UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0915

September Term, 2015

LaJUAN F. MARTIN

v.

FREDDIE L. WINSTON, JR.

Graeff,
Friedman,
Harrell, Glenn T., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 11, 2016

Appellant, LaJuan Martin, and Appellee, Freddie Winston, purchased in the name of their development company, Winston Martin Holding Group, LLC ("WMHG"), a parcel of real property in Prince George's County, which property later became the object of multiple legal actions in the Circuit Court for Prince George's County. Ultimately, Martin filed a Complaint (later amended) against Winston alleging primarily violations of WMHG's operating agreement and breach of fiduciary duties. Martin asks this Court to reverse the judgment of the circuit court, which dismissed his Amended Complaint on the ground of *res judicata* based on principally one of the preceding legal actions. We shall reverse the judgment of the circuit court and remand the case for further proceedings.

I.

FACTS AND LEGAL PROCEEDINGS

Martin and Winston were business partners and sole members with equal ownership of WMHG, a commercial development company organized under the laws of the District of Columbia. In June 2006, WMHG bought a parcel of land located at 9620 Lottsford Court (the "Property") in Prince George's County, Maryland, with plans to build a restaurant. The Property was purchased for $900,000 with the "intent and understanding of Martin and Winston that each would personally contribute to [WMHG] 50% of the purchase price to reflect their respective co-equal, 50% ownership interests in [WMHG]", as alleged by Martin in his Complaint in the present litigation. According to the circuit court, the purchase price of the Property was handled in the following manner:

> The record in this case and the consolidated cases would show, [the] Winston Martin [Holding Group] acquired the subject property on or about

> June 22, 2006 for the sum of $900,000.00; $500,000.00 of this sum was borrowed from the Industrial Bank of Washington. While legal title to the property was in the name of the LLC, Martin personally negotiated and obtained the loan from Industrial Bank. As a result of an error, the Deed of Trust securing this loan was in the name of the individual Winston and not Winston-Martin Holding Group, LLC.[1]

The titling error became the basis of a lawsuit, *Industrial Bank v. Winston-Martin Holding Group, LLC*, CAE 13-04739, brought in the circuit court in 2013 to correct the mistake. The case was settled purportedly by the litigants without further action by the court, other than its dismissal later in 2013. There was no apparent disclosure on the record of the terms of the settlement.

A. The *Fenwick* Action

Between 2006 and 2008, WMHG (with Martin handling its managerial duties) began to move on the development of the Property. Jason Fenwick was hired as CEO of WMHG to work on the restaurant concept. When WMHG decided to discontinue its pursuit of the restaurant and Fenwick's employment ended, Martin issued a confessed judgment promissory note for $75,000 to compensate Fenwick for the work he had completed. When payment under the note was not made, Fenwick obtained, in 2008, a monetary judgment against WMHG and a lien on the Property. A foreclosure action was initiated by Fenwick. He bought the Property at a Sheriff's sale. WMHG filed

[1] According to Martin's Amended Complaint, the structure of the transaction occurred in a somewhat different manner. Martin alleged that he contributed $410,000 to the purchase price. On 12 June 2006, without Martin's consent, Winston executed with Industrial Bank a Purchase Money Deed of Trust, with the Property as collateral, for $500,000 to cover his portion of the purchase price.

exceptions, which were denied, and, after ratification of the sale, WMHG appealed the decision. In deciding the appeal in *Fenwick*, this Court, in an unreported opinion filed 18 June 2012, reversed the circuit court's ratification of the sale to Fenwick (because it was determined that the Sheriff posted the wrong property for sale), set aside the deed to Fenwick, and remanded the case.

