

Circuit Court for Baltimore County
Case No. C-03-CV-22-004396

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 149

September Term, 2023

RUSSELL MIRABILE

v.

NANCY LEITER

Berger,
Arthur,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 3, 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This case is before us on appeal from an order of the Circuit Court for Baltimore County dismissing a civil action filed by Russell Mirabile (“Mirabile”), appellant, against Nancy Leiter (“Leiter”), appellee. Mirabile and Leiter are siblings who were general partners in the Liberty Mobile Home Park partnership (the “LMHP”) since 1993. Differences between the parties resulted in Leiter filing suit to dissolve the partnership in 2008. The parties entered a settlement agreement in 2010 (the “Settlement Agreement”), which was incorporated in a court order. Under the agreement, Mirabile agreed to sell his partnership interest in the LMHP partnership to Leiter for a sale price of \$1.5 million.

Following the 2010 Settlement Agreement and court order, the siblings have been entangled in litigation spanning over a decade, with Mirabile continuously refusing to comply with the terms of the Settlement Agreement. Pursuant to a 2018 court order, the parties finally closed on the sale of Mirabile’s partnership interest to Leiter in 2019 in accordance with the terms of the Settlement Agreement. As discussed below, Mirabile’s complaint in the extant appeal is yet another challenge to the enforcement of the Settlement Agreement, through which he disputes the amount paid to him at the closing in 2018. On January 13, 2023, Leiter filed a motion to dismiss Mirabile’s complaint or, in the alternative, for summary judgment. Mirabile also filed a motion for summary judgment. On March 14, 2023, the circuit court granted Leiter’s motion to dismiss and denied Mirabile’s motion as moot.

Mirabile presents the following issues for our consideration on appeal:

- I. Whether the circuit court erred in treating Leiter’s motion as a motion to dismiss rather than a motion for summary judgment.
- II. Whether Mirabile’s claims are waived by the waiver provision of the Settlement Agreement and barred by the doctrine of *res judicata*.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

The Original Partnership Action (2008-2019)

Mirabile and Leiter were general partners in the Liberty Mobile Home Park partnership (“LMHP”), with each owning a fifty-percent partnership interest in LMHP assets. In 2008, irreconcilable differences between the siblings resulted in them wishing to dissolve the partnership, but they could not agree upon terms of dissolution. On August 26, 2008, Leiter filed a complaint in the Circuit Court for Baltimore County seeking dissolution of the LMPH partnership under Md. Code (1975, Repl. Vol. 2014) § 9A-801 of the Corporations and Associations Article (“C&A”) and requesting an accounting of the partnership. Mirabile filed a counter-complaint similarly requesting a dissolution and accounting of the partnership and alleging breach of fiduciary duty, breach of contract, conversion, and constructive fraud.

The circuit court held a four-day trial in November 2010. We previously set forth the outcome of this trial in our prior unreported opinion arising out of this partnership

action, *Mirabile v. Leiter*, Case No. 2905, Sept. Term 2018 (Apr. 6, 2020) (“2020 Opinion”):

The circuit court found Leiter to be a “very credible witness” and further found that Mirabile was not “believable in hardly any respect.” Moreover, the trial court found that Mirabile “was not credible, he was evasive in answering questions.”

On November 19, 2010 the trial court determined that Leiter was entitled to \$147,000.00 for Mirabile’s failure to account to the partnership for certain rents associated with partnership property. The court further awarded Leiter \$168,004.12 in income associated with one partnership property, and \$4,800.00 associated with another property. The court appointed a trustee for the purpose of winding up the affairs of the partnership and ordered Mirabile to attend anger management classes.

On November 22, 2010, both Mirabile and Leiter signed a Settlement Agreement, which provided for Leiter to buy Mirabile’s interest in the partnership and a dissolution of their partnership. The Agreement provided that Leiter would purchase Mirabile’s interest in the partnership for \$1,500,00.00, which included the properties associated with [LMPH], certain Ancillary Properties, as well as one parcel owned solely by Mirabile. Leiter was to pay Mirabile \$60,000.00 within ten business days of the signing of the Agreement and \$1,440,000.00 at the time of closing.

