

Circuit Court for Allegany County
Case No. C-01-CV-20-000039

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1934

September Term, 2021

FERNANDO SMITH, ET. AL.

v.

ESTATE OF RICHARD REEVES

Leahy,
Ripken,
Kehoe, Christopher B.,**
(Senior Judge, Specially Assigned)
JJ.

Opinion by Leahy, J.

Filed: October 20, 2023

* This is an unreported opinion. The 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).

** Christopher B. Kehoe, J., now retired, participated as a member of the panel on this case while an active member of the Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the adoption of this opinion.

This action arises out of a complaint filed in the Circuit Court for Allegany County, Maryland, by Fernando Smith and Jamie Crabtree (“Appellants”), alleging, among other things, breach of contract concerning the sale of real property. In 2013, Appellants entered into an installment contract (“Land Installment Contract”) with Richard Reeves¹ (“Mr. Reeves” or “the Estate”), to purchase property in Allegany County that was being used as an automobile salvage facility. Two years later, in 2015, the parties entered into an “Agreement to Release [] Installment Contract and Offer to Purchase Real Estate” (“Agreement to Release”), which altered the sale and payment terms of the Land Installment Contract. The Agreement to Release provided that Appellants could purchase the subject property for a payment of \$60,000 to be made on or before December 15, 2017. Appellants continued making regular payments until July 1, 2016, at which point they stopped. Mr. Reeves filed a foreclosure action on June 30, 2017. The foreclosure court found that Appellants were in default and permitted the sale of the property, which was ratified in June 2019.

Following the foreclosure sale, in January 2020, Appellants filed suit alleging various causes of action, including that Mr. Reeves breached the Agreement to Release by foreclosing prematurely on the property. The Estate moved for summary judgment and, on January 12, 2022, following a hearing, the circuit court granted the Estate’s motion on all counts in a written memorandum and order. The court found that the Agreement to Release required Appellants to continue making monthly payments under the Land Installment

¹ Mr. Reeves passed away on October 27, 2021.

Contract. The court concluded that Appellants, not Mr. Reeves, breached the Agreement to Release when they defaulted on the Land Installment Contract. The court also determined that Appellants could not collaterally attack the foreclosure court’s ruling that Appellants were in default under the terms of the Land Installment Contract.

On February 9, 2022, Appellants noted this appeal and present one question for our review, which we have condensed as follows:²

Did the circuit court err in granting summary judgment on the ground that the Appellants breached the Agreement to Release by failing to make the regular, monthly payments prescribed in the Land Installment Contract?

The Estate argues, as it did below, that the issue was already adjudicated and asserts that the present action was a collateral attack on the circuit court’s judgment in the foreclosure proceeding. We agree, and, therefore, we affirm the court’s judgment without reaching the merits of the breach of contract claim because it was collaterally estopped.

BACKGROUND

The Contracts

The parties entered into the Land Installment Contract in 2013. It defined the terms of the sale of the subject property, in pertinent part, as follows:

² In their brief, Appellants state the question as follows:

- I. “Was the Circuit Court in error in deciding that Appellants failed to make payments as agreed in the Contract dated December 15, 2015, by summarily determining that Appellants’ breach of a previously litigated Land Installment Contract constituted breach of both contracts and that no evidentiary determination was made as to what payments were made in relation to the current contract in dispute, creating a material fact preventing summary judgment pursuant to Maryland Rule 2-501?”

(d) The total purchase price . . . is: \$100,000.00

(e) The down payment paid on account by the Buyers at or before the execution of this Contract is: \$10,000.00

(f) The principal balance owed by the Buyers . . . is: \$90,000.00

The above principal balance, together with the property expenses listed below, shall be paid by the Buyers to the Seller in 119 consecutive installments of \$954.59 each and one final installment of \$954.58. Each installment shall be due and payable on the 1st day of each month beginning with the first installment which is due on the 1st day of June, 2013. The total number of consecutive monthly installments is 120.

