

Circuit Court for Prince George's County
Case No. CAL16-34879

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 01653

September Term, 2017

FISHER DEAN, ET AL.

v.

CAPITAL CENTRE, LLC

Nazarian,
Arthur,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 2, 2019

*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.

A tenant defaulted on its lease. The landlord obtained a judgment against the tenant, as well as a confessed judgment against the persons who had guaranteed the lease. Despite those judgments, the tenant and the guarantors filed a complaint against the landlord, asserting claims that they had made or could have made in the earlier litigation.

The Circuit Court for Prince George’s County dismissed the complaint. In addition, the court imposed sanctions against the three guarantors under Md. Rule 1-311(c), which allows for “sanctions” (or “appropriate disciplinary action”) against the attorney who has signed a pleading or paper. The tenant and the guarantors appealed.

We affirm the dismissal of the complaint, but reverse the imposition of Rule 1-311 sanctions against persons who are not attorneys.

BACKGROUND

On January 20, 2012, Capital Centre LLC entered into a lease with T.D. Burger LLC for space in the Capital Centre Shopping Center in Largo. The lease was guaranteed by Timothy Dean, Fisher Dean, and Adebayo Adedeji (the “guarantors”).

T.D. Burger defaulted on its obligations under the lease by failing to pay rent when it became due. Consequently, on December 23, 2014, Capital Centre filed a complaint for repossession of rented property.

On February 3, 2015, the District Court of Maryland for Prince George’s County entered a judgment in favor of Capital Centre for possession and rent. T.D. Burger did not appeal.

On February 11, 2015, Capital Centre filed a petition for a warrant of restitution, to obtain possession of the leased premises. The court granted the petition and scheduled

an eviction for April 17, 2015. On April 16, 2015, one day before the court-ordered eviction, T.D. Burger filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Maryland. Shortly thereafter, the case was converted to a Chapter 7 case.

On September 20, 2015, while the bankruptcy proceeding was pending, Capital Centre filed a complaint for a confessed judgment against the guarantors in the Circuit Court for Prince George’s County. On October 14, 2015, the circuit court entered a confessed judgment against the guarantors.

The guarantors moved to vacate the confessed judgment, claiming that Capital Centre breached the “First Amendment of Lease,” a document that Capital Centre had neither accepted nor signed. On January 20, 2016, the circuit court rejected the guarantors’ claims of breach and denied the motion to vacate the confessed judgment.

On March 8, 2016, more than 30 days after the entry of judgment, the guarantors filed a notice of appeal. On May 6, 2016, this Court granted Capital Centre’s motion to dismiss the appeal on the ground that it was untimely.

Notwithstanding the district court judgment against T.D. Burger and the confessed judgment against the guarantors in the circuit court, T.D. Burger and the guarantors, through counsel, filed suit against Capital Centre in the Circuit Court for Prince George’s County on September 9, 2016. The complaint alleged a breach of the “First Amendment of Lease,” a breach of the implied covenant of good faith and fair dealing, and “tortious breach of contract.”

Capital Centre filed a motion to dismiss, arguing, among other things, that the

claims were barred by res judicata and collateral estoppel, that several of the counts failed to state a claim upon which relief could be granted, and that T.D. Burger’s bankruptcy divested it of standing to assert its claims. In addition, Capital Centre moved for sanctions under Md. Rule “1-311,” which subjects “an attorney” to “appropriate disciplinary action” if she signs a pleading or paper in wilful violation of the certification that she “has read the pleading or paper; that to the best of the attorney’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.” While the motions were pending, the court permitted counsel for T.D. Burger and the guarantors to withdraw. Several weeks later, when a hearing on the motions was nigh, the court declined to grant a continuance on the ground of their failure to obtain new counsel.

On August 7, 2017, the circuit court granted Capital Centre’s motion to dismiss and awarded sanctions in the amount of \$5,000 under Rule 1-311. The order initially required the guarantors “and their counsel” to pay the sanctions. Upon a motion by the guarantors’ (former) counsel, however, the court amended the order to impose the payment obligation on the guarantors alone. After T.D. Burger and the guarantors unsuccessfully moved to vacate the judgment, they took a timely appeal.

QUESTIONS PRESENTED

T.D. Burger and the guarantors present a number of questions, which we have distilled into three:

1. Did the trial court properly dismiss all claims by appellants?

2. Did the trial court abuse its discretion in proceeding with the summary judgment hearing even though the appellants had no attorney at the time?
3. Did the trial court err in imposing sanctions on appellants?¹

For the reasons explained below, we shall hold that the court correctly dismissed all claims and that it did not abuse its discretion in proceeding with the hearing, but that it erred in imposing sanctions against nonlawyers under Rule 1-311.

