

Circuit Court for Allegany County
Case No. C-01-CV-18-000276

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 203

September Term, 2021

NELSON ELICK

v.

KEEFE COMMISSARY NETWORK, LLC

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 23, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In this appeal from a civil action in the Circuit Court for Allegany County, Nelson Elick, appellant, challenges the court’s granting of summary judgment in favor of appellee Keefe Commissary Network, LLC (“Keefe”). For the reasons that follow, we shall affirm the judgment of the circuit court.

We recount some of the pertinent facts from our recent opinion in the parties’ dispute:

Mr. Elick is an inmate at Western Correctional Institution in Cumberland. Keefe is a private company that provides commissary goods to the Department of Public Safety and Correctional Services (the “Department”), some of which are made available for purchase to inmates across the State. The products available for sale are listed on the “Maryland DPSCS State Wide General Population Menu.” Among other notations for dietary needs, the menu denotes which commissary foods are kosher by marking those items with a “K.”

Mr. Elick, who identifies as “an observant Orthodox Jew,” participates in a Religious Diet Program offered by the Department. To remain in the program, Mr. Elick may not “purchase[] or . . . eat[] food items from the Commissary inconsistent with [kosher] dietary requirements.”

* * *

On October 19, 2017, Mr. Elick filed a pro se complaint in the District Court of Maryland for Baltimore City. The complaint alleged that:

- On July 18, 2017, Mr. Elick bought a bag of chili cheese Fritos “which was listed and identified as a (K) Kosher commissary purchase item” on the menu.
- On July 25, 2017, Mr. Elick purchased a bag of Cheetos “which was listed and identified as a (K) Kosher Commissary Purchase item” on the menu.
- On August 2, 2017, Mr. Elick received a warning from his rabbi that he had violated his Religious Diet Agreement by purchasing the Fritos and Cheetos.

Mr. Elick further alleged that when he purchased those two food items, he “was under the impression and made to believe that” they were “Kosher Dietary Items being offered by Keefe.” He claimed that Keefe’s actions violated state consumer protection laws, several federal laws, and the Maryland and federal constitutions. Mr. Elick sought \$2,000 “for the breach of [his] religious Diet purchases” and \$3,000 in punitive damages.

On January 26, 2018, Mr. Elick tried his case before the District Court, which entered a judgment in favor of Keefe at the conclusion of the trial.

* * *

The record does not contain a transcript of the proceedings.

On February 13, Mr. Elick sought a waiver of fees in the District Court to pursue an appeal to the Circuit Court for Baltimore City. According to the docket, the District Court denied his request based on his “fail[ure] to file appropriate form & documentation.” Mr. Elick did not pursue the appeal further.

* * *

On June 7, 2018, Mr. Elick filed a pro se complaint against Keefe in the Circuit Court for Allegany County. As pertinent to this appeal, the complaint alleges:

- On September 12, 2017, Mr. Elick “purchased . . . Brushy Creek Cajun Rice with Chicken and Sausage marked with a (K) for Kosher . . . from Keefe Commissary and Maryland DPSCS’s [menu].”
- On September 25, 2017, Mr. Elick “purchased . . . Brushy Creek Cajun Rice with Chicken and Sausage marked with a (K) for Kosher . . . from Keefe Commissary and Maryland DPSCS’s [menu].”
- On October 25, 2017, Mr. Elick “was eating a package of purchased Brushy Creek Cajun Rice with Chicken and Sausage . . . when a friend . . . asked if [he] was eating ‘pork.’[] [Mr. Elick] looked at the package . . . and identified it as having pork and pork renderings.”

Mr. Elick claimed violations of the Maryland and federal constitutions; violations of consumer protection laws; gross negligence; actual malice; and intentional infliction of emotional distress. With respect to his consumer protection claims, he asserted that Keefe had engaged in deceptive practices “by failing to state the material fact that Brushy Creek Cajun Rice with Chicken and Sausage is not Kosher, however labeled such item on [its] list approved by [the Department] as Kosher.” He also asserted that Keefe deceptively “advertis[ed] food that is non-Kosher to the Public,” and that Keefe was “deliberate in [its] intent” to mislabel the product. Mr. Elick sought damages of \$1,000,000 and, among other relief, punitive damages.

Keefe filed a motion to dismiss the complaint or, in the alternative, for summary judgment. In arguing that Mr. Elick’s action should be dismissed, Keefe relied on the doctrine of collateral estoppel. Specifically, Keefe asserted that the issue before the circuit court – which Keefe characterized as whether it was liable for “a typographical error on the DPSCS menu” – had already been decided against Mr. Elick in the District Court action. In opposing the motion, Mr. Elick argued that collateral estoppel was inapplicable because “the allegations and products are completely different” in the two actions.

After a hearing, the circuit court ruled that Mr. Elick’s complaint was barred by collateral estoppel and, on that ground, granted the motion to dismiss.

Elick v. Keefe Commissary Network, LLC, No. 2971, September Term, 2018, 2020 WL 3429482 (filed June 23, 2020), at *1-3 (footnotes omitted).

Mr. Elick appealed from the court’s judgment. *Id.* at *3. We “conclude[d] that the circuit court erred in determining that collateral estoppel barred the complaint,” *id.* at *1, because “we have no idea on what basis the District Court ruled,” and hence, “we can draw no non-speculative conclusions regarding what issues were actually litigated or decided beyond the specific incidents and products that were at issue in that action.” *Id.* at *4. Accordingly, we “reverse[d] the order granting the motion to dismiss the complaint and remand[ed] the action for further proceedings in the circuit court.” *Id.*

Following remand, Keefe filed a “Second Motion to Dismiss or, in the Alternative, Motion for Summary Judgment,” in which it contended, *inter alia*, that Mr. Elick’s “claims are barred by the doctrine of res judicata.” Following a hearing, the court agreed with Keefe, and issued a memorandum and order in which it granted Keefe summary judgment.

Mr. Elick now contends that, for numerous reasons, the court erred in granting Keefe summary judgment. We disagree. The Court of Appeals has stated that the “doctrine of 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.*” *Board of Ed v. Norville*, 390 Md. 93, 106-07 (2005) (emphasis added). Here, the parties to, subject matter of, and causes of action cited within the complaint filed by Mr. Elick in the Circuit Court for Allegany County are identical or substantially identical as to those cited within the complaint filed by Mr. Elick in the District Court of Maryland for Baltimore City, and any issues as to Keefe’s mislabeling of additional products could have, and should have, been raised in the litigation of that complaint. The relitigation of the mislabeling in the Circuit Court for Allegany County is barred by the doctrine of res judicata, and hence, the court did not err in granting Keefe summary judgment.

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