

Circuit Court for Baltimore County
Case No.: C-03-CV-22-001002
Case No.: C-03-CV-23-001556

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 983 & 1500

September Term, 2023

LAVONNE OLIVER

v.

KATINA L. BROYLES, ET AL.

LAVONNE OLIVER

v.

KATINA L. BROYLES

Berger,
Leahy,
Ripken,

JJ.

Opinion by Leahy, J.

Filed: October 28, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

These appeals arise from two actions filed in the Circuit Court for Baltimore County concerning the same commercial lease agreement (“the Lease”). First, in Case No. C-03-CV-22-001002 (“Breach of Lease Action”), Katina Broyles and her sister, Diana McGhin, as successor trustees for the Anthony Marmaras Revocable Living Trust (“the Trust”), (collectively, “trustees” or “Appellees”), filed suit against their tenant, LaVonne Oliver, appellant, for breach of the Lease. During discovery, the trial court imposed a sanction against Ms. Oliver for her failure to produce documents as directed under a prior court order. The sanction prohibited Ms. Oliver from “offering any affirmative evidence or exhibits” in opposition to the trustees’ claims. Following a bench trial, the court entered judgment in favor of the trustees for \$42,073.90, plus attorneys’ fees and costs.

While that case was pending, Ms. Oliver filed suit against Ms. Broyles under a pleading captioned, “Ill[e]gal Eviction,” (the “Illegal Eviction Action”). Ms. Broyles moved to dismiss the complaint. Following a hearing, the court determined to convert the motion to dismiss to a motion for summary judgment and granted judgment in favor of Ms. Broyles.

Ms. Oliver appealed from both adverse judgments and this Court, *sua sponte*, consolidated the appeals for decision. In the first appeal, Ms. Oliver raises numerous issues,¹ which we combine and rephrase as one:

¹ In her informal brief, Ms. Oliver states that the “main issue presented for review” is whether she was “denied due process under the law” when Appellees executed a self-help eviction “without presenting the tenant an opportunity to be heard in court.” She also alleges discrimination based upon her race, breach of the Lease by Appellees, and an illegal lockout.

I. Did the trial court err by entering judgment in favor of Appellees in the action for breach of a commercial lease?

In the second appeal, Ms. Oliver presents five issues,² which we have combined and rephrased as one:

II. Did the trial court err by granting summary judgment in favor of Ms. Broyles?

For the reasons explained in our discussion below, we discern no error in the judgments of the circuit court. Accordingly, we shall affirm.

² The questions as posed by Ms. Oliver in the Illegal Eviction Action are:

1. Does the landlord's engagement in a self-help eviction, as opposed to pursuing proper legal channels, infringe upon the tenants' rights protected under the 14th amendment, especially when the landlord's actions are akin to those of a quasi-governmental entity?
2. How does the court interpret and apply common law principles within the context of this case, particularly in light of the landlord's deviation from established legal procedures for eviction?
3. Can the court provide clarity on the validity of enforceability of verbal agreements, especially those made during extraordinary circumstance such as the COVID-19 pandemic, to ensure fairness in proceedings and prevent disputes arising from unclear arrangement [sic]?
4. In evaluating the lease discrepancies, particularly concerning tax payments and the landlord's adherence to lease provisions, how does the court view the landlord's responsibilities and tenants' rights under Maryland State law?
5. Given the claim of potential racial bias in the landlord's actions, can the court address the significance of fair and unbiased proceedings, considering the impact on the Appellant's rights and equal protection under the law, as enshrined in the 14th Amendment?

BACKGROUND

The Trust, originally created by Mr. Marmaras, the father of Ms. Broyles and Ms. McGhin, owns a single-story commercial property at 8327-8329 Harford Road in Parkville, Maryland (“the Premises”). The Trust documents named his wife, Lenora Marmaras, as the trustee, and named Ms. Broyles and Ms. McGhin as successor trustees. Ms. Marmaras died on November 14, 2020, and Ms. Broyles and Ms. McGhin succeeded to her interest.

A. The Lease

On September 27, 2019, the trustees leased the Premises to Ms. Oliver and her business, Hopping Tots Learning Center, LLC, tenants, for use as a childcare center. We set out the pertinent provisions of the Lease.

