[Cite as *Homestead Interiors, Inc. v. Langfellow*, 2010-Ohio-2285.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

HOMESTEAD INTERIORS, INC.,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009-G-2937**
- vs -	:	
PATRICIA LANGFELLOW, et al.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 08 P 000752.

Judgment: Affirmed.

Michael T. Judy, Michael T. Judy Co., L.P.A., 8228 Mayfield Road, Suite 6-B, Chesterland, OH 44026 (For Plaintiff-Appellant).

Todd E. Petersen, Petersen & Petersen, 428 South Street, Chardon, OH 44024 (For Defendant-Appellee).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Homestead Interiors, Inc. ("Homestead"), appeals from the October 26, 2009 judgment of the Geauga County Court of Common Pleas, sustaining defendants' motion for summary judgment as to appellee, Patricia Langfellow, and overruling the motion as to Robert Phillips, who is not a party to this appeal. Defendants' motion for summary judgment was based on the doctrine of res judicata.

{¶2} The parties involved in the instant case have engaged in litigation since 2005 as a result of their tumultuous business relationship. Langfellow and Phillips

started Homestead in 1980, running the business as a partnership. In 2003, Phillips sold his share of the partnership to George L. Badovick, and Langfellow sold two percent of her share to Badovick. The partnership was incorporated with Badovick owning 51% of the stock and Langfellow owning 49% of the stock. Tensions developed between the two shareholders, with Langfellow selling her shares in August 2004 and leaving the company.

{¶3} In March 2005, Homestead and Badovick filed a complaint in the Geauga County Court of Common Pleas against Langfellow for slander, tortious interference, and breach of fiduciary responsibility, captioned *Homestead Interiors, Inc. v. Patricia Langfellow*, case No. 05M268.

{¶4} After a bench trial, judgment was rendered against Homestead. In its judgment entry, the trial court outlined the claims against Langfellow, stating:

{¶5} "Plaintiff George Badovick is suing for defamation on the ground that [Langfellow] spoke ill of him.

{¶6} "***

{¶7} "The other claim is that Plaintiffs were injured in their business relations because of [Langfellow's] aforementioned statements and because [Langfellow] cried to some customers about her treatment by the new owner."

{¶8} During the pendency of the above-mentioned case, Langfellow pursued unemployment compensation, which was challenged by Homestead. Langfellow's unemployment compensation was approved, and Homestead filed a notice of appeal in the Geauga County Court of Common Pleas, captioned *In Re: Homestead Interiors, Inc. v. Patricia Langfellow, et al.*, case No. 05A421. The magistrate recommended that

Langfellow receive unemployment benefits; the trial court adopted the decision of the magistrate.

{¶9} In 2006, two small claims complaints were filed in the Chardon Municipal Court. The first case was filed by Langfellow, captioned *Langfellow v. Badovick*, case No. 2006 CVF 1003, alleging she had paid for carpet, which Homestead failed to deliver. The second case was filed by Langfellow and Phillips, which was transferred to the Geauga County Court of Common Pleas and captioned *Langfellow, et al. v. Badovick, et al.*, case No. 07 M 000180. The second case alleged that Homestead breached its lease.

{¶10} In 2008, Homestead filed another complaint in the Geauga County Court of Common Pleas against Langfellow and Phillips alleging the following counts: (1) commingling of funds and accounts, (2) fraud by mismanagement/conversion of cash, (3) fraud by inappropriate disbursements/conversion of cash, (4) fraud by inappropriate transfer to partnership, (5) fraud by inappropriate payments to partnership, (5) fraud by inappropriate material orders/conversion of inventory, (6) fraud by inappropriate material orders/conversion of cash, and (7) fraud by inappropriate payroll payments to Langfellow. The complaint prayed for punitive damages. This complaint, which is the subject of the instant appeal, is captioned *Homestead Interiors, Inc. v. Patricia Langfellow, et al.*, case No. 08P00752.

{¶11} The complaint stated:

{¶12} "In a subsequent litigation on May 4, 2006, between the parties herein and Badovick (Case Number 2006 CV F 01003, Chardon Municipal Court), Langfellow, plaintiff therein, introduced a sales invoice that was not reflected in the corporate

accounting system and a cancelled check negotiated on a bank Homestead believed to be closed. The introduction of said evidence in that case prompted a thorough audit of the corporate accounting system and all source documents available."

{¶13} Langfellow and Phillips filed a motion for summary judgment based on the doctrine of res judicata, attaching, inter alia, numerous certified copies of the documents filed in the previous cases and the deposition of Elizabeth Sobota, a certified public accountant and owner of Dittrick & Associates, Inc.

{¶14} The trial court sustained the motion for summary judgment as to Langfellow and overruled the motion as to Phillips—entering judgment in favor of Langfellow and against Homestead. It is from this judgment that Homestead has filed a timely notice of appeal and asserts the following assignment of error:

{¶15} "The Trial Court erred in finding in favor of defendant/appellee on her claim of res judicata."

