

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT

MAUREEN CLIFFEL, D.O., PLLC d/b/a  
DETROIT DERMATOLOGY AND VEIN CENTER,

Plaintiff,

Case No. 2019-176106-CB

v.

Hon. Martha D. Anderson

PREMIER GROUP HOLDINGS, LLC,

Defendant.

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

This matter is before the Court on Defendant's Motion for Summary Disposition, pursuant to MCR 2.116(C)(7), (8) and (10). Pursuant to MCR 2.119(E)(3), there will be no oral argument.

On August 23, 2019, Plaintiff filed a Complaint against Defendant alleging Breach of Contract, Fraudulent Misrepresentation, Innocent Misrepresentation and Quantum Meruit/Unjust Enrichment. Plaintiff filed the instant lawsuit after the Court entered an Order on August 1, 2019 striking Plaintiff's counter-complaint in a *then pending* action between the same parties (*Premier Group Holdings, LLC v Cliffel*, OCCC Case No. 2019-171846-CB) based upon the counter-complaint having been filed in violation of the Scheduling Order therein and MCR 2.118(A)(2).<sup>1</sup>

Defendant now brings the pending Motion for Summary Disposition, pursuant to MCR 2.116(C)(7).<sup>2</sup> A motion is granted under MCR 2.116(C)(7) if the claim is barred, among other enumerated grounds, by a prior judgment. Upon review of a (C)(7) motion, the plaintiff's well pleaded factual allegations must be accepted as true and construed in plaintiff's favor. *Huron Tool & Eng'g Co v Precision Consulting Services, Inc*, 209 Mich App

<sup>1</sup> See *Premier Group Holdings, LLC v Cliffel*, OCCC Case No. 2019-171846-CB, Order [dated August 1, 2019] Striking Defendants' Counter-Complaint filed on July 10, 2019, pursuant to MCR 2.115(B).

<sup>2</sup> Although Defendant also cites MCR 2.116(C)(8) and (10) in support of its motion, Defendant's arguments are grounded solely upon MCR 2.116(C)(7) and, therefore, the Court shall limit its analysis accordingly.

365, 376-77; 532 NW2d 541 (1995). To determine if a question of fact exists, the Court shall look to the pleadings, affidavits or other documentary evidence. *Id* at 377. If no factual allegations are in dispute, whether a prior judgment bars plaintiff's complaint is a question of law. *Id*.

Here, Defendant argues that the doctrines of collateral estoppel and res judicata preclude the filing of Plaintiff's Complaint in this second action between the parties because the counter-complaint in the first action was between the same parties, involving the same claims and decided on the merits. In support, Defendant predominantly relies upon *Nummer v Treasury Dept*, 448 Mich 534, 541; 533 NW2d 250 (1995) (collateral estoppel)<sup>3</sup> and *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001) (res judicata)<sup>4</sup>.

In response, Plaintiff does not dispute the authority cited by Defendant, but its application to the facts before this Court. Plaintiff opposes Defendant's motion arguing that the striking of its counter-complaint by the Court in the first action filed between the parties constituted a procedural, rather than, a substantive dismissal by this Court and, consequently, neither the doctrine of collateral estoppel nor the doctrine of res judicata apply to bar the Plaintiff's Complaint in this lawsuit. This Court agrees.

The Court, having reviewed the parties' respective motion, response, reply, briefs in support, supporting documentation as well as the Court record in this matter, granting the benefit of any reasonable doubt to the opposing party, finds that no factual allegations are

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<sup>3</sup> "The preclusion doctrines serve an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims. By putting an end to litigation, the preclusion doctrines eliminate costly repetition, conserve judicial resources, and ease fears of prolonged litigation." *Nummer, supra* at 541 (internal citation omitted). "Generally, '[f]or collateral estoppel to apply, a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment. In addition, the same parties must have had a full opportunity to litigate the issue, and there must be mutuality of estoppel.'" *Id* at 542 (internal citation omitted).

<sup>4</sup> "Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred 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. 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." *Sewell, supra* at 575 (internal citations omitted).

in dispute, and thus, whether a prior judgment bars Plaintiff's Complaint is a question of law for the Court. MCR 2.116(C)(7) and *Huron Tool & Eng'g Co, supra* at 377. Here, the Court finds Defendant's reliance upon the Order dated August 1, 2019 Striking Defendants' Counter-Complaint filed on July 10, 2019, pursuant to MCR 2.115(B) (in *Premier Group Holdings, LLC v Cliffel*, OCCC Case No. 2019-171846-CB) to establish that a "prior judgment" under MCR 2.116(C)(7) precludes the filing of Plaintiff's Complaint in this action is misplaced. Indeed, Plaintiff did not have a full and fair opportunity to adjudicate its counter-complaint in the initial action between the parties, *Nummer, supra*, and furthermore, the striking of Plaintiff's counter-complaint in the initial action between the parties did not constitute a decision on the merits, *Sewell, supra*. Thus, Plaintiff's Complaint in this action is not barred under the doctrines of collateral estoppel or res judicata.

**THEREFORE, IT IS HEREBY ORDERED** that Defendant's Motion for Summary Disposition is **DENIED**, pursuant to MCR 2.116(C)(7).

**IT IS SO ORDERED.**

**This Order does NOT resolve the last pending matter and does NOT close the case.**

/s/ Martha Anderson

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HON. MARTHA D. ANDERSON  
CIRCUIT COURT JUDGE

Dated: 6/9/2020.