B. The *Inglewood* Action

Before the *Fenwick* appeal was decided, Inglewood Restaurant Park Association ("Inglewood")[2] filed in the circuit court an Order to Docket Foreclosure, requesting the right to auction and sell the Property to enforce a lien to recover assessments owed by WMHG and Fenwick.[3] Fenwick filed a Motion to Release the Property from the purported Inglewood lien, levy and order to docket foreclosure. A hearing was held on 31 March 2011 to determine whether probable cause existed to establish Inglewood's lien. The circuit court issued an order on 23 June 2011, finding probable cause, declaring a lien in the amount of $30,060.20 against Fenwick, in favor of Inglewood (the "Inglewood Lien"). The then pending cases[4] involving the Property were consolidated,

[2] As a condition of purchasing the Property, WMHG became a member of the Inglewood Restaurant Park Association, an association of property owners in a part of the so-called "Inglewood" master development where the Property was located.

[3] It is unclear what the basis may have been for Fenwick to be liable individually for the assessments.

[4] On 6 June 2011, Case No. CAE11-10974, *Fenwick v. Inglewood Restaurant Park Association* and Case No. CAE11-02632, *Inglewood Restaurant Park Association,*

(Continued…)

and on 18 July 2011, Inglewood amended its Order to Docket Foreclosure, again naming both Fenwick and WMHG as defendants, but alleging facts implicating only Fenwick. Pursuant to the Inglewood Lien, the Property was sold at an auction on 17 October 2011 to Winston (individually), with a winning bid of $250,000. Martin, in the name of WMHG, filed exceptions to the sale on 19 December 2011, alleging violations of the corporate loyalty doctrine. On 13 January 2012, Winston intervened and moved to Strike WMHG's Exceptions.

On 19 August 2013, Martin filed an intervenor motion (as an individual) to dismiss Inglewood's foreclosure action because he believed that the overdue assessments had been satisfied and, as a result, there was no longer a controversy related to the Inglewood foreclosure action. He included also a counter-claim for declaratory relief, damages and sanctions against Inglewood. Winston and Inglewood opposed Martin's Motion to Dismiss. A hearing was conducted on 7 October 2013 in regard to WMHG's Exceptions to the previous sale to Winston. At this hearing, evidence was presented that showed that money paid by Winston toward the auction purchase price was not in any part in satisfaction of the Inglewood lien, as Martin maintained. Winston testified also that he purchased the Property at the 17 October 2011 auction sale for his personal account.

(…continued)
Inc. v. Winston Martin Holding Group were consolidated. The other cases were consolidated later.

After an exchange of additional legal memoranda, on 16 January 2014, the circuit court (Judge Thomas P. Smith presiding) issued a Memorandum Opinion and Order ratifying the sale of the Property to Winston. In discussing WMHG's exceptions, Judge Smith explained that:

> As the Court has noted on the record repeatedly, if there is a dispute between Freddie Winston and LaJuan Martin and Winston Martin Holding Group, LLC or any combination thereof, it is not resolvable in a foreclosure proceeding involving inter alia the rights of Inglewood Restaurant Park Association, Inc. These parties are certainly free to institute other litigation regarding these issues.

Martin filed additional motions to challenge the sale, requesting that the circuit court recognize this Court's intervening decision in the appeal of *Fenwick v. Winston Martin* and stay the judgment because Winston was not a *bona fide* purchaser. These motions were denied when the circuit court ratified the sale to Winston. On 14 May 2014, Winston and a trustee for Inglewood executed a fee simple deed conveying title of the Property to Winston as the sole owner of the Property.

C. The Present Litigation[5]

On 29 October 2014, Martin filed in the circuit court a Complaint and Motion for Ex Parte Interlocutory and Permanent Injunctive and Declaratory Relief against Winston. Martin's complaint alleged *in personam* claims, and sought to quiet WMHG's title to the Property, appoint Martin as the managing-member for the winding-down process for

[5] There remained at the time two other cases involving the Property, but those cases were either settled or dismissed (including the *Industrial Bank* action). The judgments in those two cases do not bear on our analysis here.

WMHG, disassociate Winston from WMHG, and an award of fees and costs. The suit was assigned to a judge other than Judge Smith.