{¶16} In support of its ruling, the trial court reasoned that the claims made by Homestead in the instant case "were or should have been raised" in the prior litigation, case No. 05M268. The trial court rejected Homestead's argument that Langfellow "concealed or absconded with evidence of her alleged misdeeds." The trial court further stated, "the record is clear that if a cause of action existed, it existed at the time of the prior litigation and no evidence has been presented to the Court to substantiate a claim that [Homestead] was not and could not have been aware of that claim."

{¶17} On appeal, Homestead contends that res judicata is not applicable because the claims in the instant case did not arise out of the same nucleus of operative facts as the claims alleged in the prior action, filed in 2005. Homestead

further argues the claims in the instant case, which include, inter alia, fraud and conversion, are entirely different than the claims alleged in 2005—slander, tortious interference, and breach of fiduciary responsibility. Relying on *Davis v. Wal-Mart Stores, Inc.* (2001), 93 Ohio St.3d 488, Homestead maintains that it did not suspect the claims filed in the instant action when it filed the complaint in 2005. Homestead claims that it was not until an audit was conducted "related to other matters" that it "had any reason to believe that [Langfellow] might have done anything improper."

{¶18} In order for a motion for summary judgment to be granted, the moving party must demonstrate:

{¶19} "(1) [N]o genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *Mootispaw v. Eckstein* (1996), 76 Ohio St.3d 383, 385. (Citation omitted.)

{¶20} If the moving party meets this burden, the nonmoving party must then provide evidence illustrating a genuine issue of material fact, pursuant to Civ.R. 56(E). *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293.

{¶21} Appellate courts review a trial court's entry of summary judgment de novo. *Brown v. Scioto Cty. Bd. of Commrs*. (1993), 87 Ohio App.3d 704, 711. "*De novo* review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no

genuine issues exist for trial." *Brewer v. Cleveland Bd. of Edn*. (1997), 122 Ohio App.3d 378, 383, citing *Dupler v. Mansfield Journal* (1980), 64 Ohio St.2d 116, 119-120.

{¶22} The doctrine of res judicata requires a party "to present every ground for relief in the first action, or be forever barred from asserting it." *Natl. Amusements, Inc. v. Springdale* (1990), 53 Ohio St.3d 60, 62. "It has long been the law of Ohio that 'an existing final judgment or decree between the parties to the litigation is conclusive as to all claims which were *or might have been* litigated in a first lawsuit.'" Id. (Citation omitted and emphasis sic.) The Supreme Court of Ohio has stated, "we expressly adhere to the modern application of the doctrine of *res judicata* *** and hold that a valid, final judgment rendered upon the merits bars all subsequent action based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp*. (1995), 73 Ohio St.3d 379, 382.

{¶23} The arguments of Homestead fail, as they could have litigated the claims now asserted in the prior action. A review of the pleadings filed in the prior action reveals that Homestead had previously complained of the "falling off in business with existing customers" and further sought to recover "in excess of $100,000 per year." In fact, in a previous action, Homestead characterized the 2005 action as "the business relationships between and among the parties."

{¶24} Further, upon review, we find *Davis*, supra, to be distinguishable. In *Davis*, the Supreme Court of Ohio recognized that the doctrine of res judicata does not bar litigation of a claim that *could not* have been asserted in a prior lawsuit. *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d at 490. The appellant in *Davis* was arguing that

the appellee's claim for spoliation of evidence was barred by the doctrine of res judicata, as the appellee had previously litigated a claim of intentional tort. Id. at 489.

{¶25} "During the course of post-trial proceedings for prejudgment interest, [the appellee] came to believe that [appellant] withheld certain evidence and documents and that several [of appellant's employee's] had provided false or misleading testimony during their depositions in the intentional tort case." Id. Consequently, the appellee filed a new cause of action—spoliation of evidence. The *Davis* Court reasoned that "[i]t is possible that reasonable minds could conclude that the basis for the second action, the alleged misrepresentations and withholding of evidence, occurred after and independent of the first action, based upon the truck's pulling away from the loading dock prematurely and tragically." Id. at 490.

{¶26} The evidence presented in the instant case, however, establishes that Homestead could have brought their present claims in the prior action. As illustrated by Langfellow, Homestead was in possession of the documents used by Ms. Sobota in preparation of her audit at the time the 2005 case was filed. Ms. Sobota investigated the time period of July 1 – December 31, 2003. When asked about the data received from Badovick, Ms. Sobota stated, "[i]n other words, the Quick Books file that I had from several years, from six years ago, was the *same exact information* of a piece of paper with a balance sheet and a profit and loss statement that I was given by George Badovick in May of 2009." (Emphasis added.) Therefore, unlike *Davis*, Homestead was not precluded from raising the present claims in the prior case, as Homestead was in possession of the same data used to formulate the basis of the claims at issue during the pendency of the prior case.

{¶27} Based on the foregoing, we conclude that the trial court did not err in entering summary judgment in favor of Langfellow on the basis of res judicata. Accordingly, the judgment of the Geauga County Court of Common Pleas is hereby affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.