

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

CRAWFORD FINANCIAL CONSULTING, LLC

Case No.: 2023-200746-CB

Hon.: Victoria Valentine

Plaintiff,

- vs -

RANDY DZIERZAWSKI,  
JON GERSTENSLAGER, and  
AMERICAN VINTERS, LLC,  
jointly and severally,

Defendants.

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**OPINION AND ORDER REGARDING DEFENDANT RANDY DZIERZAWSKI'S  
MOTION FOR SUMMARY DISPOSITION**

At a session of said Court held on the  
18<sup>th</sup> day of December 2023 in the County of  
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendant Randy Dzierzawski's Motion for Summary Disposition under MCR 2.116(C)(6), (7), (8) and (10). The Court, having reviewed the briefs,

having considered the merits, having heard oral argument, and being fully advised in the premises, GRANTS Defendant's motion under MCR 2.116(C)(7).

## INTRODUCTION

### Background

Plaintiff Crawford Financial Consulting ("Crawford") previously provided accounting and litigation support services to Defendant Randy Dzierzawski ("Dzierzawski") and others pursuant to the parties' agreement.<sup>1</sup> Crawford's accounting and litigation services related to a lawsuit filed against Defendant Dzierzawski and Vinifera Wine Company LLC by Dzierzawski's former employer.<sup>2</sup> Pursuant to parties' agreement, Dzierzawski agreed to pay Crawford for services, and costs incurred on behalf of Dzierzawski and his businesses.<sup>3</sup> Notwithstanding Plaintiffs demands, Dzierzawski failed to pay Crawford \$95,094.59 for Crawford's Services.<sup>4</sup>

### ***Case No. 21-190196-CB***

Thereafter, Crawford filed its first lawsuit in this Court against Defendant Dzierzawski, Defendants Vinifera Wine Company LLC, Defendant RKD Consulting Inc, and Defendant American Vintners LLC. Crawford's causes of action, which seek damages in the amount of \$95,094.59, consist of the following claims:

- Breach of Engagement Agreement
- Unjust Enrichment/Quantum Meruit
- Promissory Estopped
- Fraudulent Misrepresentation
- Breach of Contract Amongst Defendants

This lawsuit resulted in the following dispositions in favor of Crawford, which total \$97, 094.95:

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<sup>1</sup> Complaint ¶4.

<sup>2</sup> Complaint ¶7.

<sup>3</sup> Complaint ¶5.

<sup>4</sup> Complaint ¶7 and Exhibit A attached thereto.

- Default Judgment against insolvent Defendant Vinifera Wine Company LLC.
- *Consent Judgment* between Crawford and RKD Consulting and *Randy Dzierzawski* in the amount of \$70,094.95.
- Settlement Agreement between Crawford and American Vinters LLC in the amount of \$27,000.00.

**Case No. 2023-200746-CB**

After the judgment in Case No. 21-190196-CB, allegedly numerous and extensive post judgment collection efforts were undertaken in the 21-190196-CB case by Crawford against Dzierzawski, including wage garnishments against Vintners.<sup>5</sup> Crawford then filed the second lawsuit against Dzierzawski, Jon Gerstenschlager<sup>6</sup> and American Vinters LLC. This second complaint alleged that a pattern of concealment, fraud, concerted action, and conspiracy have been present throughout by Vintners, Dzierzawski and Gerstenschlager; and that upon information and belief, they participated in joint concealment and hindering to avoid production of these discoverable records and information, and to also conceal their transfer of assets, benefits, and other monies to avoid payments to creditors, including Plaintiff.<sup>7</sup>

This second Complaint seeks damages against Defendants jointly and severally in the amount of \$95,094.59 plus interest, costs, and attorney fees, and alleges the following causes of action:

- Concert of Action and Civil Conspiracy
- Fraudulent Transfer
- Fraud

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<sup>5</sup> Complaint ¶12.

<sup>6</sup> The Court previously denied Defendants American Vinters LLC and Gerstenschlager's motion for summary disposition. See Order dated 8/31/2023.

<sup>7</sup> Complaint ¶16.

Defendant Randy Dzierzawski now files this Motion for Summary Disposition under MCR 2.116(C)(6), (7), (8) and (10), arguing:

- This lawsuit is barred by compulsory joinder under MCR 2.203(A).
- This lawsuit is barred by res judicata by virtue of a Consent Order entered in Case No. 21-190196-CB.
- The lawsuit is barred by collateral estoppel.

Plaintiff argues that the current lawsuit is brought based on different causes of action including concert of action, civil conspiracy, fraudulent transfer, and fraud.

#### STANDARD OF REVIEW<sup>8</sup>

MCR 2.116(C) provides the grounds upon which summary disposition may be granted, which includes:

(6) Another action has been initiated between the same parties involving the same claim.

(7) Entry of judgment, dismissal of the action, or other relief is appropriate because of release, payment, **prior judgment**, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

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(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. (emphasis added).

"Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by res judicata or collateral estoppel." *Allen Park Retirees Ass'n v City of Allen Park*, 329 Mich App 430, 443-44 (2019), citing *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, (2007).

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<sup>8</sup> Because the Court is granting Defendant Dzierzawski's motion under MCR 2.116(C)(7), it need not address the applicable standards of review under MCR 2.116(C)(6), (8) and (10).