About two years later, on December 15, 2015, and as a result of Appellants' financial hardship, the parties entered into the Agreement to Release, which modified the original Land Installment Contract by providing that Appellants could purchase the subject property via a lump-sum payment of \$60,000 to be paid on or before December 15, 2017. The Agreement to Release states, in relevant part:

The Buyer wishes to submit an offer to purchase certain property from the Seller under the terms stated below which includes an agreement for the Seller to RELEASE an existing Installment Contract for the same property upon payment of amounts stipulated herein:

* * *

The balance of the Purchase Price will be paid in cash or equivalent in financing at closing unless otherwise provided in this Offer. **The balance will be subject to adjustments because it is further agreed that payments are to be continually made in relation to the existing Installment Contract to reduce such balance accordingly.**

* * *

Seller, Richard P. Reeves, **HEREBY AGREES to RELEASE any AMOUNTS presently owed in the aforementioned Land Installment Contract** recorded in the Land Records of Allegany County for the agreed amount of Sixty Thousand Dollars (\$60,000.00) paid to him, or his heirs in the event of his death or incapacity, on or before December 15, 2017. This amount is the agreed amount that was decided by both parties on the date of this Agreement. **If this amount, minus adjustments from continued payments, is paid by the aforementioned date, Seller agrees that such would satisfy the existing Land Installment Contract recorded in the**

Land Records of Allegany County book 1962 page 001 and that NO DEFAULT would occur if paid by December 15, 2017.

* * *

This Agreement is ACCEPTED upon the signature of both parties and in the event that Closing DOES NOT occur by December 15, 2017, the Original Land Installment Contract between Seller (Richard P. Reeves) and Buyer(s) (Fernando Smith and Jamie Crabtree) will remain valid and effective in its totality and entirety. Any funds paid as deposits or payments shall be applied to the Original Land Installment Contract as if this agreement did not exist.

(Emphasis added).

The Foreclosure Action

On July 1, 2016, Appellants stopped making payments pursuant to the Land Installment Contract; however, Appellants argued later at the summary judgment hearing in the underlying case that they continued to make irregular payments in varying amounts whenever they were able. On June 30, 2017, Mr. Reeves filed a foreclosure action in the Circuit Court for Allegany County, Maryland, in Case No. 01-C-17-045626. The foreclosure sale was stayed at Appellants' request pending an evidentiary hearing and was then permitted to proceed pursuant to an order issued after that hearing on December 7, 2017. Appellants introduced the Agreement to Release in the foreclosure action as evidence that they had not, in fact, defaulted on the Land Installment Contract.

The parties' accounts, in the underlying proceeding and on appeal, of the judge's bench ruling at the foreclosure proceeding differ. Appellants claim that the judge who conducted the foreclosure proceeding advised that he was not considering the Agreement to Release in the foreclosure proceeding, and that he further instructed that any claim for breach of the Agreement to Release would have to be pursued in a separate action. The Estate, however, claims that the court held that the Land Installment Contract was still valid

and enforceable because the Agreement to Release specified that “payments are to be continually made in relation to the existing Installment Contract to reduce such balance accordingly.” According to the Estate, the foreclosure court found that Appellants failed to make payments as required under the Land Installment Contract, and they failed to make the \$60,000 payment contemplated under the Agreement to Release. The parties did not produce a transcript of the foreclosure hearing in the record,³ and the only evidence of the foreclosure judge’s analysis was introduced by Mr. Reeves in the form of a verified pleading in the action underlying this appeal.

Appellants appealed the foreclosure court’s decision, but we dismissed that appeal for failure to provide the evidentiary hearing transcript. The foreclosure sale proceeded and was later ratified on June 18, 2019.

The Action Underlying this Appeal

Following the foreclosure on the subject property, Appellants filed the instant suit against Mr. Reeves in the Circuit Court for Allegany County, Maryland, on January 29, 2020, alleging the following four counts: (1) breach of contract; (2) tortious interference with business relations; (3) fraud; and (4) negligence. Under Count I for breach of contract, Appellants alleged that initiation of foreclosure proceedings prior to the December 15, 2017 closing date was a material breach of the Agreement to Release and sought relief in the amount of \$251,000 in both compensatory and punitive damages.

³ A transcript of the evidentiary hearing in the foreclosure action was not provided for this appeal, nor could we locate any transcript on MDEC. The transcript was similarly unavailable to the court below as the trial judge specifically asked the parties if they had ordered a transcript and they conceded that they had not.

