

Circuit Court for Howard County
Case No. 13-C-16-106791

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2091

September Term, 2016

WON KIM a/k/a EMMA WONG

v.

US-1 FLEA MARKET LLC, *ET AL.*

Kehoe,
Reed,
Salmon, James P.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: April 16, 2018

*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. *See* Md. Rule 1-104.

This is an appeal from a judgment of the Circuit Court for Howard County in favor of US-1 Flea Market, LLC and Michael Brown in a civil action brought against them by Won Kim, a/k/a Emma Wong. (For the purposes of this opinion, because Brown and US-1 have the same interests in this case, we will refer to them collectively as “US-1” unless the context suggests otherwise.) Kim presents two questions, which we have reworded:

Did the trial court err by granting summary judgment to US-1 based on the doctrine of collateral estoppel?

Is the settlement agreement between the parties enforceable in light of Real Property Article § 5-101–03?

We will affirm the judgment of the circuit court in part and reverse it in part.

Background

The record in this case is very sparse. From what we can glean from it, the following, or something close to it, is the background of the current appeal.

In 2013, appellant entered into an oral agreement with Brown, US-1’s agent, whereby she agreed to lease a stall to sell merchandise at the US-1 Flea Market in Jessup. There is a document in the extract that suggests that rent might have been paid on a weekly basis, but that’s not entirely certain, and the terms of the agreement are not otherwise explained. It appears that the business relationship was troubled. At some point—perhaps in 2015?—appellant filed two court actions against US-1 and/or Brown, US-1’s manager. For its part, US-1 filed a tenant holding over action against her. At the heart of the parties’ contentions is an assertion by Kim that Brown told her that US-1 would permit her to remain as a tenant in the flea market, if she dismissed her two

pending court actions and brought her unpaid rent current. Kim alleged that, according to what she asserted was this verbal agreement, she dismissed the circuit court actions but that Brown refused her tender of the back rent. For his part, Brown denied that there was such an agreement.

US-1's tenant holding over case was tried before the District Court of Maryland for Howard County, the Honorable Mary C. Reese, presiding, which entered judgment in favor of US-1. The settlement agreement issue was raised at trial, with Brown testifying that there was no agreement, and Kim testifying that there was. Judge Reese found in favor of US-1. She explained her reasoning in a bench opinion. Only a part of the opinion is included in the record and it states in pertinent part (emphasis added):

[A proposed written settlement agreement] was drafted to permit Ms. Wong to return to the premises of the US Flea Market. But the US Flea Market did not sign it, and therefore **I can't bind them to it.**

I'm therefore finding that it was an at-will contract between Ms. Kim and the US-1 Flea Market, LLC, and I think that there was **a translation problem** that resulted in her conversation with Mr. Brown, and I think that — **I don't think that she heard what was said.**

And I think that she acted with great detriment when she asked her attorney . . . to draft the two notices of dismissal with prejudice of the circuit court cases . . . because **I don't think that she understood what the — what was really being communicated to her,** and I think that's a crying shame.

Appellant appealed this judgment to the circuit court but moved to dismiss the appeal before the court ruled on the merits. However, the motion was not timely filed and the circuit court entered judgment in favor of US-1.

About a year later, appellant filed the current action. In her complaint, she alleged that she dismissed her lawsuits against US-1 because she entered into an oral settlement agreement with Brown to the effect that he would allow her to resume her tenancy in the flea market if she terminated her civil actions against US-1 and/or him and brought her rent up to date. She further asserted that she fulfilled her side of the bargain by dismissing the actions with prejudice and tendering the unpaid rent, but that Brown refused to accept the rent after he learned that the actions had been dismissed. She was evicted and her inventory was stolen from the Flea Market's parking lot. She asserted claims for breach of contract (Count I), intentional misrepresentation (Count II), and that US-1 is liable for Brown's misconduct through the principle of respondeat superior (Count III). She sought monetary damages.

After discovery, US-1 filed a motion for summary judgment. Relevant to the issues raised in this appeal, they asserted that:

- (1) Kim's claims were based on the purported oral settlement agreement between her and Brown;
- (2) The existence of the alleged settlement agreement was litigated in the tenant holding over action;
- (3) The District Court found that no such agreement existed; so
- (4) Kim's claims are barred by the doctrine of collateral estoppel; and

(5) As an alternative basis for judgment in its favor, any agreement between US-1 and Kim was unenforceable because it violated the Statute of Frauds, specifically Maryland Code Ann., Real Property Article (“RP”) §§ 5-101 and 5-103.

In addition to other exhibits in support of the motion, US-1 filed excerpts from the trial in the tenant holding over action. The trial transcript was at least 76 pages long, but US-1 included only eight pages in its exhibit. Six of these pages are testimony. Although the portions of the transcript included in the record do not identify the witnesses, it appears that two pages are excerpts of Brown’s testimony, and four are of Kim’s. There is one page that seems to be part of a legal argument by a lawyer, but there is no context and it’s not clear whether the speaker represented US-1 or Kim. Finally, there is a page that represents a portion of Judge Reese’s oral opinion.