Pursuant to the Agreement, closing was to occur on or before March 24, 2011. Closing would be extended for acts of force majeure or acts by Mirabile to delay closing or financing. In the event that Leiter failed to close within the time period set forth in the Agreement, the decision of the circuit court was to take effect

The Settlement Agreement was entered as a Consent Order by the circuit court on December 1, 2010. Leiter, despite applying to 49 financial institutions, was unable to obtain financing by the closing date specified in the Settlement Agreement. On April 14, 2011, several weeks after the closing date, Harford

Bank approved her request for a loan in the amount of \$1,100,000.00 and a line of credit for \$400,000.00. Mirabile, however, refused to extend the closing date.

Mirabile continued to refuse to comply with the terms of the Settlement Agreement from 2011 through 2019, repeatedly refusing to accept payment from Leiter and challenging the enforcement of the agreement. Between 2011 and 2012, Mirabile filed numerous motions disputing the Settlement Agreement, including a “Motion for Appropriate Relief” seeking appointment of a trustee for the sale of real property associated with the partnership. In response, Leiter filed a motion to enforce the settlement agreement. The circuit court denied Mirabile’s motion and granted Leiter’s motion to enforce the agreement. Thereafter, Mirabile filed a “Motion to Reopen and Revise” the circuit court’s judgment, a “Motion to Alter/Amend Judgment,” and a “Notice disputing Attorneys Liens and Request for Adjudication of Rights.” The circuit court denied all of Mirabile’s motions.¹ On September 14, 2011, Mirabile filed a “Notice of In Banc Review” challenging the circuit court’s order enforcing Settlement Agreement. In August 2012, the

¹ Mirabile also filed a defamation action against Leiter in July 2012. The circuit court granted Leiter’s motion for summary judgment, and we affirmed the judgment of the circuit court. *See Mirabile v. Leiter*, Case. No. 513, Sept. Term 2015 (Mar. 15, 2016).

In Banc panel of the Circuit Court for Baltimore County affirmed the circuit court’s judgment.²

On December 21, 2012, Leiter filed a “Petition for Contempt and Other Relief” against Mirabile. The circuit court held a hearing on Leiter’s motion in January 2013. As we described in our 2020 Opinion:

Following two days of testimony, the Circuit Court for Baltimore County found that Mirabile did not abide by the Settlement Agreement. Mirabile was ordered to sign deeds to several properties as required by the Settlement Agreement in order to purge himself. Despite the finding of contempt, on February 13, 2013 Mirabile filed a “Motion to Rescind the Agreement,” which was denied a week later. On February 15, 2013, Mirabile filed an appeal of the contempt finding with this Court. Mirabile filed another appeal with this Court of the denial of his motion to rescind on March 28, 2013. This Court consolidated both appeals and ultimately dismissed them both when Mirabile failed to file his brief, despite being granted multiple extensions.

Regardless of the various court orders upholding and enforcing the Settlement Agreement and holding Mirabile in contempt, Mirabile continued to refuse to adhere to the terms of the agreement. He attempted to circumvent the terms of the agreement and made efforts to “settle” with Leiter out of court in 2014 and 2015. Leiter refused, emphasizing that all

² In September 2012, Mirabile also appealed the circuit court’s denial of his “Notice disputing Attorneys Liens and Request for Adjudication of Rights.” We dismissed Mirabile’s motion for his failure to file a Civil Appeal Information Report pursuant to Maryland Rule 8-205. Additionally, in October 2012, Mirabile filed a “Motion for Appointment of a Special Auditor” with the circuit court, which was also denied.

matters had been resolved through the Settlement Agreement and informing Mirabile that attempts to settle were “now off the table.”

Mirabile’s litigious behavior continued in 2015. As we described in our 2020 Opinion:

On January 9, 2015, Mirabile filed a “Motion for Contempt” and on February 12, 2015 filed a “Motion to Unseal.” Both motions were subsequently withdrawn. In December of 2016 Mirabile filed a “Motion to Consolidate” the case with another related case pending in the circuit court. That motion was denied on February 6, 2017. Mirabile filed another “Renewed Motion to Rescind” on February 13, 2017, which was amended on April 10, 2018. Leiter filed an opposition to Mirabile’s motion on March 10, 2017 and a “Petition for Contempt and Other Relief” on July 17, 2017.