The term of the Lease was seven years and four months, commencing on September 1, 2019, and terminating on December 31, 2026. The annual rent was \$56,250, increasing by three percent on September 1 of each subsequent year. Rent was due in monthly installments of \$4,687.50 beginning on January 1, 2020, with a ten percent late charge if the rent was more than five days late. A security deposit equivalent to two months’ rent (\$9,375) was due upon execution of the Lease.³ The trustees granted to Ms. Oliver a \$10,000 allowance for improvements to the Premises (“improvement allowance”), which was payable to her upon completion.

In addition to rent, Ms. Oliver was responsible for utility payments, real property taxes, operating costs for the Premises, and insurance costs, which were deemed

³ Ms. Oliver also paid the first month’s rent in advance.

“Additional Rent.”⁴ With respect to real property taxes, Ms. Oliver was obligated to pay one-twelfth of the annual tax bill for the Premises each month as part of her monthly rent payment.

Failure to pay rent, including additional rent, was a breach of the Lease. Upon a breach, the trustees were entitled to terminate the Lease after giving the tenant “five (5) days’ advance written notice” and to reenter the Premises, by force, if necessary, to take possession. An indemnification clause provided that Ms. Oliver was obligated to “pay all costs, expenses, and reasonable attorney’s fees that may be expended or incurred by Landlord in enforcing the covenants and agreements of this Lease.”

B. Modifications to the Lease

In January 2020, the trustees⁵ agreed to delay the rent commencement date under the Lease until March 1, 2020 because of issues with water service to the Premises and other needed repairs.⁶ Thereafter, the trustees agreed to delay the rent commencement date until April 1, 2020. In April 2020, the trustees twice agreed to extend the rent

⁴ Recently, the Supreme Court of Maryland held, in pertinent part, that “[f]or purposes of [Maryland Code,] Real Property § 8-401[, governing summary ejectment proceedings,] *as applied to residential leases*, ‘rent’ consists of a tenant’s fixed, periodic payments to a landlord for the use or possession of rented property[.]” *Westminster Mgmt., LLC v. Smith*, 486 Md. 616, 675 (2024) (emphasis added). Because the Lease in this case was a commercial lease and the trustees did not pursue summary ejectment proceedings, this decision has no bearing upon our analysis.

⁵ Ms. Broyles was the primary point of contact for Ms. Oliver.

⁶ Because Ms. Oliver paid the first month’s rent in advance, her first monthly installment of rent would have been due on February 1, 2020.

commencement date due to the COVID-19 pandemic, initially extending it one month (May 1, 2020) and then an additional two months (July 1, 2020).

At the end of June 2020, Ms. Oliver requested an additional two months of deferred rent. The trustees agreed to defer rent until September 1, 2020. With Ms. Oliver's consent, the trustees applied the \$10,000 improvement allowance towards \$4,730.55 in real property taxes owed for the 2021 tax year (July 1, 2020 through June 30, 2021) and to cover her September 2020 rent payment.

In mid-October 2020, the trustees inquired about the October rent payment, which had not been received. At the end of October, when the payment still had not been received, Ms. Oliver requested a reduction in her monthly rent to \$2,000. The trustees agreed to a temporary reduction in monthly rent to \$2,000 for the last three months of 2020, which subsequently was extended through February 2021. During that period, the trustees received a single \$2,000 rent payment, which was credited for October 2020.

Ms. Oliver did not pay rent in March 2021. The trustees applied the remaining balance of the improvement allowance (\$581.85) to that month's rent.

In mid-March, the trustees advised Ms. Oliver that she owed \$16,943.41, comprising \$12,105.55 in back rent, \$4,687.50 for rent due April 1, 2021, and \$150.46 for a water bill.

On April 1, 2021, Ms. Oliver's husband gave Ms. Broyles two checks, one for current rent of \$4,687.50 and one for \$12,255.91 for back rent and the water bill. He instructed her not to deposit the rent check for a day and not to deposit the second check until mid-month. Ultimately, both checks bounced. Ms. Oliver gave Ms. Broyles a third

check for \$4,700 in April 2021 and paid \$2,000 in May 2021. She did not make any further payments.

C. Termination of the Lease

By letter dated January 26, 2022, which was sent by certified mail to the Premises, to Ms. Oliver’s house, and by email, the trustees gave notice that they were terminating the Lease, effective February 4, 2022, due to failure to pay rent and other charges. The letter advised that Ms. Oliver should remove any personal property in the Premises by February 4, 2022 and that any property remaining thereafter would be deemed abandoned.