In lieu of an answer, Mr. Reeves filed a motion to dismiss on February 25, 2020, for failure to state a claim upon which relief can be granted on the ground that the issues raised by Appellants had already been litigated and decided in the foreclosure case. On November 5, 2020, the court denied Mr. Reeves’ motion to dismiss, stating that the court was required to assume that the allegations of Appellants’ complaint were true. However, the court acknowledged that it had “serious doubts about the [Appellants’] legal theory in this case. . . . Having litigated this issue to a final judgment in the foreclosure action, the [Appellants] appear to be attempting a collateral attack on that judgment in the instant action.” Mr. Reeves then filed an answer on November 18, 2020, and the court subsequently entered a scheduling order on November 23, 2020.

On December 7, 2020, Appellants served Mr. Reeves with Interrogatories and a Request for Production of documents. Hearing nothing, Appellants sent a follow-up letter on January 11, 2021, requesting written discovery responses. Then, without providing any discovery responses or conducting discovery, Mr. Reeves filed a verified motion for summary judgment on April 28, 2021, accompanied by the Affidavit of Richard Reeves, swearing that Mr. Reeves had reviewed the entirety of the motion and “[a]ll of the factual assertions contained therein are true and correct.”⁴ Mr. Reeves alleged, in relevant part, that the Agreement to Release was admitted into evidence in the foreclosure proceeding, and that the foreclosure judge “held at that evidentiary hearing that the Land Installment

⁴ We note that the parties failed to include the Affidavit of Mr. Reeves—clearly a critical document in this case—in the record extract submitted to this Court.

Contract was still valid and in effect because the payment contemplated by the Agreement to Release . . . had never been made and a closing had not occurred as contemplated under the Agreement to Release.” Appellants did not reply to the Motion for Summary Judgment, nor otherwise seek to introduce evidence to rebut the allegations that Appellants’ breach of contract claim was “heard and ruled upon in the underlying foreclosure case” as verified by Mr. Reeves’ affidavit.

A hearing was held before Judge Jeffrey S. Getty on December 10, 2021. At the hearing, counsel for Mr. Reeves⁵ claimed that she never received the Appellants’ discovery requests. Mr. Smith, *pro se*, on behalf of both Appellants, argued that Appellants were entitled to their discovery and there were material facts remaining in dispute that precluded summary judgment. Mr. Smith expounded:

In this particular case [Mr. Reeves] rests solely on the fact . . . that the [Agreement to Release] that was reached by Mr. Reeves and us was litigated in the initial foreclosure proceedings that they instituted. That’s not the case. That in itself is a disputed fact. We expressly at the ending of that hearing . . . asked the Judge . . . if the alleged default on the [Agreement to Release] was considered into his decision[.] . . . He . . . stated that that would have to be done in a separate action. That he only dealt with that particular issue and any alleged default that we were alleging, we would have to submit a second action.

The court ventured into the merits of the claim, allowing Mr. Smith to explain the ambiguity in the Agreement to Release that purportedly presented an issue of material fact that barred summary judgment. Mr. Smith contended, “[t]he ambiguity comes in it when it says here, . . . Reeves hereby agrees to release any amount presently owed in the

⁵ Counsel informed the court that Mr. Reeves had recently passed away, but that he had not filed a motion to substitute parties because the Estate had not yet been opened.

aforementioned land installment contract recorded in the land [records] . . . for the agreed amount of \$60,000.00 paid to him or his heirs in the event of his death or [in]capacity, on or before December 15th, 2017.” Mr. Smith posited that the language that “payments are to be continually made in relation to the existing Installment Contract” meant only that Appellants would continually make payments to reduce the balance, which, he claimed, they did. “At the time on, by 2017 we didn’t owe him \$60,000.00 anymore . . . if we’re allowed the opportunity to litigate the case, we can show every payment that we made[.]”

Mr. Reeves’ counsel disputed Mr. Smith’s contention that the terms of the Agreement to Release were ambiguous, and added that by her recollection, the foreclosure judge was referring to a potential deficiency judgment and not the Agreement to Release when he spoke about the possibility of pursuing another action.

In January 2022, the circuit court issued a memorandum opinion in which it granted Mr. Reeves’ motion for summary judgment on all counts.⁶ The circuit court held that Appellants’ obligation under the Agreement to Release to make monthly payments pursuant to the Land Installment Contract was unambiguous and need not be submitted to the jury, and that Appellants breached the agreement by failing to make those payments. In ruling on Appellants’ breach of contract claim, the court explained:

⁶ Appellants did not submit a written opposition to the motion for summary judgment but did appear at the hearing. On the morning of the hearing, Appellants filed a motion for judgment for failure to provide discovery, alleging that they had served Mr. Reeves with interrogatories and requests for production of documents on December 7, 2020, and had never received a response. Appellants’ motion was denied for failure to file the interrogatories and requests for production with the court.