The circuit court denied Mirabile’s “Amended Renewed Motion to Rescind” and further denied Leiter’s “Counter-Motion for Breach.” The circuit court granted Leiter’s “Petition for Contempt” on October 31, 2018.

The trial court’s October 31, 2018 order appointed a trustee to administer the “sale and conveyance of the real properties which are the subject of this suit . . . and the distribution and apportionment of the proceeds thereof, in accordance with the [Settlement Agreement].”³

The trial court’s memorandum opinion further noted that:

The inability of the parties to close after the signing of the agreement was not due to the imperfections of the English

³ The trial court denied both parties’ requests for attorneys’ fees. On November 30, 2018 Leiter filed a motion for attorney’s fees pursuant to Maryland Rule 1-341. The court granted, in part, and denied, in part, Leiter’s motion, ultimately ordering Mirabile to pay Leiter \$151,637.50 for attorneys’ fees. Mirabile appealed this ruling, and we affirmed.

language or unforeseen contractual complexities. Rather, Mirabile's uncooperative, deceitful behavior blocked the Agreement from going forward and forced years long litigation.

The parties finally executed the closing sale of Mirabile's partnership interest to Leiter in accordance with the Settlement Agreement on July 12, 2019. The circuit court ratified the sale on August 6, 2019. Mirabile received a gross amount of \$1.5 million, which equals the proceeds of his fifty-percent property interest in the LMPH partnership.⁴

Mirabile's Civil Action Against Leiter: 2022-Present

On October 30, 2022, Mirabile filed the immediate action against Leiter in the Circuit Court for Baltimore County. Mirabile's complaint contains six counts that dispute the amount he was paid at the closing sale of his partnership interest to Leiter, as recorded in the HUD-1 Settlement Statement attached to his complaint. Mirabile's complaint contends he is a "dissociated partner" and was entitled to be treated as such pursuant to C&A § 9A-701. He also asserts that he is a "judgment creditor" under Md. Code (2006, Repl. Vol. 2020) § 11-107 of the Courts and Judicial Proceedings Article ("CJP"). In total, Mirabile asserts he is entitled to more than \$2 million in "addition HUD-1 gross amounts."

Count 1 asserts that Mirabile is entitled to post-judgment "time value of money" interest for the "installment deferred payment principal" of \$1,440,000 for the period from

⁴ Mirabile also filed a "Motion Regarding Rents" in June 2019, requesting that the circuit court release the rent escrow account to him and that Leiter pay him rent collected from partnership-owned properties since 2015. The circuit court granted Mirabile's motion in August 2019.

December 1, 2010 (the date of the court order incorporating the Settlement Agreement) to July 12, 2019 (the date of closing), totaling \$1,876,300 with additional accrued interest.

Count 2 contends that Leiter failed to pay Mirabile the appropriate tax basis capital account for the purchase of Mirabile’s partnership interest in the LMPH partnership, totaling \$153,020.

Count 3 argues that Mirabile is entitled to compensation for “labor services” he rendered that “elevat[ed] the condition of” partnership property, totaling \$38,700.

Count 4 maintains that Mirabile should not have been required to pay the \$36,258 in closing costs and seeks compensatory damages in that amount from Leiter.

Count 5 asserts that certain income credits totaling \$355,100 were not reflected in the HUD-1 Settlement Statement and seeks compensatory damages in that amount from Leiter.

Count 6 contends that the sale price of Mirabile’s partnership interest should have been adjusted to account for the “8 years and 4-month delay in closing” and seeks judgment against Leiter “for an additional HUD-1 gross amount” totaling \$500,000.

On January 13, 2023, Leiter filed a motion to dismiss Mirabile’s complaint or, in the alternative, for summary judgment. Mirabile filed a motion for summary judgment on February 2, 2023. The circuit court held a hearing to consider the parties’ motions on March 14, 2023. The court ruled from the bench and granted Leiter’s motion to dismiss Mirabile’s complaint.