D. Breach of Lease Action

On March 15, 2022, the trustees filed suit against Ms. Oliver seeking unpaid rent, unpaid real property taxes, unpaid water bills and attorneys’ fees. Ms. Oliver answered the complaint, asserting that she was illegally evicted from the Premises. The court set a discovery deadline of November 11, 2022.

In May 2022, the trustees served on Ms. Oliver interrogatories and requests for production of documents, to which she did not respond. The Trustees’ first motion to compel was denied on the ground that there had been insufficient attempts to resolve the discovery dispute.

The trustees deposed Ms. Oliver in October 2022. Despite being instructed to bring documents with her to deposition, she did not. Ms. Oliver agreed during her deposition to provide those documents after her deposition but did not.

The trustees’ second motion to compel was granted and Ms. Oliver was ordered to produce all requested documents within fifteen days (by February 15, 2023). Six days after

that deadline passed, the trustees moved for sanctions. On March 14, 2023, the court granted the motion, ordering that Ms. Oliver could not “oppose [the trustees’] claims by offering any affirmative evidence or exhibits.”

E. The Illegal Eviction Action

A month later, Ms. Oliver filed suit against Ms. Broyles. In her pleading, captioned, “Ill[e]gal Eviction,” she alleged that in October 2021 she received a letter from counsel for the trustees advising that she owed significant sums in back rent. She subsequently received the notice that the trustees were terminating the Lease for breach of the covenant to pay rent. She alleged that she was locked out of the Premises and was unable to recover her property, including business documents. She asked the circuit court to rule that she was illegally evicted, that her personal property was illegally converted, to enter a default judgment as to liability and schedule a hearing on damages, and to postpone the trial in the Breach of Lease.⁷

Ms. Broyles moved to dismiss the complaint, attaching exhibits. She argued that the complaint should be dismissed for failure to comply with Rule 2-303, governing the form of pleadings; for failure to name the proper parties, specifically the Trust and Ms. McGhin; and for failure to state a claim upon which relief may be granted.

Ms. Oliver opposed the motion, arguing in pertinent part that because the landlord evicted her by self-help, rather than through judicial process under Title 8, Subtitle 4 of the

⁷ Ms. Oliver’s pleading also included a “Schedule of Documents” that she sought from Ms. Broyles.

Real Property Article, the eviction was illegal. She acknowledged receiving notice of the Lease termination but maintained that the letter was insufficient as a matter of law.

F. Bench Trial in the Breach of Lease Action

Meanwhile, a bench trial commenced on June 15, 2023 in the Breach of Lease Action. The trustees were represented by counsel and Ms. Oliver represented herself.

In the trustees' case, Ms. Broyles testified to the above stated facts regarding the agreed-upon modifications to the rent commencement date, the reductions in rent for certain months, and Ms. Oliver's failure to pay rent and other amounts due under the Lease over many months.

With respect to additional rent owing under the Lease, Ms. Broyles testified that \$765.24 in water bills for the Premises were paid by the trustees prior to termination of the Lease. The real property taxes for the Premises for the 2022 tax year, commencing on July 1, 2021, totaled \$4,777.95. Ms. Broyles testified that she prorated that bill for the seven months that Ms. Oliver occupied the Premises, for a total of \$2,787.69.⁸ The Trust paid \$442 to the Chesapeake Safe and Lock Company to change the locks at the Premises on February 5, 2022.

Ms. Broyles testified that the trustees paid \$16,193 in attorneys' fees and the itemized bills were admitted into evidence. Counsel also moved into evidence a verified statement in support of the request for attorneys' fees.

⁸ The correct calculation is \$2,787.14.

On cross-examination, Ms. Oliver questioned whether the trustees gave Ms. Oliver notice of the water bills and the real property tax bills. Ms. Broyles responded that she had notified Ms. Oliver of the bills but did not mail the bills to her. The court admitted into evidence the text messages exchanged between Ms. Broyles and Ms. Oliver during the term of the Lease as a defense exhibit.

In her case, Ms. Oliver testified that the pandemic greatly impacted her childcare business, making it difficult for her to make timely rent payments. She asserted that in 2020, Ms. Broyles told her to pay what she could and that anytime she had funds, she paid them to the trustees. In 2021, she was “dealing with personal issues,” including caring for her mother and contracting COVID twice. She acknowledged that she “missed some communication[s]” from Ms. Broyles.

