UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 518

September Term, 2015

JOYCE H. SAMS

v.

JANE G. HENDERSON, LLC, ET AL.

Graeff,
Friedman,
Thieme, Raymond, G., Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Graeff, J.

Filed: April 4, 2017

Joyce H. Sams, appellant, appeals from the ruling of the Circuit Court for St. Mary's County dismissing the Complaint she filed against appellees, Jane G. Henderson, LLC (the "LLC"), and her brothers, Adam B. Henderson, Jr., George G. Henderson, and Nicholas E. Henderson, members of the LLC. Ms. Sams presents three questions for this Court's review,[1] which we have consolidated and rephrased, as follows:

> Did the circuit court err in dismissing Ms. Sams' complaint on the ground that it was barred by *res judicata*?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On September 21, 1988, Jane G. Henderson, mother of Ms. Sams, Adam Henderson, George Henderson, and Nicholas Henderson, executed a last will and testament, dividing and bequeathing an approximately 190-acre farm to her four children. Ms. Henderson left

[1] Ms. Sams' original questions presented were as follows:

1. Whether the trial court properly applied Maryland law to the res judicata issues raised?

2. Whether the trial court erred in finding that appellant's participation in a prior suit was sufficient to actuate the principles of res judicata, and that application of res judicata principles barred appellant's suit?

3. Do the res judicata principles provide for 13 years retroactive privity for individuals who are part of an LLC in a later action?

[2] Because we are reviewing a motion to dismiss, our factual recitation will be to the facts alleged in the Complaint. *See D'Aoust v. Diamond*, 424 Md. 549, 572 (2012) ("When ruling on a motion to dismiss, 'consideration of 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.'") (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)).

20 acres, the house, and the outbuildings situated on her property to Ms. Sams in fee simple absolute (the "Property"). The remainder of the acreage was to be divided among her three sons.

Ms. Sams tried to buy the Property from her mother, but Ms. Henderson did not want to sell it. Instead, Ms. Henderson signed a lease with Ms. Sams to live in the house, essentially rent-free, until Ms. Henderson's death, when Ms. Sams would receive the Property as part of her inheritance.[3] Ms. Sams was in possession of the Property from July 1988 to May 2015, and she maintained the Property during her tenancy, expending approximately $206,165 in improvements, maintenance, and upkeep expenses over the years.

On July 26, 2001, Ms. Henderson formed Jane G. Henderson, LLC and transferred title to her farm, including the Property, to the LLC. Pursuant to the LLC's operating Agreement, she was the general partner and there were four 25% limited partner interests, one for each of her children.

On December 31, 2007, Ms. Henderson executed a new Last Will and Testament. The new will made no mention of the Property. Ms. Henderson passed away on July 27, 2011.

On December 2, 2011, Ms. Sams filed a complaint against the LLC and Adam Henderson, its managing partner. She asserted that she had a lease with her mother,

[3] The original July 1988 lease provided that Ms. Sams would pay $725 per month in rent. Ms. Sams averred in her complaint that she paid rent through September 1989, but since that date, "rent was neither demanded nor paid."

and although she initially paid rent, rent had been "neither demanded nor paid" from September 1989 to November 21, 2011, when the LLC notified her of the obligation to pay $3,000 a month rent or purchase the Property for $380,000. Ms. Sams asserted that she had been in possession of the Property for 23.6 years, with a "total of 22 years, 4 months . . . elapsed with rent neither demanded nor paid." She cited Maryland Code (2015 Repl. Vol.) § 8-107 of the Real Property Article ("RP"), which provides, in pertinent part, as follows:

> If there is no demand or payment for more than 20 consecutive years of any specific rent reserved out of a particular property or any part of a particular property under any form of lease, the rent conclusively is presumed to be extinguished and the landlord may not set up any claim for the rent or to the reversion in the property out of which it issued. The landlord also may not institute any suit, action, or proceeding to recover the rent or the property.

Relying on RP § 8-107, and the lack of a demand for, or payment of, rent for more than 22 years, Ms. Sams sought the following relief in her Complaint:

1. The rent be conclusively extinguished.
2. Any future actions for rent are barred.
3. Any sale of the property by defendant is barred.
4. The reversionary interest of the owner of the fee be barred and terminated.
5. That title to the [Property] . . . be vested to Joyce H. Sams. . . .
6. For such other and further relief as this [c]ourt deems proper.

On July 17, 2012, Ms. Sams filed a Second Amended Complaint, deleting Adam Henderson as a defendant.