The Agreement explicitly addresses [Appellants'] obligation to make payments as provided in the Land Installment Contract – “. . . because it is further agreed that payments are to be continually made in relation to the existing Installment Contract to reduce such balance accordingly.” (Emphasis added). There is nothing ambiguous about [Appellants'] obligation. That obligation was to continue to make payments to reduce the principal balance due in accordance with the Land Installment Contract.

Judge Getty also found that Appellants “cannot collaterally attack the [c]ourt’s prior holding” in the foreclosure action that Appellants “were in default of the payment obligation set forth in the Land Installment Contract.”⁷

The court entered judgment against Appellants by separate order on January 12, 2022. A timely notice of appeal was subsequently filed on February 9, 2022.

DISCUSSION

The Estate’s argument on the threshold issue of collateral estoppel is dispositive. Because we conclude that Appellants’ breach of contract claim is estopped by the judgment of the foreclosure court and the ratification of the sale, we do not reach the merits of the claim.

The Estate argues that the circuit court already ruled on the factual issue of breach of the Agreement to Release in the foreclosure case and that the instant action is a collateral attack on the court’s prior holding. Appellants offer a different narrative, arguing that, in the foreclosure proceeding, the judge advised that he was not considering the Agreement to Release, and that his ruling was solely based on Appellants’ default on the Land Installment Contract. Appellants further contend that the foreclosure judge explained that

⁷ Judge Getty also made findings and determinations on Appellants’ claims for tortious interference, fraud, and negligence, which are not challenged in this appeal.

a breach of contract claim under the Agreement to Release would have to be pursued in a separate action.

A. Governing Law

When reviewing a trial court's grant of a motion for summary judgment, "the standard of review is *de novo*. *Browne v. State Farm Mut. Auto. Ins. Co.*, 258 Md. App. 452, 471 (2023) (quoting *Dashiell v. Meeks*, 396 Md. 149, 163 (2006)). A circuit court shall enter summary judgment in favor of a moving party "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f). The application of collateral estoppel, however, is a "separate legal question, subject to *de novo* review." *Garrity v. Maryland State Bd. of Plumbing*, 221 Md. App. 678, 684 (2015) (citing *Shader v. Hampton Imp. Ass'n, Inc.*, 217 Md. App. 581, 605 (2014)).

A collateral attack, as is alleged here, is "an attempt to impeach a judgment . . . before a court other than the one in which [the judgment] was rendered, in an action other than that in which it was rendered[.]" *Facey v. Facey*, 249 Md. App. 584, 605 (2021) (quoting *Klein v. Whitehead*, 40 Md. App. 1, 20 (1978)). Further, it is an attempt to avoid, defeat, or evade a prior judgment, or deny its force and effect in some incidental proceeding not provided by law for the express purpose of attacking it. *Klein*, 40 Md. App. at 20. Collateral attacks are usually barred by *res judicata* as any and all claims which could have been litigated in a prior suit are precluded, *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 388 (2000), but the prohibition on collateral attacks goes slightly further and prevents

a person “from challenging the validity of the existing judgment from attacking the judgment itself rather than merely its scope or effect.” *Klein*, 40 Md. App. at 21.

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*, 361 Md. at 390-91 (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[.]” *Colandrea*, 361 Md. at 388 (quoting *Mackall*, 293 Md. at 228). Under the doctrine of collateral estoppel, a previous judgment only precludes re-litigation of “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). As we summarized in *Mostofi v. Midland Funding, LLC*, “claim preclusion bars litigation of *claims*, whereas issue preclusion generally bars re-litigation of *facts*.” 223 Md. App. 687, 696 (2015) (emphasis in original).

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[.]” *Id.* at 388 (quoting *Mackall v. Zayre Corp.*, 293 Md. 221, 227-28 (1982)). 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)).