At the close of all the evidence, counsel argued that the trustees had provided “extraordinary relief and concessions” to Ms. Oliver due to the pandemic and business difficulties she was experiencing. He maintained that the trustees were entitled to recover unpaid rent for the period from October 2020 through January 2022, during which time Ms. Oliver paid only \$8,700, plus the prorated 2022 real property taxes, water bills, cost to change the locks, and attorneys’ fees.

Ms. Oliver argued that the court should consider the impact of the pandemic and “dilemmas” involving the building. She asserted that between October 2020 and October 2021, she and Ms. Broyles orally agreed that Ms. Oliver could pay what she could afford toward the Lease.

The trial court took a recess and then ruled from the bench, granting judgment in favor of the trustees in the amount of \$42,073.90, plus \$16,193 in attorneys’ fees and \$175 in costs. This timely appeal followed.

G. Supplementation of Motion to Dismiss in the Illegal Eviction Action

After judgment was entered in the Breach of Lease Action, Ms. Broyles filed a reply to Ms. Oliver’s opposition to the motion to dismiss, attaching copies of the complaint, the answer, and the judgment in the Breach of Lease Action and arguing that Ms. Oliver was collaterally estopped from relitigating any issues arising under the Lease.

The court held a hearing on August 25, 2023. It asked the parties to focus upon the issue of collateral estoppel. Counsel for Ms. Broyles argued that the judgment in the Breach of Lease Action finally adjudicated the parties’ rights under the Lease and barred the Illegal Eviction Action. Ms. Oliver responded that she was not afforded an opportunity to defend herself in the Breach of Lease Action due to the imposition of the discovery sanction.

The circuit court determined to convert the motion to dismiss to a motion for summary judgment,⁹ and granted summary judgment in favor of Ms. Broyles. It ruled that “the issue of the breach of Lease” had been “adjudicated” and Ms. Oliver was precluded from relitigating that issue. Further, it determined that under the doctrine of *res judicata*, Ms. Oliver was barred from litigating issues that “could have been litigated . . . in the prior

⁹ Under Md. Rule 2-322(c), if “on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]”

suit[,]” such as the “circumstances of her eviction” and whether she was entitled to a set off against the damages incurred by the trustees. Alternatively, it ruled that “as a matter of law there is no prohibition against non-judicial evictions with respect to commercial leases.” Because the Lease permitted a self-help eviction and there was no allegation that the trustees breached the peace during the eviction, the court ruled that the eviction was lawful. This timely appeal followed.

DISCUSSION

FIRST APPEAL (Case No. 983)

A. Parties’ Contentions

In the Breach of Lease Action, Ms. Oliver identifies the “main issue” as whether she was denied due process of law under the 14th Amendment when the trustees resorted to self-help to repossess the Premises. She also contends that the trustees engaged in disparate treatment due to race, prematurely evicted her before a court could determine if she breached the terms of the Lease, breached the terms of the Lease when it gave improper notice to her of its intention to evict her, and failed to comply with provisions of the Lease regarding her liability for property taxes.

The trustees respond that the evidence supported the trial court’s finding that Ms. Oliver breached the Lease by not paying rent and that the eviction was proper under the terms of the Lease and under Maryland law. They assert that Ms. Oliver’s remaining contentions of error are unpreserved and, in any event, lack merit.

B. Standard of Review

In an appeal from a judgment entered following a bench trial, we “review the case on both the law and the evidence.” Md. Rule 8-131(c). “[We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and [we] will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” *Id.* A trial court commits clear error if its factual findings are not supported by competent evidence. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 339 (2017).

C. Analysis

The issues during the bench trial in the circuit court concerned whether Ms. Oliver breached the lease and, if so, the amount of damages and attorneys’ fees occasioned by that breach. We construe a commercial lease like any contract and thus, if the contractual language is unambiguous, we “will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used.” *Sy-Lene of Washington, Inc. v. Starwood Urb. Retail II, LLC*, 376 Md. 157, 167 (2003). Here, the Lease unambiguously obligated Ms. Oliver to pay \$4,687.50 in monthly installments on her annual rent, plus additional rent, which was defined to include water bills, real property taxes, and other expenses not at issue here. The failure “to pay any Rent when due” was a breach of the Lease. Upon a breach, the trustees were empowered to “terminate [the] Lease” after giving Ms. Oliver five (5) days’ advance written notice[.]”

