

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

EAGLE WOODS, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 1516-CV03902
v.	)	Division 12
	)	
EDWARD SLOAN, et al.,	)	
	)	
Defendants.	)	

**ORDER/JUDGMENT**

NOW on this 12th day of November, 2015, the Court takes up and considers *Defendant Edward Sloan and Robin Arnett’s Motion for Summary Judgment*, filed October 2, 2015, and no opposition being filed, the Court being fully advised of the premises orders as follows:

IT IS HEREBY ORDERED that *Defendant Edward Sloan and Robin Arnett’s Motion for Summary Judgment* is **GRANTED**.

In their Motion for Summary Judgment, Defendants Edward Sloan and Robin Arnett (hereinafter “Defendants”) assert that they are entitled to judgment as a matter of law pursuant to Missouri Supreme Court Rule 74.04 on three grounds: that Plaintiffs are barred from bringing the instant case by the compulsory counterclaim rule; that Plaintiffs are barred from bringing the instant case by the doctrine of res judicata; and/or that Plaintiffs are barred from bringing the instant case by the doctrine of collateral estoppel. Plaintiffs failed to respond to Defendants’ motion pursuant to Missouri Supreme Court Rule 74.04(c)(2). Therefore, by Plaintiffs’ failure to respond to Defendants’ motion in accordance with Rule 74.04(c)(2), the Court finds that Plaintiffs have admitted all material facts asserted and there are no material facts at dispute in the above-captioned matter. The Court grants judgment in favor of Defendant Sloan and against Plaintiffs as to Counts I, II, and III pursuant to Missouri Supreme Court Rule 74.04. The Court grants judgment in favor of Defendant Arnett and against Plaintiffs as to Count III pursuant to Missouri Supreme Court Rule 74.04.

Plaintiff Eagle Woods filed an action with this Court relating to legal representation by Defendants Sloan and Matteuzzi & Brooker, P.C. on May 9, 2012 (hereinafter “*Eagle Woods I*”). Defendants Sloan and Matteuzzi & Brooker P.C. filed an answer on September 20, 2012, and asserted counterclaims against Plaintiff Eagle Woods regarding unpaid legal fees. *Eagle Woods I* was set for jury trial before The Honorable Jack Grate on February 28, 2014. On February 21, 2014, Plaintiff Eagle Woods filed a dismissal of its claims; however, Defendant Sloan’s counterclaims remained pending. Eagle Woods did not appear for trial and did not assert any compulsory counterclaims to Defendant Sloan’s remaining claims for unpaid legal fees. Judge Grate entered judgment in favor of Defendant Sloan and against Plaintiff Eagle Woods. Plaintiff Eagle Woods did not appeal the judgment entered in *Eagle Woods I*.

Plaintiff Eagle Woods and its managing member, M.J. Tonsfeldt, filed the instant case on February 20, 2015, adding three additional defendants to those sued in *Eagle Woods I*. Plaintiffs’ Petition in the instant case asserts claims related to the same legal services that were the subject of Defendant Sloan’s claims tried in front of Judge Grate in *Eagle Woods I*. The Court has previously entered judgment in favor of Defendants Matteuzzi & Brooker, P.C., Meagan Patterson, and Michael Meyer as a matter of law pursuant to Missouri Supreme Court Rule 74.04 on Plaintiffs’ Petition under the compulsory counterclaim doctrine, the doctrine of res judicata, and/or the doctrine of collateral estoppel.

Missouri Supreme Court Rule 55.32(a), a codification of the doctrines of res judicata and collateral estoppel, sets out the compulsory counterclaim rule, which requires a party to assert all claims against an opposing party “if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claims and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.” Mo. Sup. Ct. R. 55.32(a). “Claims and issues that could have been litigated in a prior adjudicated action are precluded in a later action between the same parties or those in privity with them.” *Steinmann v. Davenport*, 248 S.W.3d 8, 14 (Mo. App. 2008). A stockholder and employee is in privity with his [or her] employer for purposes of issue or claim preclusion. *Woods v. Mehlville Chrysler-Plymouth*, 198 S.W.3d 165, 170 (Mo. App. 2006). Managing members of a limited liability company are in

privity with the company and are estopped from litigating issues which the limited liability company could have litigated in prior litigation. *KCAF Investors, L.L.C. v. Kansas City Downtown Streetcar Transp. Dev. Dist.*, 414 S.W.3d 470, 481 n. 7 (Mo. App. 2013).