After a hearing on 6 November 2014, the circuit court dismissed (without prejudice) on 10 November 2014 Martin's Complaint. Relying on the 16 January 2014 ratification of the foreclosure sale in the *Inglewood* action and the fact that Martin failed to post the required appeal bond for his appeal from the final judgment in that matter, the circuit court dismissed Martin's Complaint for lack of standing as it appeared that Martin "currently has no interest in the subject property."

Martin responded on 11 December 2014 with: (1) an Amended Complaint; (2) a Motion for Permanent Injunction and Declaratory Relief; and furthermore (3) a Motion to Alter or Amend Judgment, but in the *Inglewood* action. The Amended Complaint no longer contained a request to quiet title to the Property, but maintained the personal liability claims against Winston. In the Amended Complaint, Martin requested the following relief:

1. A Declaratory Judgment that Winston breached his fiduciary duty to Martin directly and to WMHG derivatively;
2. Appointment of Martin as managing member and trustee of WMHG;
3. To enjoin Winston from interfering with the winding-down of WMHG;
4. An order disassociating Winston from WMHG and reducing his ownership interest to that of a passive limited partner; and
5. fees and courts costs.

On 31 December 2014, this Court dismissed the appeal in the *Inglewood* action because Martin failed to file the required appeal bond. On 16 January 2015, the circuit court denied Martin's Motion to Alter or Amend in the *Inglewood* action based on the

ground that the filing of the Amended Complaint in the present case rendered that motion moot. As for the Amended Complaint, the circuit court stated that it would "take no action on the Amended Complaint at this time as there is no return of service. Additionally, the dismissal of this case pending the outcome of an appeal in a companion case effectively closed the case. There has been no motion for leave to reopen the case."

On 26 January 2015, Winston filed a Motion to Dismiss Martin's Amended Complaint and Motion for Permanent Injunctive and Declaratory Relief, or in the Alternative, a Motion for Summary Judgment and Request for Hearing. Winston argued that Martin's Amended Complaint was barred by *res judicata* because Martin's claims were determined in the *Inglewood* action and thus further litigation was precluded.

On 5 February 2015, Martin filed an Opposition to Winston's Motion to Dismiss, in which he argued that, because neither he nor Winston were parties to the other consolidated cases, the claims in his Amended Complaint were not litigated actually there.

The circuit court granted Winston's Motion to Dismiss on 17 April 2015, agreeing that Martin's claims were barred by *res judicata*. Martin filed another Motion to Alter or Amend the Judgment, which was denied summarily on 1 May 2015. Martin appealed timely to this Court.

II.

QUESTION PRESENTED

Martin presents three questions for our consideration[6], which we condense into the following iteration:

> Did the circuit court err in ruling that Appellant's Amended Complaint was barred by *res judicata*?

For reasons that we shall elaborate, we hold that the Circuit Court for Prince George's County erred as a matter of law and, accordingly, we reverse its judgment.

[6] Martin's questions asked:

> 1. Whether the trial court's ruling that the defense of *res judicata* barred the claims in the Amended Complaint because the Appellant *could have* asserted the claims in other proceedings, but did not, was in error, when Appellant's claims in the other proceedings would have been as counterclaims or cross-claims pursuant to Md. Rule 2-331
>
> 2. Whether the trial court's reliance on the Inglewood Case, a prior foreclosure action in which the Appellant filed cross-claims against the Appellee that were dismissed "without prejudice to other proceedings," to bar the claims in the Amended Complaint, was in error?
>
> 3. Whether the trial court committed error by failing to cull the discrete sets of operative facts alleged in the Amended Complaint that independently established liability and were distinct from the nucleus of facts of the prior judgment asserted as the basis for *res judicata*?

Appellee Winston asks additionally that we address a statute of limitations argument. We decline his invitation because it was not preserved for our consideration.

III.