“[A] commercial landlord is permitted to resort to self-help to repossess premises and property within the premises when a tenant is in breach of a lease that authorizes that remedy.” *Donegal Assocs., LLC v. Christie-Scott, LLC*, 248 Md. App. 448, 471 (2020),

cert. denied, 474 Md. 182 (2021). The trustees introduced evidence at trial (that was not disputed by Ms. Oliver) showing that it sent notice to her more than five days in advance of termination by certified mail to her business and residential addresses and by email. This was competent evidence in the record showing that the Lease was terminated effective February 4, 2022. Contrary to Ms. Oliver’s assertions on appeal, the trustees were under no obligation to obtain a judicial determination that she had breached the Lease before they could repossess the Premises.

As set out above, the evidence showed that the parties mutually agreed to excuse the payment of rent between February 1, 2020, and August 31, 2020.¹⁰ Thereafter, they mutually agreed to reduce the rent to \$2,000 per month between October 1, 2020, and February 28, 2021. Ms. Oliver failed to pay the rent due under the Lease, as amended by mutual agreement, from November 2020 through March 2021; paid less than what was due in May 2021; and paid no rent from June 2021 through January 2022. She also failed to pay water bills and real property taxes. The court did not err by ruling that Ms. Oliver breached the Lease.

Ms. Broyles’ testimony and the documentary evidence supported the trustees’ claims for damages and attorneys’ fees. In sum, the Lease, as modified by mutual agreement, obligated Ms. Oliver to pay \$10,687.50 in 2020, comprising regular rent in September 2020 and reduced rent from October 2020 through December 2020; to pay

¹⁰ Though the Lease stated that it only could be modified by a written instrument executed by both parties, the trustees conceded at the bench trial that the Lease was modified as set out above.

\$50,875 in 2021, comprising reduced rent in January and February and the remaining ten months of regular rent; and to pay \$4,687.50 in January 2022 before the Lease was terminated. The total rent due was \$66,250. After deducting the credits against the improvement allowance (\$4,687.50 and \$581.85) and the security deposit and the rent paid in advance (\$14,062.50), she owed \$46,918.15. Ms. Oliver paid just \$8,700 leaving a balance of \$38,218.15 for unpaid ordinary rent. The evidence further showed that Ms. Oliver owed \$3,994.93 for unpaid water bills, real property taxes, and the cost to change the locks, bringing the total damages for breach to \$42,213.08, which is slightly more than the amount awarded by the trial court (\$42,073.90). Ms. Oliver does not identify any clear error in the court’s findings, and we perceive none. The award of attorneys’ fees likewise was supported by competent evidence in the record and Ms. Oliver does not directly challenge it. Because the trial court’s findings were supported by competent evidence in the record, we must affirm the judgment of the circuit court.

The remaining challenges raised by Ms. Oliver were not raised in the circuit court and, consequently, are not before us on appeal. *See* Md. Rule 8-131(a) (stating that “[o]rdinarily, an appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court”).¹¹

¹¹ Even if raised, Ms. Oliver’s challenge to the trustees’ actions under the 14th amendment lack merit because there was no state action here. *See Wassif v. N. Arundel Hosp. Ass’n, Inc.*, 85 Md. App. 71, 78 (1990) (noting that the protections found in Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment to the U.S. Constitution “only apply to actions occurring under color of state law or sufficiently controlled by the state as to be considered state action” (citing *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 349 (1974) (emphasis added))). Here, private parties entered into a

(continued)

SECOND APPEAL (Case No. 1500)

A. Contentions

In the Illegal Eviction Action, Ms. Oliver challenges Ms. Broyles’ resort to a self-help eviction and asks this Court to clarify the enforceability of oral agreements and to evaluate discrepancies in the Lease relative to her obligation to pay real property taxes.¹²

Ms. Broyles responds that because the circuit court granted summary judgment in her favor on the grounds of collateral estoppel and *res judicata*, the only issue on appeal is whether the court erred by so ruling.

B. Standard of Review

A trial court’s decision to grant summary judgment is a question of law, which we review de novo. *CX Reinsurance Co., Ltd. v. Johnson*, 481 Md. 472, 484 (2022) (citing *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 102 (2020)). This Court reviews the record to determine whether the parties raised a dispute of material fact, and if not, whether the trial court properly granted judgment as a matter of law. *Id.* We consider the record in the light most favorable to the nonmoving party, drawing any reasonable inference against the moving party. *Id.*

commercial lease and, consistent with the terms of the Lease, the trustees repossessed the leased premises after Ms. Oliver defaulted.