Preliminarily, the circuit court concluded that Mirabile waived his right to bring his claims under the waiver provision of the Settlement Agreement. Paragraph 25 of the Settlement Agreement provides:

Except as expressly set forth in this Agreement, the parties hereby irrevocably and unconditionally forever release, remise, acquit and discharge each other from and against any and all debts, obligations, losses, costs, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, rights, obligations, liabilities, judgments, damages, expenses, claims, counterclaims, cross-claims, or demands, in law or equity, asserted or unasserted, express or implied, foreseen or unforeseen, real or imaginary, suspected or unsuspected, known or unknown, liquidated or non-liquidated, of any kind or nature or description whatsoever including but not limited to claims against Leiter or the LM Assets for claims for reimbursement for Carmella Mirabile's care originating from the beginning of time to the date of this Agreement.

Furthermore, the Settlement Agreement includes an integration clause specifying that the "Agreement constitutes the final agreement among the parties." Relying on these contract provisions, the circuit court concluded that Mirabile had waived all claims relating to partnership assets, including all claims raised in Mirabile's complaint.

Furthermore, the court concluded that Mirabile's claims were barred by the three-year statute of limitations for civil actions. *See* CJP § 5-101. The court also considered Leiter's argument that Mirabile's claims were barred by *res judicata* and collateral estoppel:

Finally, it has been argued by the Defense that whatever arguments there are, they have been barred by the substantial litigation that's already taken place in the case, either under the theory of *res judicata*, collateral estoppel or some other form

of issue preclusion that those claims are barred. And indeed there has been substantial litigation post 2019 concerning the Plaintiff's rights under the Settlement Agreement. Judge King just prior to the settlement, had ordered that the closing proceed in accordance with the Settlement Agreement.

And in so doing verifying if one will, the rights of the parties under that agreement. The sale, including all payments, was subsequently ratified by the Court thus, again, finalizing the settlement and any objections that might have been made to that which in fact were made to that settlement. The Court finds that any objection was resolved in that time and any objection that was brought or could have been brought as to that sale was resolved at that time and as a result of any form of issue of preclusion, that legal ship has sailed, so to speak.

The court, therefore, granted Leiter's motion to dismiss Mirabile's complaint and dismissed Mirabile's motion for summary judgment as moot. This timely appeal followed.

DISCUSSION

I. Standard of Review

“We review the grant of a motion to dismiss to determine ‘whether the trial court was legally correct.’” *Hancock v. Mayor & City Council of Balt.*, 480 Md. 588, 603 (2022) (quoting *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019)). Accordingly, our review of a circuit court's grant of a motion to dismiss is *de novo*. *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015). In doing so, we “accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party[.]” *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007). “We will affirm the circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.”

Sutton, supra, 226 Md. App. at 74 (quoting *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)) (internal quotation marks omitted).

II. The circuit court did not err in treating Leiter’s motion as a motion to dismiss.

Mirabile’s preliminary argument on appeal is that the circuit court erred in treating Leiter’s motion as a motion to dismiss because the court considered factual matters “outside the four corners” of Mirabile’s complaint. For the reasons explained below, we conclude that the circuit court properly treated Leiter’s motion as a motion to dismiss.

It is well-established that, when considering a motion to dismiss, “the universe of ‘facts’ pertinent to the court’s analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643–44 (citing *Converge Serv. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). Maryland Rule 2-322 provides:

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 and disposed of as provided in Rule 2-501, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 2-501.

Md. Rule 2-322(c). The Supreme Court of Maryland has “interpreted this Rule to mean that when a party presents factual matters outside the pleadings, and the trial judge does not exclude them from consideration . . . the trial judge must treat the motion as a motion for summary judgment.” *D’Aoust v. Diamond*, 424 Md. 549, 573 (2012) (quoting *Dual*,

Inc. v. Lockheed Martin Corp., 383 Md. 151, 161 (2004)) (internal quotation marks omitted).

If a trial court does consider factual matters outside of pleadings, the court “must provide the parties with a reasonable opportunity to present, in a form suitable for consideration on summary judgment, additional pertinent material.” *Worsham v. Ehrlich*, 181 Md. App. 711, 722 (2008) (citing *Antigua Condo. Ass’n v. Melba Inv. Atl., Inc.*, 307 Md. 700, 719 (1986)). This is because a non-moving party may be prejudiced where a court treats a motion to dismiss as a motion for summary judgment without giving the non-moving party a “reasonable opportunity to present material that may be pertinent to the court’s decision[.]” *Id.* at 722–23 (citing *Green v. H&R Block, Inc.*, 355 Md. 488, 502 (1999)).

