Circuit Court for Montgomery County
Case No. C-15-CV-22-001165

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1509

September Term, 2022

FARIMAH FLESCHUTE

v.

HENGAMEH NIKMORAD, et al.

Friedman,
Leahy,
Gill Bright, Robin D.
(Specially Assigned),
JJ.

Opinion by Leahy, J.

Filed: January 16, 2024

Farimah Fleschute, ("Appellant"), challenges an order by the Circuit Court for Montgomery County dismissing her complaint with prejudice on the ground of res judicata. Finding no error, we shall affirm.

BACKGROUND

The facts in this case are largely undisputed. Because of the procedural posture of the case, we recite the facts as stated in Appellant's complaint,[1] which we must assume true for purposes of this appeal. *See*, *e.g.*, *Parker v. Hamilton*, 453 Md. 127, 132 (2017).

Appellant, a resident of Florida, owned, for investment purposes, a residential property in Potomac, Maryland. When, in 2014, she fell ill, she enlisted the help of her half-sister, Hengameh Nikmorad, whom she hired to manage the property because the previous manager (Appellant's brother) had died. Ms. Nikmorad and her husband, Andrew Omid Omidvar, ("Appellees"), then fraudulently induced Ms. Fleschute to sign a quitclaim deed, purporting to convey the property to Ms. Nikmorad.[2] Appellees thereafter, unbeknownst to Appellant, recorded the deed in the land records of Montgomery County and then executed a deed of trust and a promissory note, secured by the property, in the amount $625,500, using the proceeds to satisfy their own debts.

When Appellant discovered Appellees' scheme, she filed a civil action in the Circuit Court for Montgomery County (Case No. 433541-V, the "prior case" or "prior action"),

[1] We also draw background facts from Appellant's Second Amended Complaint in a prior action she had pursued against the same parties.

[2] Appellant averred that she had been duped into believing that she was signing a power of attorney, which was necessary for her half-sister to manage the property.

alleging numerous causes of action, including unjust enrichment, against Appellees.[3] Ultimately, the matter proceeded to a jury trial, which concluded with a verdict in favor of Appellant for $515,000, which the court subsequently reduced to $235,000. At Appellant's election, the fraudulent quitclaim deed was declared void.

No appeal ensued from that case. Shortly after the judgment became final, Appellees defaulted on the loan, and the lender subsequently filed a foreclosure action. Appellant ultimately sold the property to stave off foreclosure and used the sale proceeds to satisfy the entire loan balance, $739,923.39, even though she was not a party to the loan. She then filed a new civil action in the in the Circuit Court for Montgomery County (Case No. C-15-CV-22-001165) against Appellees, alleging unjust enrichment and seeking damages of $739,923.39 plus pre-judgment interest, attorneys' fees, and costs. In that complaint, Appellant averred:

> 4. On or about June 15, 2017, [Appellant] filed a civil action in the Circuit Court for Montgomery County, Maryland styled as *Fleschute v. Nikmorad*, Civil Case No. # 433541V, wherein [Appellant] successfully asserted that she was the lawful owner of the Property.
>
> 5. The above matter concerned a Deed, dated June 16, 2014, which conveyed the Property from [Appellant] to Ms. Nikmorad [one of the Appellees] for no consideration. Exhibit 1.
>
> 6. The Property [was] not encumbered by any liens at the time of the Deed transfer from [Appellant] to Ms. Nikmorad.
>
> 7. On or about April 25, 2019, the Court entered an Order, in the aforementioned prior civil matter wherein it declared that the Deed transferring title from [Appellant] to Ms. Nikmorad was void as of the date of the filing of the original Complaint. Exhibit 2.

[3] Also named as defendant in that action was the Federal National Mortgage Association (Fannie Mae), the lender.

8. Prior to the commencement of the prior litigation, on March 17, 2016, [Appellees] took out a loan against the Property and executed a promissory note in the amount of $625,500.00. The loan was secured by a Deed of Trust against the Property.

9. At the time [Appellees] took out the loan and encumbered the Property, Ms. Nikmorad was the record title owner of the Property.

10. Although, [Appellee] Omidvar was not a record title owner[,] Mr. Omidvar was a Borrower on the Loan. Ms. Nikmorad executed a Deed of Trust against the Property as [the] record title owner. Exhibit 3.

11. [Appellees] received the loan proceeds at closing and used those proceeds to pay their personal debts, including but not limited to, paying off existing mortgages upon other real estate they owned together.

12. On or about December 2, 2018, following the Court's declaration that the Deed conveying the Property to Nikmorad was void, [Appellees] defaulted on the Loan. Exhibit 4.