STANDARD OF REVIEW

When we review the grant of a motion to dismiss, we "must determine whether the court was 'legally correct.' We accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the nonmoving party." *Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 139, 43 A.3d 999, 1002 (2012) (internal citations omitted). Martin argues that because facts outside of the allegations of the pleadings were considered by the circuit court, the motion, for all intents and purposes, was treated by the circuit court as a motion for summary judgment. Even if this premise were well-taken, our analysis would not be different materially as the appropriate standard of review of the grant of summary judgment is quite similar:

> The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal. In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact, and, if not, whether the moving party is entitled to judgment as a matter of law. We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party.

Boland v. Boland, 423 Md. 296, 366, 31 A.3d 529, 571 (2011) (citation omitted). Thus, because the application of *res judicata* is a question of law, our review will be without deference to the circuit court's legal conclusions.

IV.

DISCUSSION

A. Contentions

Martin contends that his Amended Complaint should not have been dismissed because the claims presented there were not litigated actually in the prior actions. He maintains that, because the Amended Complaint raised *in personam* claims, unlike the *in rem* claims decided in the *Inglewood* action, Maryland's permissive counterclaim and cross-claim rules allow him to file the *in personam* claims in a follow-on case and did not require him to bring them in any of the previous consolidated cases.

Winston responds that Martin's claims were dismissed correctly because Martin failed to assert the claims alleged in the Amended Complaint in one of the previous cases when these claims were ripe and available to him. Alternatively, Winston maintains that Martin's Amended Complaint was a mirror image of his counterclaim in the *Inglewood* action and, as a result, *res judicata* should bar Martin from litigating these claims anew.

B. Martin's Amended Complaint and *Res Judicata*

The doctrine of *res judicata* "prevents parties from re-litigating issues that have already been decided by the courts." *Boland*, 423 Md. at 362, 31 A.3d at 569. In Maryland, the elements required for *res judicata* or claim preclusion 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 Cnty. Bd. of Educ. v. Norville, 390 Md. 93, 107, 887 A.2d 1029, 1037 (2005). This doctrine "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." *Rowland v. Harrison*, 320 Md. 223, 229, 577 A.2d 51, 54 (1990) (emphasis in original).

A pivotal question in the present case is whether the claims raised by Martin were or should have been litigated in the *Inglewood* suit and thus, would be considered the same claim for *res judicata* purposes. To determine if the claims are identical, Maryland has adopted the transactional approach explained in the Restatement (Second) of Judgments § 24:

> What factual grouping constitutes a "transaction" and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Norville, 390 Md. at 108-09, 887 A.2d at 1038 (citations omitted). Under this approach, if the claims "are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously. Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Norville*, 390 Md. at 109, 887 A.2d at 1038.

There is, however, another rule in play in our analysis: the permissive counterclaim rule described in Maryland Rule 2-331(a):

> A party may assert as a counterclaim any claim that party has against any opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

The Court of Appeals explained that "Maryland's counterclaim rule, by its plain terms, is permissive and not mandatory." *Rowland*, 320 Md. at 233, 577 A.2d at 56. Maryland's permissive counterclaim rule and the effect on claims for *res judicata* purposes can be sorted-out through an analysis of § 22 of the Restatement (Second) of Judgments (1982), which states: "[w]here the defendant may interpose a claim as a counterclaim but he fails to do so, he is not thereby precluded from subsequently maintaining an action on that claim, except as stated in Subsection (2)." *Rowland*, 320 Md. at 232, 577 A.2d at 55 (quoting § 22). Subsection (2) provides that claim preclusion would apply to a counterclaim if:

> (a) The counterclaim is required to be interposed by a compulsory counterclaim statute or rule of court, or
> (b) The relationship between the counterclaim and the plaintiff's claim is such that successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action.