However, because Maryland’s counterclaim rule is permissive and not mandatory, 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*, 223 Md. App. at 698 (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 judgement.” *Id.* (quoting *Rowland*, 320 Md. at 237). Accordingly, claim preclusion does not necessarily bar an erstwhile debtor from bringing a subsequent claim for damages when doing so would not attack the validity of the underlying debt. *See id.* at 703 (holding that, even if an underlying debt is valid, Maryland

rules of *res judicata* would not preclude a consumer from later seeking damages against creditors for illegally collecting that debt under separate statutory causes of action).

B. Analysis

The instant action is not precluded by *res judicata* because Appellants are asserting a cause of action that is distinct from the foreclosure action that was litigated in the prior proceeding, even if it concerns the same property and contracts. However, the factual dispute that forms the basis of Appellants' breach of contract claim *is* barred by the doctrine of collateral estoppel. There are facts in the record to support each prong of the inquiry of whether the present action is estopped by the circuit court's previous decision permitting the foreclosure sale. Once again, these four prongs are:

(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).

Addressing the third prong first, we observe that the parties in this action are identical to—or, in the case of Mr. Smith and his estate, in undisputed privity with—those in the foreclosure action. And, with regard to the second prong, the parties agree that the circuit court's foreclosure decision and subsequent ratification of the sale constitute a final judgment on the merits of the issues raised therein.

However, the facts probative of the remaining two prongs are contested. For the prior adjudication to bar the present action, the issues must be identical and the party defending the action must have received a fair opportunity to be heard in the prior

adjudication. Appellants allege that the judge who conducted the foreclosure proceeding advised that he was not considering the Agreement to Release, and that his ruling was solely based on Appellants' default under the Land Installment Contract. Appellants further stated that the judge directly told them that any breach of contract claim under the Agreement to Release would have to be pursued in a separate action. The Estate, however, claims that the judge did consider the Agreement to Release and held that it did not, in fact, release Appellants from their obligations under the Land Installment Contract because they failed to make continuous payments. Furthermore, according to the Estate, the foreclosure court further found that the \$60,000 payment contemplated under the Agreement to Release had not yet been made.

In reviewing the trial court's ruling on the motion for summary judgment in this case, we must ascertain whether there is evidence to support the court's finding that the breach of contract claim was collaterally estopped, and whether or not that evidence was refuted by the other party. In other words, we must determine whether the fact that the foreclosure court actually ruled upon the Agreement to Release remains in dispute. As previously mentioned, the parties never introduced a transcript of the foreclosure proceedings in the underlying case, nor did they introduce any other documents to show what issues and evidence the foreclosure court found material to his ruling. And we note that the public record is mute on this subject. The order lifting the stay of the foreclosure sale, which is available for public inspection, does not explain the court's reasoning. However, the Estate introduced evidence by affidavit in support of its motion for summary judgment. Through its verified pleading, Mr. Reeves attested:

During the hearing on December 1, 2017 in the prior case, the document which has been attached to the Plaintiffs' Complaint as Attachment 3 and identified as an Agreement to Release of Installment Contract and Offer to Purchase Real Estate, dated December 15, 2015, was admitted into evidence. Judge Finan held at that evidentiary hearing that the Land Installment Contract was still valid and in effect because the payment contemplated by the Agreement to Release of Installment Contract and Offer to Purchase Real Estate, dated December 15, 2015, had never been made and a closing had not occurred as contemplated under the Agreement to Release of Installment Contract and Offer to Purchase Real Estate, dated December 15, 2015.

Appellants did not file any affidavit or present any other evidence to dispute these contentions. *See, e.g., Harrison v. Bill Cairns Pontiac of Marlow Heights, Inc.*, 77 Md. App. 41, 55, 549 (1988) (accepting as dispositive an engineer's undisputed affidavit that the recall notice that appellant offered as evidence of an automotive defect did not apply to the vehicle in question and affirming the summary judgment on the claim). Accordingly, we hold, under prong one of the collateral estoppel test, that the Estate presented unrefuted evidence that the foreclosure court considered whether Appellants defaulted under both the Installment Contract and the Agreement to Release at the hearing on December 1, 2017. We also conclude, under prong four, that the record establishes that the foreclosure court conducted an evidentiary hearing on December 1, 2017, at which both parties were represented and there is no evidence to suggest that Appellants did not have a full opportunity to be heard. Therefore, we affirm the circuit court's grant of summary judgment on Appellants' breach of contract claim on the ground that it was barred under the doctrine of collateral estoppel.

**JUDGMENT OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.**