13. At all times relevant to this Complaint, [Appellees] were responsible for the payment of the Loan.

14. On or about March 30, 2020, the Lender initiated foreclosure proceedings because [Appellees'] loan was in default.

15. The lender scheduled a foreclosure sale date for January 7, 2022.

16. [Appellant], through counsel, was able to obtain a postponement of the scheduled sale date.

17. On or about January 14, 2022, [Appellant] sent a demand to [Appellees] advising that the loan was in default and that [Appellees] immediately take steps to bring the loan current. Exhibit 5.

18. On or about February 28, 2022, [Appellant] sold the Property to a third party.

19. To sell and transfer the Property to a third party, [Appellant] was required to pay-off [Appellees'] delinquent loan so that [Appellant] could convey to the third-party purchasers clear title to the Property.

> 20. At closing, [Appellant] caused to be paid, in full, [Appellees'] loan in order to obtain a release of the Deed of Trust securing [Appellees'] loan against the Property.
>
> 21. At closing, [Appellant] paid to Lender $739,923.39 which is the full payoff of the loan which [Appellees] took out against the Property. Exhibit 6.
>
> 22. Despite demand, [Appellees] have made no effort to pay [Appellant] the monies she paid to satisfy [Appellees'] delinquent loan.
>
> 23. [Appellant's] payment of [Appellees'] loan was not intended as a gift to [Appellees]. Rather, [Appellant] sold the Property and caused the Deed of Trust to be satisfied so as to prevent the Property from going to foreclosure.

Appellees filed a motion to dismiss and/or for summary judgment, asserting that Appellant's claim was barred by res judicata. Appellant filed an opposition, and the circuit court thereafter held a hearing on the motion.

Two weeks later, the court issued a Memorandum Opinion and Order, dismissing with prejudice Appellant's complaint on the ground of res judicata. The court reasoned as follows[4]:

> It is immaterial that [Appellees] defaulted on their loan after the judgment in the Prior Case, as any alleged unjust enrichment of [Appellees] necessarily arose out of the same transaction that was the basis of the Prior Case, i.e., the ownership of the Property and the Loan which encumbered it. It could certainly have been anticipated in the Prior Case that [Appellees'] default on the Loan would follow the relief [Appellant] was requesting in the Prior Case. Indeed, in the Prior Case, [Appellant] stated in her Second Amended Complaint that she "has suffered and will continue to suffer substantial damages, including … the loss of value of the Property due to the purported Loan now encumbering it[.]"
>
> [Appellant] was obligated to present her entire controversy in the

[4] For clarity, we have omitted some citations, quotations, and internal punctuation marks.

> Prior Case, as *res judicata* applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action (1) to present evidence or grounds or theories of the case not presented in the first action, or (2) to seek remedies or forms of relief not demanded in the first action. Here, as in [*Gonsalves v. Bingel*, 194 Md. App. 695, 719 (2010)], it is immaterial that in trying the first action the plaintiff was not in possession of enough information about the damages, past or prospective, or that damages turned out in fact to be unexpectedly large and in excess of the judgment.

This timely appeal followed.

DISCUSSION

Standard of Review

Under Maryland Rule 2-322(b)(2), a circuit court may dismiss a complaint for "failure to state a claim upon which relief can be granted[.]" "A motion to dismiss is properly granted if the factual allegations in a complaint, if proven, would not provide a legally sufficient basis for the cause of action asserted in the complaint." *Wheeling v. Selene Finance LP*, 473 Md. 356, 374 (2021). In reviewing the grant of a motion to dismiss for failure to state a claim upon which relief can be granted, we "assume the truth of all relevant and material facts that are well pleaded and all inferences which can reasonably be drawn from those pleadings." *Id.* (quotation marks and citation omitted). We do not "pass on the merits of the claim, but instead, we merely determine [ ] the plaintiff's right to bring the action." *Id.* (quotation marks and citation omitted) (alteration in the original). We review the circuit court's ruling "without deference, to determine whether it was legally correct." *Id.* (quotation marks and citation omitted).

Parties' Contentions

Appellant contends that the circuit court erred in dismissing her complaint because

her "claim for unjust enrichment" in the present action "is a separate transaction which arose after the conclusion of" the prior case. According to Appellant, she "could not have asserted her instant claim for unjust enrichment in the prior litigation as that claim had not yet arisen," given that Appellees had, at that time, "remained current on the Loan." Thus, Appellant argues, at all times during the prior litigation, any damages she could have alleged for Appellees' subsequent default on the loan would have been "mere conjecture and speculation." Because, according to Appellant, her "instant claim is based on new facts which were not present in the prior litigation," it should not be barred by res judicata.