ANALYSIS

I. Dismissal of the Complaint

Capital Centre moved to dismiss the complaint on numerous grounds, including *res judicata* and collateral estoppel, failure to state a claim upon which relief can be granted, and lack of standing (on the part of T.D. Burger). On an appeal from a motion to dismiss, “this Court will ‘affirm a circuit court’s judgment on any ground adequately

¹ T.D. Burger and the guarantors phrased their questions as follows:

1. Whether the circuit court erred in dismissing this case.
2. Whether the circuit court erred in not allowing Appellants to procure counsel before conducting a hearing in the presence of pro se Timothy Dean.
3. Whether the circuit court erred in not allowing TD [sic] Burger to procure counsel before forcing Timothy Dean to speak on behalf of the corporation.
4. Whether the circuit court erred in imposing sanctions on Appellants.
5. Whether this court [sic] erred in relieving [former counsel for T.D. Burger and the guarantors] of her sanction obligations.

shown by the record[.]” *Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 530 (2013) (quoting *Barnes v. Greater Baltimore Med. Ctr.*, 210 Md. App. 457, 471 (2013)).

A. Res Judicata

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.” *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 140 (2012) (quoting *R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008)).

The elements of res judicata are: “(1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.” *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005). There is no question that each of these elements has been met, both for T.D. Burger and for the guarantors.

The first element of res judicata – that the parties in the present litigation are the same as or in privity with the parties to the earlier dispute – is obviously met. The parties in the present litigation are T.D. Burger, the guarantors, and Capital Centre. T.D. Burger and Capital Centre were the parties to the earlier litigation in the district court, in which Capital Centre obtained a judgment for unpaid rent and for possession of the leased premises. Capital Centre and the guarantors were the parties in the confessed judgment action in the Circuit Court for Prince George’s County.

The second element of *res judicata* – whether the claims in the current action are identical to the ones determined in the prior adjudication – is also met. The claim in this case – that Capital Centre breached the unexecuted lease amendment – was the guarantors’ unsuccessful defense in the confessed judgment action. Furthermore, the claim involves the same ““transaction, or series of connected transactions, out of which” Capital Centre’s district court action against T.D. Burger ““arose.”” *See, e.g., deLeon v. Slear*, 328 Md. 569, 590 (1992) (quoting Restatement (Second) of Judgments § 24(1) (1979)). Therefore, *res judicata* bars the claim even if T.D. Burger did not formally assert it in the district court action. *See Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 392 (2000) (“a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action and is conclusive, not only as to all matters decided in the original suit, *but also as to matters that could have been litigated in the original suit*”) (emphasis in original) (citations omitted). The failure to raise a legal theory in a prior proceeding “*does not deprive the ensuing judgment of its effect as res judicata.*” *Id.* (emphasis in original) (citation omitted).

The third element of *res judicata* – that there has been a final judgment – is obviously met as well. In the district court proceeding against T.D. Burger, Capital Centre obtained a money judgment and a judgment for possession of the premises. In the circuit court proceeding against the guarantors, Capital Centre also obtained a money judgment (by confession). In fact, the guarantors attempted to appeal the confessed judgment after it became final (though they waited too long), and T.D. Burger filed for

bankruptcy protection precisely because Capital Centre was taking steps to enforce its final judgment.

In summary, a routine application of the law of res judicata demonstrates that T.D. Burger and the guarantors were barred from asserting the claims in this case. The circuit court, therefore, did not err in disposing of those claims.

B. Collateral Estoppel

“The doctrine of collateral estoppel precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action.” *Shader v. Hampton Improvement Ass’n, Inc.*, 217 Md. App. 581, 605 (2014), *aff’d*, 443 Md. 148 (2015). To establish the applicability of collateral estoppel, Capital Centre was required to show: (1) that the issue decided in the prior adjudication is identical to the one presented in this action; (2) that there was a final judgment on the merits; (3) that the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) that the party against whom collateral estoppel is asserted was given a fair opportunity to be heard on the issue. *Id.*

As to the guarantors, we have already established that Capital Centre satisfied the first, second, and third elements of collateral estoppel: the claim in this case (the alleged breach of the unexecuted amendment) is identical to the guarantors’ defense in the confessed judgment action; there was a final judgment on the merits in the confessed judgment action; and the guarantors were parties to the confessed judgment action.

Capital Centre has also satisfied the fourth element – that the guarantors had a fair opportunity to be heard on the issue of whether Capital Centre had breached the

unexecuted amendment. After the circuit court entered the confessed judgment against the guarantors, they moved to vacate the judgment, as they had the right to do under Md. Rule 2-611(d). The circuit court considered their motion, but found it insufficient, thereby leaving the judgment intact. The guarantors had the right to appeal the judgment, but they failed to note an appeal within the time limits imposed by law.