Rowland, 320 Md. at 232, 577 A.2d at 55 (quoting § 22). Comment *f* to § 22 explains that, in order for this exception to the permissive counter-claim rule to apply, "it is not sufficient that the counterclaim grow out of the same transaction or occurrence as the plaintiff's claim, nor is it sufficient that the facts constituting a defense also form the basis of the counterclaim." *Moore v. Nissan Motor Acceptance Corp.*, 376 Md. 558, 565-66,

831 A.2d 12, 16 (2003). The counterclaim is only precluded by § 22(b)(2) if it would nullify the initial judgment:

> The counterclaim must be such that its successful prosecution in a subsequent action would nullify the judgment, for example, by allowing the defendant to enjoin enforcement of the judgment, or to recover on a restitution theory the amount paid pursuant to the judgment. . . or by depriving the plaintiff in the first action of property rights vested in him under the first judgment.

Moore, 376 Md. at 566, 831 A.2d at 16-17. Thus, the Court of Appeals determined that the courts may not apply the "definition of res judicata so broadly as to change the thrust of Maryland Rule 2-331 to one that is compulsory." *Rowland*, 320 Md. at 233, 577 A.2d at 56; *see also Potomac Design, Inc. v. Eurocal Trading, Inc.*, 839 F. Supp. 364, 368 (D. Md. 1993) (applying Maryland law) ("because cross-claims are permissive under Maryland law, 'a party who does not assert a cross-claim is *not* barred by res judicata in a subsequent action'").

Put another way, the Court of Appeals assumed in *Rowland* that the two causes of actions "constituted[d] the same cause of action for purposes of applying the res judicata doctrine, [and concluded that] the record before us does not show that the issue of negligence was either litigated or determined by [the circuit court] in the [first] action." *Rowland*, 320 Md. at 230, 577 A.2d at 54. The Court pivoted from this assumption to conclude that the "dismissal of the counterclaim without prejudice did not, of course, constitute an adjudication of the negligence issue, nor did [the circuit court's] disposition of the case purport to determine from evidence introduced at the trial that [the defendant]

was not negligent." *Rowland*, 320 Md. at 230, 577 A.2d at 54. The Court held further that:

> [G]iven the permissive nature of our counterclaim rule and the position taken by the Restatement, which we adopt, we hold that where the same facts may be asserted as either a defense or a counterclaim, and the issue raised by the defense is not litigated and determined so as to be precluded by collateral estoppel, the defendant in the previous action is not barred by res judicata from subsequently maintaining an action on the counterclaim.

Rowland, 320 Md. at 235-36, 577 A.2d at 57. Thus, the question had not been litigated fully and could not be precluded under the doctrine of *res judicata*.

This is exactly Martin's argument here: that his *in personam* claims against Winston were not litigated fully in *Inglewood* and, therefore, cannot be precluded in the present litigation under a theory of *res judicata*. In determining that Martin's claims were barred by *res judicata*, the circuit court explained that it was dismissing Martin's Amended Complaint because:

> In the companion case of *Inglewood Restaurant Park Association, Inc. v. Winston-Martin Holding Groups, LLC, et al.*, CAE 11-02632, Judge Smith of this Court ratified a foreclosure on the subject property. . . Plaintiff appealed that decision, but said appeal was dismissed as moot by the Court of Special Appeals due to Plaintiff's failure to pose the required supersedeas bond and to file an appeal of the judgment entered by this Court on May 1, 2014 approving the Auditor's Account for the sale of the subject property. As such, Judge Smith's decision in the CAE 11-02632 companion case is a final judgment on the merits.
>
> . . .
>
> Plaintiff [Martin] and Defendant Winston were parties in each of the aforementioned cases regarding the subject property. While Plaintiff could have asserted the causes of action arising from the subject property against Defendant in any other the aforementioned cases, but failed to properly do so and now alleges said causes of action against Defendant Winston in the Amended Complaint. Notably, in the CAE 11-02632 companion case, Plaintiff asserted causes of action against Inglewood Restaurant Park

> Association, Inc. (the plaintiff in CAE 11-02632), that are now alleged against Defendant Winston in the captioned case. Judge Smith's ratification of the foreclosure on the subject property in CAE 11-02632 is a final judgment that is binding on the parties, for which Plaintiff's Amended Complaint is now barred by res judicata.