¹² Ms. Oliver also raises the issue of racial bias by Ms. Broyles in this appeal. *Id.* did not allege racial discrimination in the Illegal Eviction Action and, consequently, it was not before the circuit court on summary judgment and is not before this Court on appeal.

C. Analysis

The distinct but related doctrines of *res judicata* and collateral estoppel prevent parties from relitigating matters that have already been decided and are based upon the judicial policy that “the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised.” *Colandrea v. Wilde Lake Cmty. Ass’n*, 361 Md. 371, 390-91 (2000) (citation omitted). Collateral estoppel, or issue preclusion, applies when a subsequent proceeding “does not involve the same cause of action as a previous proceeding between the same parties[.]” *Id.* at 388 (quoting *Mackall v. Zayre Corp.*, 293 Md. 221, 228 (1982)). Under that doctrine, a previous judgment only precludes relitigating “those facts or issues actually litigated in the previous action.” *Id.* (citation omitted). Maryland uses a four-part test to determine whether collateral estoppel is applicable:

(1) Was the issue decided in the prior adjudication identical with the one presented in the action in question? (2) Was there a final judgment on the merits? (3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication? (4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Wash. Suburban Sanitary Comm’n v. TKU Assocs., 281 Md. 1, 18-19 (1977). The foundation of the rule of collateral estoppel is that “the party to be bound must have had a full and fair opportunity to litigate the issues in question.” *Welsh v. Gerber Prods., Inc.*, 315 Md. 510, 518 (1989).

By contrast, *res judicata*, or claim preclusion, applies when a subsequent case “involves the same cause of action as a previous proceeding between the same parties[.]”

Colandrea, 361 Md. at 388 (quoting *Mackall*, 293 Md. at 227-28). A subsequent claim must meet three required elements to be precluded:

(1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction.

Id. at 389 (quoting *deLeon v. Slear*, 328 Md. 569, 580 (1992)). Under the doctrine of *res judicata*, the judgment in the previous action is conclusive “not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit.” *Id.* (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)).

Because Maryland’s counterclaim rule is permissive and not mandatory, however, subsequent claims between the same parties concerning the same general subject matter are only precluded where the claim would nullify the initial judgment or would impair rights established in the initial judgment. *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 698 (2015) (citing *Rowland v. Harrison*, 320 Md. 223, 232 (1990)). Examples of subsequent judgments which would nullify previous judgments include allowing the defendant “to enjoin enforcement of the [previous] judgment,” or seek to “depriv[e] the plaintiff in the first action of property rights vested in him under the first judgment[.]” *Id.* (quoting *Rowland*, 320 Md. at 237).

Returning to the instant case, we conclude that the circuit court correctly ruled that Ms. Oliver was collaterally estopped from relitigating the issue of whether she breached the Lease by her failure to pay rent, including payments deemed additional rent, because that issue was finally decided in the Breach of Lease Action, to which she was a party, and

she was given a full and fair opportunity to contest the allegations at the bench trial. Though she was precluded from introducing affirmative evidence at trial due to the discovery sanction, she testified and was permitted to cross-examine Ms. Broyles, to introduce the text messages exchanged between them, and to make argument.

With respect to her challenge to the self-help eviction, however, we conclude that Ms. Oliver was not barred by *res judicata* from making that claim because it was distinct from the cause of action for breach of the Lease. We nevertheless affirm the grant of summary judgment, however, because the circuit court correctly ruled, in the alternative, the eviction was lawful as a matter of law. For the reasons set out in our discussion in the first appeal, the Lease permitted the trustees to exercise self-help to evict Ms. Oliver, their commercial tenant, and they were not obligated to seek a judicial decree to do so. There was no dispute that Ms. Oliver received the notice of termination of the Lease, which also provided notice that she had nine days to return to the Premises and collect her personal property before it would be deemed abandoned. This also was permitted under the terms of the Lease. Consequently, the circuit court did not err by entering summary judgment in favor of Ms. Broyles.

**JUDGMENTS OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY IN CASE NO. 03-CV-
22-001002 AND CASE NO. 03-CV-23-001556
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**