“We have held, however, that it is proper for a trial court to decide a motion to dismiss without converting it to a motion for summary judgment when the court considers, or does not exclude, materials that are central to the allegations in the complaint.” *Heneberry v. Pharoan*, 232 Md. App. 468, 476 (2017). Furthermore, when the motion before the court is “based on questions of law that are collateral to the merits, and facts are necessary in deciding the motion, the court may consider affidavits or other evidence adduced during an evidentiary hearing,” without converting a motion to dismiss into a motion for summary judgment. *Paula v. Mayor and City Council of Balt.*, 253 Md. App. 566, 579 (2022) (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 11–12 & n.10 (2005)) (internal quotation marks omitted); *see also Tomran, Inc. v. Passano*,

391 Md. 1, 10 n.8 (2006) (supporting the principle that a court may consider documents attached to a motion to dismiss relating to the claimant’s right to bring a claim without converting the motion to a motion for summary judgment).

Mirabile contends that the circuit court considered -- or failed to exclude -- various facts outside of the pleadings without converting Leiter’s motion to a motion for summary judgment. For example, Mirabile asserts that the court erroneously relied on the exhibits Leiter attached to her motion to dismiss.⁵ These exhibits include: docket entries from the original partnership cases commencing in 2008 and lasting through 2019; hearing transcripts from the original partnership case; the October 2018 memorandum and order requiring the parties to close in accordance with the Settlement Agreement; the circuit court orders granting Leiter’s request for attorneys’ fees; and relevant sections of the Maryland Code.

All of the exhibits attached to Leiter’s motion to dismiss contained information relevant to primary legal questions considered by the trial court -- whether Mirabile’s claims were barred by the statute of limitations, collateral estoppel, or *res judicata*. These issues are questions of law collateral to the merits of the claims raised by Mirabile in his complaint. Furthermore, the prior litigation between the parties is a matter of public record.

⁵ Mirabile also argues that the court erred in considering the affidavit attached to his complaint. While a court’s consideration of materials such as affidavits *outside* of the complaint will generally convert a motion to dismiss to a motion for summary judgment, courts may consider the complaint and documents attached thereto without converting the motion. *Floyd v. Mayor and City Council of Balt.*, 463 Md. 226, 241 (2019). Therefore, the circuit court did not err in considering the affidavit attached to Mirabile’s complaint without converting Leiter’s motion to a motion for summary judgment.

The Supreme Court has recognized that courts “may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification.” *Faya v. Almaraz*, 329 Md. 435, 444 (1993)). Indeed, a court may “take judicial notice of [its] own opinions and public record documents presented to [the] Court.” *Evans v. Cnty. Council of Prince George’s Sitting as Dist. Council*, 185 Md. App. 251, 255 n.2 (2009); *see also Abrishamian v. Wash. Med. Grp.*, 216 Md. App. 386, 413 (2014) (“Many different types of information can fall under the umbrella of judicial notice, most commonly public records such as court documents.”).

The circuit court was well within its authority to take judicial notice of its prior rulings and court records from prior litigation between the parties to determine if Mirabile’s claims are barred by the statute of limitations, issue preclusion, or claim preclusion. The trial court did not err in considering Leiter’s exhibits and otherwise taking judicial notice of court documents to reach its conclusion on those legal issues. Accordingly, we conclude that the trial court did not err in treating Leiter’s motion as a motion to dismiss.

III. Mirabile’s claims are barred by the waiver provision of the Settlement Agreement and *res judicata*.

Mirabile also asserts that the trial court incorrectly held that his claims are barred by the waiver provision of the 2010 Settlement Agreement and contends that his claims are not barred by *res judicata*. Preliminarily, we agree with the circuit court that the waiver

provision of the 2010 Settlement Agreement is controlling here.⁶ Pursuant to that waiver language, Mirabile and Leiter waived and discharged any and all causes of action related to or arising out of the LMPH partnership assets. The inclusion of an integration clause affirms that the language of the Settlement Agreement “constitutes the final Agreement among the parties.” Each of the six counts in Mirabile’s complaint challenge payments made to him at closing in 2019 when Leiter bought Mirabile’s partnership interest in the LMPH partnership, as reflected in the HUD-1 Settlement Statement. Because these claims relate to or arise out of the LMPH partnership assets, Mirabile’s right to bring these claims is waived pursuant to the Settlement Agreement.

