STATE OF MICHIGAN

COURT OF CLAIMS

AMY MCCORMICK and ROBERT MCCORMICK,

Plaintiffs,

v

Case No. 22-000159-MK

MICHIGAN STATE UNIVERSITY,

Hon. Sima G. Patel

Defendant.
_____ /

OPINION AND ORDER DENYING DEFENDANT'S 6/17/26 MOTION FOR SUMMARY DISPOSITION AND 6/18/26 MOTION TO STAY OR BIFURCATE DISCOVERY

Defendant, Michigan State University (MSU), seeks summary dismissal of plaintiffs, Amy and Robert McCormick's, complaint under MCR 2.116(C)(7) based on the doctrine of res judicata. In a prior action filed by the McCormicks against the Detroit College of Law (DCL), the Ingham Circuit Court determined that "DCL was properly dissolved and simultaneously wound up" as of October 7, 2020, and satisfied MCL 450.2855 by entering an asset purchase agreement under which MSU assumed responsibility for DCL's debts, obligations, and liabilities. *McCormick v Mich State Univ College of Law*, unpublished opinion of the Court of Appeals, issued July 11, 2024 (Docket No. 362932), p 5. The Ingham Circuit Court summarily dismissed the McCormicks' action with prejudice because DCL no longer existed and, therefore, any claims against it were barred. *Id.*

The McCormicks subsequently filed the current action against MSU as the successor to DCL, raising claims of breach of contract, fraud and silent fraud, and failure of consideration.

MSU responded with a motion for summary disposition, contending that the action was not filed within the Court of Claims Act's (COCA) one-year notice period, MCL 600.6431(1). The McCormicks contended that the notice period was tolled under MCL 600.5855 because MSU fraudulently concealed that it had assumed the liabilities of DCL. The Court denied MSU's motion for summary disposition after determining that the McCormicks adequately pleaded fraudulent concealment and that there remained questions of fact on that issue. The Court of Appeals affirmed, agreeing that the COCA notice period could be tolled by fraudulent concealment, and the Supreme Court ultimately denied MSU's application for leave to appeal.

Upon remand to this Court, MSU answered the complaint, but also moved for summary disposition on res judicata grounds. "Res judicata bars a second action on the same claim if (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co*, 509 Mich 276, 282; 983 NW2d 401 (2022) (cleaned up).

As a general rule, and "[u]nless the court otherwise specifies in its order for dismissal," the summary dismissal of an action is an adjudication on the merits. MCR 2.504(B)(3). The prior circuit court action and the current matter involve the same parties or their privies. Because MSU contractually agreed to fulfill DCL's obligations and duties, it is in privity with DCL.

However, MSU has not satisfied the third element of the test for res judicata. The McCormicks raised their contractual, fraud, and failure of consideration claims in the circuit court action. The circuit court did not resolve those claims, however, because DCL no longer existed and could not be sued. There remains a question of fact whether those claims could have been

resolved in the first action. If MSU fraudulently concealed that it had assumed the liabilities of DCL, the McCormicks could not have joined MSU as a defendant at that time. Further, the successor-liability agreement between MSU and DCL was largely the reason that the Ingham Circuit Court dismissed the McCormicks' suit against DCL. As a result, this case represents the unusual scenario where the nature of a party and its privy's relationship required dismissal of the first action without addressing the merits of the claims. Accordingly, MSU is not entitled to summary disposition on res judicata grounds.

IT IS ORDERED:

1. The Court DENIES defendant's motion for summary disposition.
2. The Court DENIES defendant's motion to stay discovery as MOOT.
3. The Court DENIES defendant's motion to bifurcate discovery.
4. The parties are directed to respond to the June 4, 2026 Scheduling Order Letter within two weeks of entry of this Opinion and Order.
5. This is not a final order.

Date: July 9, 2026

Sima G. Patel
Judge, Court of Claims