In these circumstances, it is beyond any imaginable dispute that the guarantors had a fair opportunity to be heard on their contention that Capital Centre had breached an amendment to the lease. Collateral estoppel, therefore, barred the guarantors' claims.

C. T.D. Burger's Standing

In response to Capital Centre's efforts to enforce the district court judgment, T.D. Burger filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code on April 16, 2015. As a consequence, all of T.D. Burger's property, including its intangible right to recover damages from others on pre-petition claims, became the property of its bankruptcy estate. *See* 11 U.S.C. § 541(a)(1); *Adams v. Manown*, 328 Md. 463, 477 (1992); *Schlotzhauer v. Morton*, 224 Md. App. 72, 75-76 (2015), *aff'd*, 449 Md. 217 (2016).

Very shortly after the bankruptcy filing, T.D. Burger's bankruptcy case was converted from a reorganization case under Chapter 11 to a liquidation case under Chapter 7. Under Chapter 7, T.D. Burger's bankruptcy trustee acquired the sole right to assert T.D. Burger's rights, unless the trustee abandoned the rights or the bankruptcy court declared them to be exempt from creditor claims. *See Schlotzhauer v. Morton*, 224 Md. App. at 76.

T.D. Burger and the guarantors filed this lawsuit on September 9, 2016. At that time, T.D. Burger was still in Chapter 7 bankruptcy.² There is no dispute that T.D. Burger’s putative claims belonged to the bankruptcy estate at that time. Consequently, there is no dispute that T.D. Burger had no right to assert those claims – that right belonged to the Chapter 7 trustee alone.

Nor did T.D. Burger somehow reacquire the claims when the bankruptcy court closed the case. In the schedules that accompanied its bankruptcy filing, T.D. Burger did not inform its creditors and the court of an alleged claim against Capital Centre. For that reason, T.D. Burger’s bankruptcy trustee did not have the opportunity to pursue the claim or to abandon it.

If property has not been scheduled, it “is not abandoned by the trustee simply because the estate is closed.” *Adams v. Manown*, 328 Md. at 478. Instead, the property remains the property of the estate, which only the trustee may administer. *See id.* Therefore, even after the termination of the bankruptcy case, the trustee, and not T.D. Burger, was still the real party in interest in the claims against Capital Centre. *See id.* at 447, 480. The circuit court did not err in dismissing claims that were brought by someone other than the real party in interest.

² The docket discloses that the bankruptcy court closed T.D. Burger’s bankruptcy case on February 23, 2017.

D. Failure to State a Claim

Count II of the complaint appears to assert a breach of a duty of good faith and fair dealing. Count III purports to allege a claim for “tortious breach of contract.” Neither count states a claim upon which relief can be granted.

“Maryland does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing[.]” *Magnetti v. Univ. of Maryland*, 171 Md. App. 279, 285 n.3 (2006), *aff’d*, 402 Md. 548 (2007); *accord Mount Vernon Props., LLC v. Branch Banking & Trust Co.*, 170 Md. App. 457, 472 (2006) (“no independent cause of action at law exists in Maryland for breach of the implied duty of good faith and fair dealing”); *see also Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 723 (2015) (“[u]nder Maryland law, the implied covenant of good faith and fair dealing ordinarily imposes no affirmative obligations outside the express terms of the contract itself”). Therefore, the circuit court did not err in dismissing the count alleging a breach of that implied duty.

Nor did the court err in dismissing the count for “tortious breach of contract.” A person does not subject himself to tort liability by breaching a contract to which he himself is a party. *See K&K Mgmt., Inc. v. Lee*, 316 Md. 137, 155-56 (1989). In attempting to allege a tortious breach of contract, the complaint erroneously confounds and ignores the elementary distinctions between obligations in contract (which a person accepts voluntarily) and obligations in tort (which are imposed by law).³

³ T.D. Burger and the guarantors complain that the circuit court denied them an opportunity to amend their complaint. From their brief and the record extract, however,

II. Postponement

On March 27, 2017, while Capital Centre’s motion to dismiss was pending, counsel for T.D. Burger and the guarantors moved to withdraw from the case. In accordance with Md. Rule 2-132(b), counsel certified that at least five days before the motion she had told her clients of her intention to move to withdraw and had advised them to inform the court whether they would represent themselves or engage new counsel.

In an order dated April 24, 2017, the circuit court permitted counsel to withdraw. In that order, the court “strongly advise[d]” “the Plaintiff,” by which it evidently meant Timothy Dean, the most active of the plaintiffs, that he should “seek the services of an attorney.” In addition, the court gave the plaintiffs the telephone number of the Lawyer Referral Service of the Prince George’s County Bar Association and informed them of the location of the Self-Represented Litigants Room in the courthouse.