Even if the Settlement Agreement’s waiver provision did not exist, we conclude that Mirabile’s claims would nevertheless be barred by *res judicata*. We have explained:

The doctrine of claim preclusion, or *res judicata*, bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation. The doctrine embodies three elements: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been

⁶ Mirabile emphasizes that Leiter did not argue in his motion to dismiss that Mirabile’s claims were waived by the waiver provision of the Settlement Agreement. Mirabile further argues that it was “improper for [the court] to manufacture an argument for the benefit of [Leiter.]” There is nothing improper about the circuit court’s ruling that Mirabile’s claims are waived under the provisions of the Settlement Agreement. The agreement was attached as an exhibit to Mirabile’s complaint. Accordingly, it was appropriate for the court to review that exhibit and reach its legal conclusions by interpreting the provisions of the Settlement Agreement.

raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation.

R & D 2001, LLC v. Rice, 402 Md. 648, 663 (2008) (internal citations and quotation marks omitted). The “overarching purpose” of this doctrine “is judicial economy.” *Powell v. Breslin*, 430 Md. 52, 64 (2013) (citing *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 391 (2000)). *Res judicata* prevents parties from relitigating the same subject matter and “avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions[.]” *Grady Mgmt., Inc. v. Epps*, 218 Md. App. 712, 737 (2014) (quoting *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005)).

The three elements of *res judicata* are present in this case. Mirabile and Leiter litigated the dissolution of the LMHP partnership, the 2010 Settlement Agreement, and the enforcement of that agreement for over a decade. In 2010, the circuit court incorporated the Settlement Agreement into a consent order. The court also issued a motion to enforce the Settlement Agreement in 2012, which was affirmed by an *In Banc* panel of the Circuit Court for Baltimore County. Additionally, in its October 2018 memorandum and order, the circuit granted Leiter’s petition for contempt and required the parties to close in accordance with the terms of the Settlement Agreement. The parties did so in July 2019 and the circuit court ratified the sale the following month. In light of these court orders, there has been a final judgment on the merits in the original partnership action.

Mirabile argues that his suit does not seek “to challenge or overturn” the circuit court’s ruling in the original partnership action or otherwise “seek to challenge or overturn

any of the court rulings [from] the prior litigation between Leiter and Mirabile.”⁷ We are unpersuaded. *Res judicata* does not merely bar claims that “challenge or overturn” a prior action. The doctrine seeks to prevent relitigation where a party raises identical claims or claims which “could have been raised and determined in the prior litigation.” *R & D 2001, supra*, 402 Md. at 663. As discussed above, Mirabile’s claims in the instant action challenge the amount he was paid at the 2019 closing in accordance with the 2010 Settlement Agreement. As such, Mirabile’s claims in the instance action, in essence, challenge the provisions of the Settlement Agreement and the enforcement of that agreement as it occurred during the 2019 closing. At a bare minimum, these claims could have been raised in the extensive prior litigation in which Mirabile challenged the Settlement Agreement and enforcement thereof. Because the three elements of the doctrine of *res judicata* are all easily satisfied, Mirabile’s claims relating to the sale of his partnership interest in the LMPH partnership are barred.⁸

⁷ Mirabile also argues that *res judicata* and collateral estoppel “are affirmative defenses and under Md. Rule 2-322 and it is improper for the trial court to consider such matters in a motion to dismiss.” Mirabile cites no case law to support this position. Trial courts routinely determine whether a claimant’s claims are barred by *res judicata* or collateral estoppel when ruling on motions to dismiss.

⁸ In their briefs, the parties also dispute whether Mirabile’s claims are barred by collateral estoppel. In our view, *res judicata* is the more appropriate doctrine in this case. As such, we need not address the parties’ arguments regarding the doctrine of collateral estoppel.

CONCLUSION

We, therefore, conclude that the circuit court did not err in declining to convert Leiter's motion to dismiss into a motion for summary judgment. Furthermore, we hold that Mirabile's claims are barred by *res judicata*. Because Mirabile's claims are barred by *res judicata*, we need not address whether his claims are also barred under the statute of limitations. For these reasons, we affirm the judgment of the circuit court.

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

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0149s23cn.pdf>