Appellees counter that Appellant's "argument fails as a matter of simple logic." According to Appellees, Appellant claimed, in the prior case, that they had benefitted "by receiving the loan proceeds, that she was damaged by [the] Deed of Trust securing the loan and reducing her equity in the Property, and that the [A]ppellees should be required to pay [A]ppellant the amount of the loan / reduced equity to compensate her." Crucially, according to Appellees, Appellant raises the same claim here; "the only difference," according to Appellees, is "that the reduction in equity carried through to the sale of the Property," but "the basis for the loss and its amount remained exactly the same – the encumbrance on the Property of the Deed of Trust." Appellees point out that Appellant was aware of the loan and deed of trust during litigation of the prior case and that she could have and should have anticipated that the deed of trust "would eventually have to be paid at sale, finalizing the loss of equity" she had pleaded in the prior case. According to Appellees, Appellant is using the present case as a "backdoor appeal because she realized too late" that her recovery in the prior case was inadequate to compensate her for her losses.

Her remedy, however, was to pursue an appeal from the judgment in the prior case, not to file a new action.

Analysis

"The doctrine of res judicata, also referred to as claim preclusion, provides that a claim may not be relitigated once it has come to a final judgment." *Becker v. Falls Rd. Cmty. Ass'n*, 481 Md. 23, 46 n.6 (2022). The Supreme Court of Maryland has described it as follows:

> Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that 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.
>
> In Maryland, the doctrine of res judicata precludes the relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action.

Powell v. Breslin, 430 Md. 52, 63-64 (2013) (quotation marks and citations omitted).

In determining whether a claim in a later action is "identical" to one raised in an earlier action, Maryland follows the transactional approach, *Gonsalves*, 194 Md. App. at 710, which is set forth in the Restatement (Second) of Judgments:

> (1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
>
> (2) What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or

> motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

RESTATEMENT (SECOND) OF JUDGMENTS § 24 (AM. L. INST. 1982). Thus, res judicata not only "bars relitigation of all matters actually litigated" in the prior action but also those "that could have been litigated[.]" *Becker*, 481 Md. at 46 n.6 (quotation marks and citations omitted) (alteration in the original).

In the present case, it is undisputed that the parties are the same as those in the prior case. It is further undisputed that there was a final judgment on the merits in the prior action. As Judge Storm explained in his memorandum opinion:

> The Prior Case included a claim for Unjust Enrichment. It also included a claim for Breach of Contract against Nikmorad "by using the Property for her own personal gain." A jury trial was held in the Prior Case, and on July 27, 2018, the jury returned a verdict in favor of Plaintiff. A money judgment was thereafter entered awarding Plaintiff a total of $608,000,[] which was later reduced to $328,000.[] As part of the relief in the Prior Case, the court voided the Deed and restored Plaintiff's ownership of the Property. The Property, however, remained encumbered by the Deed of Trust securing the Loan on which Defendants were personally obligated.

(citations and footnotes omitted).[5] The only matter in dispute is whether the unjust enrichment claim in the present case is "identical" to a claim determined in the previous action.

We conclude that it is. In *Gonsalves*, we quoted the following "Exemplifications of General Rule Concerning Splitting," which is equally pertinent here:

> The rule of § 24 applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action

[5] In the jury trial before a different judge, Appellant was awarded $93,000 for breach of contract and $515,000 for breach of fiduciary duty. That court further reduced "the judgment" to $235,000 on April 25, 2019, following a motions hearing. The record on appeal does not reveal why the judgment was further reduced.

> (1) To present evidence or grounds or theories of the case not presented in the first action, or
>
> (2) To seek remedies or forms of relief not demanded in the first action.

Gonsalves, 194 Md. App. at 718 (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 25 (AM. L. INST. 1982)). Moreover, we further observed:

> Typically, even when the injury caused by an actionable wrong extends into the future and will be felt beyond the date of judgment, the damages awarded by the judgment are nevertheless supposed to embody the money equivalent of the entire injury. Accordingly, if a plaintiff who has recovered a judgment against a defendant in a certain amount becomes dissatisfied with his recovery and commences a second action to obtain increased damages, the court will hold him precluded; his claim has been merged in the judgment and may not be split. . . . It is immaterial that in trying the first action he was not in possession of enough information about the damages, past or prospective, or that the damages turned out in fact to be unexpectedly large and in excess of the judgment.

Id. (quoting RESTATEMENT (SECOND) OF JUDGMENTS § 25, cmt. c (AM. L. INST. 1982) (alteration in the original)).

Applying these precepts to the present case, we conclude that the circuit court correctly dismissed Appellant's complaint on the ground of res judicata. Unfortunately for Appellant, the judgment in the prior action, which was reduced, did not ultimately cover the full amount of Appellant's damages. We agree with Appellees, however, that this was foreseeable and that her remedy was to pursue an appeal from the judgment in the prior case, not to file a new action.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.