On February 14, 2013, the LLC filed a motion for summary judgment, arguing, *inter alia*, that the court could not grant Ms. Sams' claim for relief because RP § 8-107 applied only to ground rent leases, which was not involved in that case. On February 25, 2013, the circuit court issued an order granting summary judgment in favor of the defendants, agreeing that RP § 8-107 was inapposite because it applied only to "ground rent leases," and Ms. Sams' case did not involve such a lease.

On July 11, 2014, this Court affirmed the circuit court's ruling on appeal, noting that RP § 8-107 applied only to an unusual "form of land tenure, which is virtually unique to this State,[] known as a 'ground rent lease,'" and holding that the circuit court properly concluded that RP § 8-107 was not a basis for relief for Ms. Sams. We also rejected Ms. Sams' argument that she was entitled to the Property through adverse possession.[4]

On July 25, 2014, Ms. Sams instituted this action, alleging unjust enrichment, *quantum meruit*, and detrimental reliance, and asking the circuit court to transfer title to the Property to her, or in the alternative, award her a monetary lien in the amount of $206,165 against appellees.[5] Appellees filed a Motion to Dismiss, arguing, *inter alia*, that

[4] After the circuit court's ruling, the LLC filed a wrongful detainer action against Ms. Sams, relating to her continued occupation of the Property. Appellees assert in their brief that, after this Court's decision, the circuit court ruled in its favor, and on May 11, 2015, Ms. Sams was evicted from the Property.

[5] In January 2014, Ms. Sams instituted a separate action against her mother's estate, challenging the estate's denial of her claim to a 25% share of the LLC. Ms. Sams' complaint ultimately was dismissed, and this Court affirmed, holding that, pursuant to Maryland Code (2011 Repl. Vol.) § 8-107(b) of the Estates and Trusts Article ("ET"), Ms. Sams "was required to file her claim against the Estate within 60 days (continued . . .)

res judicata barred the action. On March 9, 2015, the circuit court granted appellees' motion and dismissed the case on the ground that it was barred by *res judicata*.

In its Memorandum Opinion and Order, the circuit court noted, citing *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 392 (2000), that there are three requirements for *res judicata*, or claim preclusion:

> (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 was a final judgment on the merits.

The court found that all three of these requirements were met in this case.

With respect to the first requirement, the court found that the parties in this case were the same or in privity with the parties in the 2011 title case. It noted that, although Adam Henderson was dismissed as a party in the prior litigation, and neither of the other two Henderson brothers were a party to the suit, leaving only the LLC as a named party in both suits, all of the brothers were members of the LLC, and therefore, they all were in privity with the LLC.

The court next determined that the claims raised in the present case could have been litigated in the 2011 case, thus satisfying the second element of the test. Quoting *Colandrea*, it explained that, "a judgment between the same parties or their privies upon

(. . . continued) from . . . the disallowance of the claim by the personal representative," but she failed to do so, and instead, made the "procedurally fatal decision to file her claim in the orphans' court, which was without jurisdiction." *Sams v. Henderson*, No. 628, Sept. Term. 2014, slip op. at 4 (filed Jan. 13, 2016). We also noted that Ms. Sams likewise "failed to satisfy the limitations period for filing a claim against the Estate within six months of her mother's death, pursuant to [ET] § 8-103(a)(1) & 8-104(d)." Slip op. at 5.

the same cause of action is conclusive not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit." *Id.* at 389. It noted that the "factual allegations in both cases [were] the same and both actions revolve[d] around the same transaction, namely, [Ms. Sams'] occupation of the Property since 1988 and her allegations of title ownership or some other possessory interest in the Property." Because the claims in this case "could have, and should have, been brought in the previous case," the circuit court found that the second requirement of *res judicata* was satisfied.

Finally, the court found that there was final judgment on the merits in the prior case. It noted that the case was adjudicated on summary judgment, and all avenues of appeal had been exhausted. Accordingly, the circuit court granted appellees' motion to dismiss, ruling that Ms. Sams' claims were barred by *res judicata*.

DISCUSSION

The sole issue raised by Ms. Sams on appeal is whether her 2014 action is barred by *res judicata* based on the action that she instituted in 2011. Whether *res judicata* bars a particular action is a question of law, which we review *de novo*. *See Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc.*, 187 Md. App. 601, 633 (2009) ("The defense of *res judicata* is before 'the court as a question of law.' '[W]e review questions of law *de novo*.'") (citations omitted).