A party is not required to submit any material in support of a motion under MCR 2.116(C)(7); the motion can be evaluated on the pleadings alone. *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.* “A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence.” *Maiden*, 461 Mich at 119. “In reviewing the motion, a court must review all documentary evidence submitted by the parties, accepting as true the contents of the complaint unless affidavits or other appropriate documents specifically contradict them.” *Yono v Dep’t of Transp (Yono I)*, 495 Mich 982, 982-983 (2014); see also MCR 2.116(G)(5).

The purpose of the doctrine of res judicata is to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, specifically, to foster the finality of litigation. *Garrett v Washington*, 314 Mich App 436, 441 (2016). The doctrine serves the important function of resolving disputes by imposing a state of finality to litigation when the same parties were given a full and fair opportunity to adjudicate their claims. *William Beaumont Hosp v Wass*, 315 Mich App 392, 398 (2016). *The party asserting that the doctrine of res judicata is applicable bears the burden of proof. Id.*

The doctrine of res judicata bars a subsequent action when (1) the prior action was decided on the merits, (2) both actions involved the same parties or their privies, and (3) the claims in the second case were, or could have been, resolved in the first case. *Adair v Michigan*, 470 Mich 105, 121 (2004). “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.” *Dart*

*v Dart*, 460 Mich 573, 586 (1999). When the same facts or evidence would sustain both the first and second actions, the two actions are deemed the same for purposes of res judicata. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 11 (2003). **Res judicata applies to actions** resolved by the grant of summary disposition, *City of Detroit v Nortown Theater, Inc*, 116 Mich App 386, 392 (1982), **to consent judgments**, *Ditmore v Michalik*, 244 Mich App 569, 576 (2001), and to voluntary dismissals with prejudice as an adjudication on the merits, *Limbach v Oakland Co Rd Comm*, 226 Mich App 389, 395 (1997).

To satisfy the first requirement of res judicata, the prior action must have been decided on the merits. *Adair*, 470 Mich at 121. It pertains to every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Dart*, 460 Mich at 586.

Here, in the prior action, Plaintiff raised claims of Breach of Engagement Agreement, Unjust Enrichment/Quantum Meruit, Promissory Estoppel, Fraudulent Misrepresentation, and Breach of Contract Amongst Defendants. These claims arose from Vinifera Wine Co, LLC's engagement of Crawford to perform accounting and litigation services in connection with a lawsuit in which Vinifera and Randy Dzierzawski were codefendants and for which Vinifera agreed to pay for services. The prior action resulted in a Default Judgment against then insolvent Vinifera; a **Consent Judgment against Defendant Randy Dzierzawski** and RKD Consulting Inc, the latter of which is *not* a party in the present case, and a Settlement Agreement between Crawford and Defendant American Vinters LLC. The Court finds that the prior litigation that resulted in a consent judgment between Crawford and Defendant Randy Dzierzaski was decided on the merits

as relating to those specific claims alleged therein, which satisfies the first requirement of res judicata.

The second requirement to satisfy res judicata is that both cases involve the same parties or their privies. *Adair*, 470 Mich at 121. Here, while Defendant Jon Gerstenschlager was not a named Defendant in the prior action, Defendant Dzierzawski was a party in the prior action, and in fact, entered into the consent judgment in the prior action. He is also a party to the present litigation.

The last requirement for purposes of res judicata is that the claims in the second action were or could have been resolved in the first action. *Adair*, 470 Mich at 121. “In Michigan, the doctrine of res judicata applies, except in special cases, in a subsequent action between the same parties and ‘not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.’” *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380 (1999), quoting *Hackley v Hackley*, 426 Mich 582, 584 (1986).

Again, the prior action (21-190196-CB) related to Plaintiff’s claims of Breach of Engagement Agreement, Unjust Enrichment/Quantum Meruit, Promissory Estoppel, Fraudulent Misrepresentation, Breach of Contract Amongst Defendants. These claims arose from Vinifera Wine Co, LLC’s engagement of Crawford to perform accounting and litigation services in connection with a lawsuit in which Vinifera and Randy Dzierzawski were codefendants and for which Vinifera agreed to pay for services.<sup>9</sup> This first lawsuit sought damages in the amount of

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<sup>9</sup> Exhibit B attached to Complaint in Case No. 2021-190196-CB.

\$95,094.59 for Crawford's services and attached Crawford's Customer Balance Detail statement relating to this amount.<sup>10</sup>

The present case (2023-200746-CB) relates to claims of concert of action and civil conspiracy, fraudulent transfer, and fraud, some of which are allegedly based on actions that may have allegedly occurred subsequent to the judgment in the prior action. Nevertheless, all of the claims in this second lawsuit seek damages of \$95,094.59, which again was the amount sought by and awarded to Crawford in the first lawsuit. In fact, Crawford attaches to its complaint in the present lawsuit the same Customer Balance Detail statement it attached to and relied upon in its first lawsuit.<sup>11</sup> The present case does not allege harm to Crawford separate and distinct from what Crawford alleged and was awarded in the first case. The Court finds that that Plaintiff in this present case is seeking a judgment against Dzierzawski for the same amount due (\$95,094.59) under the contract that was at issue in the 2021 case, which was resolved by a settlement agreement with American Vinters and a consent judgment against Defendant Dzierzawski.

Based on the above, Defendant Dzierzawski's motion for Summary Disposition under MCR 2.116(C)(7) is GRANTED.

IT IS SO ORDERED.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

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<sup>10</sup> Exhibit A attached to Complaint in Case No. 2021-190196-CB.

<sup>11</sup> Exhibit A attached to Complaint in Case No. 2021-190196-CB.



/s/Victoria A. Valentine

Dated: 12/18/23