the filing of the second lawsuit, his sections 302A.467 and 302A.751 claims are new claims and therefore not barred by res judicata. *See* Wright et al., *supra*, at 227 ("[A] new claim or cause of action is created as the conduct continues."). We therefore reverse and remand for further proceedings on Rydrych's sections 302A.467 and 302A.751 claims.

II.

Rydrych asserts two claims in this lawsuit that rely exclusively on allegations regarding the loan-write-off issue as it relates to the corporate accounts and the corporate balance sheets of GK Cab and Spike. First, he contends that Minn. Stat. § 302A.473, as

well as the corporate bylaws, require shareholder notification and approval for transactions that reduce assets by over 75%. Rydrych argues that, because he had no notice of the loan cancellation, he was unable to dissent because of his lack of knowledge of the proposed corporate action. He contends that it is within the district court's equity powers to restore this right of dissent to him, and allow him to demand payment for his shares as they were valued prior to the loan write-off. He further asks us to order restoration of this loan to the corporate accounts of the cab companies. We need not reach the merits of these claims because we conclude that these claims are barred by res judicata.

"Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action." *Hauschildt*, 686 N.W.2d at 840. The loan write-off as it relates to the corporate balance sheet is the focus of these claims. The facts supporting these claims are not part of a continuing pattern of conduct. *See* Wright et al., *supra*, § 4409 (generally discussing claims that arise from a continuing pattern of conduct). Despite some uncertainty in the record as to when the loan write-off actually occurred, Rydrych concedes that he knew of the existence of the potential loan issue as early as April 20, 2010.[9] The complaint in the second lawsuit was filed in July 2010. The operative date for the application of res judicata is the date of filing the complaint in the earlier action. *Drewitz*, 728 N.W.2d at 239-40. Rydrych could have brought these claims in the second lawsuit. Discovery doubtless would have been appropriate and

[9] Rydrych's appeal brief states that "[t]he fiscal '08 balance sheet showing the loan missing [from the corporate accounts] was received [by Rydrych on] April 20, 2010, six weeks prior to filing [the second lawsuit]."

necessary to determine the status of the loan,[10] but Rydrych knew of the loan write-off issue and failed to raise it then. Therefore, his claims based solely on the loan write-off issue as it relates to the corporate balance sheets are now barred by res judicata. *Hauschildt*, 686 N.W.2d at 840.

Rydrych argues that he did not have "the incentive to litigate fully" the loan write-off issue in the second lawsuit. *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001). Even if accurate, the argument is unavailing and contrary to the weight of authority. Res judicata itself provides the incentive to litigate issues known to exist at the time a suit is brought. If the plaintiff chooses not to bring claims of which he is aware at the time he brings suit, those claims may be barred in a later action against that same party. Here, Rydrych states that he did not bring these claims because he wanted to avoid complicating his lawsuit, which "included the loan in any case." Rydrych's subjective motivation for having not litigated the issue in the second lawsuit is irrelevant and insufficient to avoid the res judicata bar. *Hauschildt* conclusively establishes that res judicata applies to claims that "could have been litigated in the earlier action," not only those claims that Rydrych chose to litigate. 686 N.W.2d at 840.[11]

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[10] It appears that Rydrych engaged in discovery on this issue in the second lawsuit. Whether collateral estoppel (issue preclusion) therefore applies to this issue in the context of Rydrych's sections 302A.467 and 302A.751 claims is something the parties and the district court may consider on remand.

[11] Whether a plaintiff is allowed to split his direct and derivative claims without fear of a res judicata bar is a question we need not consider. Rydrych brought both direct claims and derivative claims in his second lawsuit, and therefore was required to bring all of his claims regarding the loan write-off issue in that case. *See Dorso Trailer Sales*, 482 N.W.2d at 774 ("[Generally, a plaintiff is] required to assert all alternative theories of recovery in the initial action.").

Because Rydrych's second and third claims for relief relate only to the loan write-off issue, they "could have been litigated" in the second lawsuit. *Id.*; *see also Nitz*, 456 N.W.2d at 451 (applying the "same operative nucleus of facts" standard). There were no "procedural [or other] limitations in the prior proceeding" that would have prevented Rydrych from litigating this claim in the second lawsuit. *Joseph*, 636 N.W.2d at 328. We therefore affirm the district court's summary judgment of dismissal of Rydrych's second and third claims for relief.

We will affirm summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996). Although respondents asserted additional affirmative defenses in their motion for summary judgment, the district court did not address them, and we decline to address those possible alternative defenses on appeal.[12] We observe again that the record created by the parties below was not entirely satisfactory, and those other affirmative defenses were not analyzed by the district court. Whether those other affirmative defenses have merit remains to be seen.

In sum, Rydrych's claims relating solely to the loan write-off issue, of which Rydrych was aware when the second lawsuit was filed, are barred by res judicata. Because the district court properly granted summary judgment dismissing those claims by application of the doctrine of res judicata, we affirm in part. But because Rydrych's claims under sections 302A.467 and 302A.751 are based, in part, on facts that arose after the second lawsuit, those claims are not barred by res judicata. We therefore reverse the

[12] And respondent did not file a Notice of Related Appeal.

district court's summary adjudication of those claims and remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.