Ms. Sams argues that the circuit court erred in dismissing her Complaint, asserting that it is not barred by *res judicata*. Her argument focuses primarily on the second

requirement, i.e., whether the complaint at issue here arises from the same cause of action as the 2011 complaint. She argues that it does not, asserting that the "factual allegations in both cases are different and the facts that sustain one action would not sustain the other." Although she acknowledges that both actions "do revolve around [her] possession of the subject property for more than 20 years," she argues that it would have been inconsistent to pursue the equitable claims she asserts in this case in the 2011 case because "it would not make sense to claim ownership of a property and at the same time claim those you are fighting for the title owe you damages for maintaining and improving the property." She contends that, in the previous case, she claimed *title* to the Property, but in this case she asked for *restitution* "in the form of money damages **or** title to the property," and she is "**not** claiming that title to the property belongs to [her] legally, as in the prior action."

Appellees contend that the circuit court properly dismissed Ms. Sams' complaint on the ground that it was barred by *res judicata*, asserting that it involved "the same parties and the same subject matter' as her prior lawsuit, and all of her claims could have been raised in the prior lawsuit. They argue that, because Ms. Sams failed to present her "entire controversy" in the previous action, and because both involved parties in privity, and there was a final judgment in the prior case, her "claims in the instant case are barred by res judicata." We agree.

The Court of Appeals has stated that "[r]es judicata, also known as claim preclusion or direct estoppel, means 'a thing adjudicated.'" *Anne Arundel County Bd. of Ed. v. Norville*, 390 Md. 93, 106 (2005) (quoting *Lizzi v. Washington Metro. Area Transit Auth.*,

384 Md. 199, 206 (2004)). It is "'an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been—but was not—raised in the first suit.'" *Id.* (quoting *Black's Law Dictionary*, 1336-37 (8th ed. 2004)).

Res judicata protects the courts and the parties from the "burdens of relitigation." *Id.* at 107. It "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or could have been decided fully and fairly." *Id.*

As we explained in *Heit v. Stansbury*, 215 Md. App. 550, 565-66 (2013):

> "Under Maryland Law, the requirements of *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 was a final judgment on the merits. Therefore, 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. To avoid the vagaries of res judicata's preclusive effect, a party must assert all the legal theories he wishes to in his initial action, because failure to do so does not deprive the ensuing judgment of its effect as res judicata.* As can be seen, *res judicata* looks to the final judgment on the merits earlier entered in the same case *or same cause* and to the necessary legal consequences of that judgment."

(quoting *Colandrea*, 361 Md. at 392).

We thus turn to the three requirements of *res judicata*. With respect to the first requirement, the Court of Appeals explained in *Ugast v. La Fontaine*, 189 Md. 227, 232-33 (1947), as follows:

> It is well established that a judgment may not be pleaded as res judicata by strangers to the action in which it was rendered, but it may be pleaded only by the parties to the action and their privies. Generally, the parties to a suit are those persons who are entered as parties of record. But for the purpose of the application of the rule of res judicata, the term 'parties' includes all persons who have a direct interest in the subject matter of the suit, and have a right to control the proceedings, make defense, examine the witnesses, and appeal if an appeal lies. So, where persons, although not formal parties of record, have a direct interest in the suit, and in the advancement of their interest take open and substantial control of its prosecution, or they are so far represented by another that their interests receive actual and efficient protection, any judgment recovered therein is conclusive upon them to the same extent as if they had been formal parties.

(citations omitted). *Accord Cochran v. Griffith Energy Services, Inc.*, 426 Md. 134, 141 (2012).[6]

Here, the parties to the 2011 action were Ms. Sams, the plaintiff, and the LLC, the defendant. The parties to the present case are Ms. Sams, the plaintiff, and the LLC, Adam, George, and Nicholas Henderson, the defendants. Clearly, Ms. Sams and the LLC were named parties in both cases, and therefore, the first requirement is satisfied as to those parties. With respect to the individual Henderson brothers, we agree with the circuit court's conclusion that "Adam Henderson, George Henderson, and Nicholas Henderson are in privity with . . . [the] LLC because they are all members of the LLC," and the LLC "would have been protecting the interests of its members, actually and efficiently, in the previous lawsuit" regarding the ownership of the Property.

[6] We also note that the Court of Appeals in *Cochran v. Griffith Energy Services*, Inc., 426 Md. 134, 142 (2012), indicated that a "family relationship itself, of course, is a major factor" in determining whether parties are in privity for the purposes of applying *res judicata*.

With respect to the second requirement, whether "the claim presented in the current action is identical to the one determined in the prior adjudication," Ms. Sams argues that the causes of action in the 2011 case and the present case are not the same. She asserts that the test for determining whether two actions are the same for the purposes of *res judicata* is "whether the same evidentiary facts would sustain both actions," and that the evidence involved in this case, that she made and paid for maintenance and improvements with knowledge of appellees, was not critical to the 2011 test.