On June 9, 2017, 10 weeks after counsel first moved to withdraw and six weeks after counsel was allowed to withdraw, the court conducted a status conference. At the

it not clear whether T.D. Burger and the guarantors ever actually requested an opportunity to amend the complaint. We are not required to scour the record to determine whether an appellant has preserved an argument for appellate review. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (citing *von Lusch v. State*, 31 Md. App. 271, 285 (1976), *rev’d on other grounds*, 279 Md. 255 (1977)). In any event, we generally review the denial of a post-judgment motion for leave to amend for abuse of discretion, *see RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010), an extremely deferential standard. *See King v. State*, 407 Md. 682, 697 (2009). In view of the insurmountable obstacles to the appellants’ rights to recover, including *res judicata*, collateral estoppel, T.D. Burger’s lack of standing, and the absence of the real party interest to assert T.D. Burger’s putative claims, the court could not conceivably have abused its discretion in declining to permit an amendment.

conference, the court observed that T.D. Burger and the guarantors had yet to obtain counsel. In response, Timothy Dean told the court that they had an attorney, whom he named. He also told the court that they “should be ready” for the hearing on the motion to dismiss, which was scheduled for June 21, 2017.

Despite Mr. Dean’s representations, he and his co-plaintiffs failed to engage an attorney. Instead, a few days before the scheduled hearing, they filed an “emergency motion” for a continuance. The court denied the motion, proceeded with the hearing, and granted the motion to dismiss. Mr. Dean and his co-appellants now challenge the denial of the motion for a continuance.

Under Md. Rule 2-508(a), “[o]n motion of any party or on its own initiative, the court may continue or postpone a trial or other proceeding as justice may require.” The phrase “as justice may require” implies that “the decision to grant a continuance lies within the sound discretion of the trial judge.” *Touzeau v. Deffinbaugh*, 394 Md. 654, 669 (2006). “Absent an abuse of discretion we historically have not disturbed the decision to deny a motion for continuance.” *Id.* A trial court abuses its discretion when its ruling is “‘clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,’ when the ruling is ‘violative of fact and logic,’ or when it constitutes an ‘untenable judicial act that defies reason and works an injustice.’” *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)).

By no means did the court abuse its discretion in this case. T.D. Burger and the guarantors had months to engage counsel before the hearing occurred. The court went out of its way to advise them how to obtain counsel. Mr. Timothy Dean assured the court

that they had engaged counsel and that they “should be ready” for the upcoming hearing on the long-pending motion to dismiss. Only when the hearing was virtually imminent did they change course and request more time. In these circumstances, one could fairly argue that it would have been an abuse of discretion to *grant* a continuance.

III. Sanctions

At Capital Centre’s request, the court imposed \$5,000 in sanctions on the guarantors. The court acted under the authority of Rule 1-311. That rule reads:

(a) **Requirement.** Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. . . .

(b) **Effect of Signature.** The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney’s knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) **Sanctions.** If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed. For a willful violation of this Rule, an attorney is subject to appropriate disciplinary actions.

Sanctions imposed by a trial court will be upheld on appellate review unless they are based on clearly erroneous findings of fact or involve an erroneous application of law. *See URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017) (discussing sanctions under Rule 1-341).

The circuit court committed an error of law in imposing sanctions on the guarantors under Rule 1-311(c), because the rule authorizes sanctions only against “an attorney.” Consequently, we shall vacate the award of sanctions.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED IN PART AND VACATED IN
PART; CASE REMANDED WITH
INSTRUCTIONS TO VACATE THE
AWARD OF SANCTIONS AGAINST
FISHER DEAN, TIMOTHY DEAN, AND
ADEBAYO ADEDEJI; APPELLANTS TO
PAY NINETY PERCENT OF THE COSTS;
APPELLEE TO PAY TEN PERCENT OF
THE COSTS.**

⁴ Capital Centre did not move for an award of sanctions under Rule 1-341(a), which permits a court to require a party, the party’s attorney, or both to pay the costs of the proceeding and reasonable expenses, including reasonable attorneys’ fees, if the court finds that the parties’ conduct in maintaining or defending any proceeding was in bad faith or without substantial justification. Even if Capital Centre had moved for sanctions under Rule 1-341(a), the court could not have imposed sanctions without making “specific findings on whether a party or attorney pursued an action in bad faith or without substantial justification” and “determin[ing] whether the wrongdoing actually warrants the imposition of sanctions.” *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999). The court made no such findings, because it was never asked to make them.