The circuit court ruling was correct insofar as the foreclosure judgment is a final judgment on the merits of whether the foreclosure sale was proper and binds the parties at least insofar as that goes. It does not preclude, however, Martin's current claims against Winston. This distinction becomes apparent upon a review of one of Judge Smith's earlier rulings in the *Inglewood* action:

> Mr. Martin, this is a foreclosure case. You have asserted a number of things. You have asserted alleged causes of action and I don't know whether they have merit or not. That is not the issue before me today. . . At this stage of the proceedings, the only thing before the Court is the ratification of the sale. Now I don't suggest that you have or don't have, can or can't, file not in this case, but in some judicial proceeding, these claims.

It is quite clear from Judge Smith's exposition in *Inglewood* that Martin was not permitted to litigate his *in personam* claims against Winston in the foreclosure action. As a result, we cannot hold that these are claims that should have been brought in the prior proceeding, according to our understanding of Maryland's *res judicata* jurisprudence. Judge Smith's ruling in the *Inglewood* foreclosure action was a valid final judgment, but it is not one that forecloses Martin's ability to assert *in personam* claims against Winston in the present litigation. These claims were not litigated in the earlier suits.

Furthermore, successful pursuit of the *in personam* claims against Winston would not nullify the judgment rendered in the *Inglewood* action. In *Baker v. Montgomery*

Cnty., 427 Md. 691, 708, 50 A.3d 1112, 1121-22 (2012), the Court of Appeals held that *res judicata* would not apply to bar the second claim of the defendant because of the permissive counterclaim rule. Both claims involved the use of speed cameras for motor vehicle violations. The Court of Appeals relied primarily on the distinct factual inquiries required for each claim:

> The factual inquiry surrounding the former question involves principally who was operating the vehicle at the time and whether the speed of the vehicle was captured accurately. *See* [Maryland Code (1977, 2012 Repl. Vol.), Transportation Article, § 21-809(f) ("Transp.")]. The factual inquiry surrounding the latter question (apart from the pure statutory interpretation question) involves whether Respondents operated their speed monitoring systems within the meaning of the statute, and if not, was the means of compensating ACS in conformance with the statute.

Baker, 427 Md. at 708, 50 A.3d at 1121-22. The factual inquiry required for the second claim, "if successful, would not nullify Respondents' prior admission of speeding, represented by paying the penalty before trial in the District Court." *Baker*, 427 Md. at 708, 50 A.3d at 1122. This is because "it is one thing to say that a successful assertion of a defense would have defeated the initial action, but quite another to say that a successful prosecution of the defense/counterclaim would serve to nullify an admission of guilt." *Id.* (citing *Rowland*, 320 Md. at 236, 577 A.2d at 57).

As applied here, these principles demonstrate that the factual inquiry required to be undertaken to decide Martin's present claims for breach of fiduciary duties by Winston is quite different from that required to determine the validity of the foreclosure sale pursuant to the Inglewood lien. The prior cases involved primarily the Property and who had a legal right to ownership under lien foreclosure procedures. Martin's claims in

this proceeding focus on personal claims against Winston in regard to duties owed one-to–the–other and to their business entity, WMHG. The current interests asserted by Martin do not relate to the interests litigated in the *Inglewood* action, and thus, would not nullify necessarily the judgment in the former case.

Precluding Martin's claims raised in his Amended Complaint was an improper application of Maryland's *res judicata* standards. Because we determine that Martin's claims do not represent, for purposes of *res judicata*, claims that could have been brought in the *Inglewood* action, we need not analyze further the other requirements of *res judicata* because the absence of even one of the requirements is fatal to the claim preclusion basis for the circuit court judgment. Therefore, we remand this case to the circuit court for further proceedings in regard to Martin's Amended Complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED AND CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.