Although Maryland initially used the "same evidence" test, *see Smalls v. Maryland State Dept. of Educ., Office of Child Care*, 226 Md. App. 224, 237 (2015) ("Maryland's first serious effort to articulate a workable test for determining whether two causes of action were the same for res judicata purposes was . . . . the 'same evidence' test . . . ," articulated in *MPC, Inc. v. Kenny*, 279 Md. 29 (1977), which asks "whether the same evidentiary facts would sustain both actions."), that is no longer the test. In *Kent County Board of Education v. Bilbrough*, 309 Md. 487 (1987), the Court of Appeals stated that reliance on the same evidence test might "improperly narrow the scope of a 'claim' in the preclusion context." *Smalls*, 226 Md. App. at 238 (quoting *Bilbrough*, 309 Md. at 33) (emphasis omitted). Recognizing that "the concept of a 'claim' is broad," the Court adopted the "transaction" test set forth in § 24 of the Restatement (Second) of Judgments. *Id.* (quoting *DeLeon v. Slear*, 328 Md. 569, 589 (1992)).

This Court explained that test in *Heit*, 215 Md. App. at 566, as follows:

> When an earlier court has entered a final judgment and actually ruled on the matter sought to be litigated in a second court, the "'same claim'"

> analysis usually is straightforward. *Colandrea*, 361 Md. at 389 (quoting *FWB Bank v. Richman*, 354 Md. 472, 492 (1999)). It is more difficult, however, when the "earlier court has *not* directly ruled upon the matter." *FWB Bank*, 354 Md. at 493. In that case, "the second court must determine whether the matter currently before it was fairly included within the claim or action that was before the earlier court and *could* have been resolved in that court." *Id.* To make that determination, Maryland courts have adopted the transactional test, i.e., "if the two clams or theories 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." *Anne Arundel County Bd. of Ed. v. Norville*, 390 Md. 93, 109 (2005). "Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Id.* Thus, *res judicata* applies "'even though the subsequent suit takes a different form or is based on a different cause of action.'" *Blades v. Woods*, 338 Md. 475, 478-79 (1995) (citation omitted).

The determination regarding what factual situation constitutes a "transaction" is to be made "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 109 (quoting *FWB Bank v. Richman*, 354 Md. 472, 493 (1999)). Courts look to whether the cases arise from a "'common nucleus of operative fact.'" *Id.* at 109 (quoting *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966)). This Court has recognized that the term "transaction" in the context of a *res judicata* claim is not a "self-evident phenomenon," and it "may defy a precise definition." *Smalls*, 226 Md. App. at 245-46.

With those principles in mind, we address whether the complaint at issue here was based on the same cause of action as the 2011 complaint. We begin with whether "'the facts are related in time, space, [and] origin.'" *Norville*, 390 Md. at 109 (quoting *Richman*,

354 Md. at 493). In that regard, both complaints related to Ms. Sams' possession of the Property from July 1988 to May 2015, her expectation that she eventually would own the house and surrounding land, and her remedy after her mother died and there was a demand for rent. The legal theories she asserted in the two cases were different, i.e., in the 2011 case, Ms. Sams was asserting that she had title to the Property, whereas here, she recognizes that the LLC owns the Property and seeks equitable relief in the form of money damages or title to the Property. Both complaints, however, involved the same core issue, i.e., Ms. Sams' rights involving the Property, based on her mother's promise and her living in the Property, rent-free but paying for upkeep, for approximately 24 years. These claims are sufficiently related such that they would have formed a "convenient trial unit," *Norville*, 309 Md. at 109, and as the circuit court stated, they "could have, and should have," been brought in one proceeding.[7] The circuit court properly found that the second requirement for a finding of *res judicata* was satisfied.

[7] We do not agree with Ms. Sams that it would have been illogical to claim ownership of the Property while simultaneously presenting alternative equitable claims for reimbursement for her expenditures. Maryland Rule 2-303(c) explicitly allows such alternative and inconsistent claims, stating as follows:

> **Consistency.** A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based on legal or equitable grounds.

Finally, with respect to the last requirement, there is no dispute that there was a final judgment on the merits in the earlier case. The 2011 complaint was resolved by the grant of summary judgment in favor of the defendants. *See Powell*, 430 Md. at 64 (grant of summary judgment constituted a final judgment on the merits). This Court affirmed in an unreported opinion, *Sams v. Jane G. Henderson LLC*, No. 305, Sept. Term. 2013 (filed July 11, 2014), and Ms. Sams' petition for writ of certiorari subsequently was denied by the Court of Appeals. *Sams v. Jane G. Henderson LLC*, 440 Md. 227 (2014).

All three requirements for a finding of *res judicata* were satisfied. Accordingly, the circuit court properly dismissed Ms. Sams' complaint on the ground that it was barred by *res judicata*.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.