Plaintiff Eagle Woods, and anyone in privity with it, were required to comply with the compulsory counterclaim rule with regard to Defendant Sloan's claim for unpaid legal fees in *Eagle Woods I*. The Missouri Supreme Court has held that upon dismissal of a plaintiff's claims, the counterclaims that remain automatically become the primary claim. *Oates v. Safeco Ins. Co. of Am.*, 583 S.W.2d 713, 717 (Mo. banc 1979). Plaintiff Eagle Woods, as the defending party, was required to assert compulsory counterclaims under Rule 55.32(a) that would arise from Defendant Sloan's claims. The claims Plaintiffs seek to assert in the instant case arise out of the same legal services that were the subject of Defendant Sloan's claims in *Eagle Woods I* and were compulsory counterclaims which should have been asserted pursuant to Rule 55.32(a). Plaintiffs' claims in the instant matter are now barred under Missouri law.

Plaintiff Tonsfeldt is in privity with Plaintiff Eagle Woods and is barred from bringing claims arising out of the same legal services that was the subject matter of the litigation in *Eagle Woods I*. Plaintiff Tonsfeldt is the managing member of Plaintiff Eagle Woods, LLC and the preclusive effect of Rule 55.32(a) applies equally to him. To the extent that Eagle Woods is barred from bringing claims under the compulsory counterclaim rule, Plaintiff Tonsfeldt is likewise barred under the doctrine.

Further, Plaintiffs are barred from bringing any claims that should have been asserted under the compulsory counterclaim rule against any party in privity with Defendant Sloan. Defendants Sloan, Matteuzzi & Brooker, P.C., Patterson, Arnett, and Meyer are in privity with each other with regard to the claims asserted in Plaintiffs' Petition. Each of the Defendants individually named were employees and/or shareholders of Waldeck, Matteuzzi & Sloan, P.C., which Plaintiffs allege to be the same firm as Defendant Matteuzzi & Brooker, P.C. A shareholder of a company stands in privity with the company for purposes of issue or claim preclusion. *Woods*, 198 S.W.3d at 170. An employee stands in privity with his or her employer for purposes of issue or claim preclusion. *Hoelscher v. Patton*, 842 S.W.2d 127, 128 (Mo. App. 1992). As Defendants

Sloan, Arnett, Matteuzzi & Brooker, P.C., Meyer, and Patterson are in privity with each other, the Court finds that the compulsory counterclaim rule applies equally as to claims asserted against these Defendants.

Therefore, the compulsory counterclaim rule bars the assertion of claims against Defendants arising out of the same transaction or occurrence that was the subject of the *Eagle Woods I* litigation. Defendant Sloan's claim for unpaid legal fees is related to the claims for legal malpractice asserted in Plaintiffs' Petition in the instant case and Plaintiffs are barred from asserting these claims in the instant case. These claims should have been asserted as compulsory counterclaims in *Eagle Woods I*.

IT IS FURTHER ORDERED that pursuant to Missouri Supreme Court Rule 74.04 the Court enters judgment in favor of Defendant Sloan and against Plaintiffs as to Counts I, II and III.

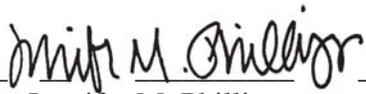
IT IS FURTHER ORDERED that pursuant to Missouri Supreme Court Rule 74.04 the Court enters judgment in favor of Defendant Sloan and against Plaintiffs as to Counts I, II and III.

IT IS FURTHER ORDERED that pursuant to Missouri Supreme Court Rule 74.04 the Court enters judgment in favor of Defendant Arnett and against Plaintiffs as to Count III.

IT IS FURTHER ORDERED that all issues in the above-captioned matter have been fully disposed. The case management conference scheduled for December 14, 2015 is cancelled.

IT IS SO ORDERED.

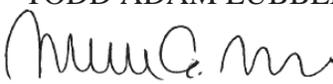
Date: 12-Nov-2015

  
\_\_\_\_\_  
Judge Jennifer M. Phillips

**CERTIFICATE OF MAILING**

It is hereby certified that a copy of the forgoing was sent via the E-Filing System, this 12th day of November, 2015, to the following:

DANIEAL HOWARD MILLER  
KEVIN DUDLEY CASE  
PATRIC S LINDEN  
STEVEN HOWARD SCHWARTZ

TODD ADAM LUBBEN  
  
\_\_\_\_\_  
Law Clerk