After a hearing on the motion, the circuit court granted the motion on the basis of collateral estoppel. The court did not address US-1’s Statute of Frauds contention.

Kim filed a timely appeal.

Analysis

“The question of whether a trial court’s grant of summary judgment was proper is a question of law.” *Woznicki v. GEICO General Ins. Co.*, 443 Md. 93, 118 (2015).

Therefore, we review the circuit court’s decision *de novo*. *Jurgensen v. New Phoenix Atlantic Condominium Council of Unit Owners*, 380 Md. 106, 113 (2004).

1. Background

Kim’s complaint has two substantive counts: breach of contract and fraud.¹

In Maryland, “in order to state a claim for breach of contract, a plaintiff need only allege the existence of a contractual obligation owed by the defendant to the plaintiff, and a material breach of that obligation by the defendant.” *RRC Northeast, LLC v. BAA Maryland, Inc., Inc.*, 413 Md. 638, 658 (2010) (citation omitted).

In a fraud action, a plaintiff must prove “(1) that the one perpetrating the fraud made a false representation to the victim; (2) that its falsity was either known to the perpetrator or that the representation was made with reckless indifference as to its truth; (3) that the misrepresentation was made for the purpose of defrauding the victim; (4) that the victim relied on the misrepresentation and had the right to rely on it; and (5) that the victim suffered compensable injury resulting from the misrepresentation.” *Thomas v. Nadel*, 427 Md. 441, 451 n.18 (2012) (citations omitted). Each element requires proof of “clear and convincing evidence.” *Rhee v. Highland Dev. Corp.*, 182 Md. App. 516, 524 (2008).

The doctrine of collateral estoppel, or issue preclusion, prevents a party in a second case from re-litigating a legal or factual issue “that was essential to a valid and final judgment against the same party in a prior action.” *Electric General Corp. v. Labonte*,

¹ The complaint also contains a Count III, designated as “respondeat superior,” which alleges that Brown was acting as an agent for US-1 and thus US-1 is responsible for any damages. Because the court found Kim’s claims were barred by collateral estoppel, the circuit court never addressed the respondeat superior allegations.

454 Md. 113, 142 (2017) (quotation marks and citation omitted). In order for collateral estoppel to apply, “the issue of fact or law [must have been] actually litigated and determined by a valid and final judgment, and the determination [was] essential to the [prior] judgment[.]” *Murray International v. Graham*, 315 Md. 543, 547 (1989) (citation omitted). When this occurs, “the determination [in the first action] is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Id.*

The doctrine of *res judicata*, or claim preclusion, provides “that a judgment between the same parties . . . is a final bar to any other suit upon the same cause of action, and 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.” *Prince George's County v. Brent*, 414 Md. 334, 342 (2010) (citations and brackets omitted).

Put another way,

The principle underlying the rule of claim preclusion is that a party who once has had a chance to litigate a claim before an appropriate tribunal usually ought not to have another chance to do so. A related but narrower principle—that one who has actually litigated an issue should not be allowed to relitigate it—underlies the rule of issue preclusion.

Restatement (Second) of Judgments 1 (Relation) (1982).

2. Collateral Estoppel

The circuit court entered judgment for US-1 on the basis that Kim is collaterally estopped from litigating her breach of contract and fraud claims.

In the present appeal, the “prior action” was the 2015 tenant holding over case. In order to grant US-1’s motion for summary judgment on the breach of contract count on the basis of collateral estoppel, it was necessary for the circuit court to conclude that: (1) the existence, or non-existence, of the oral settlement agreement between US-1/Brown was actually litigated in the tenant holding over action; (2) Judge Reese decided as a matter of fact that no such agreement existed; and (3) the finding was necessary for the District Court to reach its result. The court was required to undertake the same process in order to grant summary judgment on the misrepresentation claim.

We now turn to the parties’ contentions. In her brief, Kim contends that the circuit court erred when it concluded that Judge Reese had found that there was no settlement agreement between the parties and that there had been no misrepresentation. For its part, US-1 asserts that:

The circuit court’s grant of summary judgment was premised on its determination that the issue of whether Appellant had a legal right to remain at the US-1 Flea Market had been determined by a final judgment in the District Court. Appellant was precluded from arguing that she had a contractual right to continue to sell goods at the US-1 Flea Market or, similarly, that the legal eviction of Appellant pursuant to the District Court’s ruling was a breach of contract. Moreover, the District Court also ruled that the alleged intentional misrepresentation by Appellee Brown was a “translation problem” complicated by her attorney’s decision to file dismissal with prejudice without confirming the terms of an alleged agreement. **Appellant was given a fair opportunity to be**

heard on all of these issues after which her arguments and supporting evidence were found unpersuasive.

(Emphasis added.)

There are problems with US-1’s contentions. The first one is conceptual.

US-1’s argument conflates the principles of res judicata (claim preclusion) with collateral estoppel (issue preclusion). Res judicata “does not depend on any factual decision on the merits and is as concerned with **what might have been litigated** as surely as it is with what actually was litigated.” *Smalls v. Maryland State Dep’t of Educ., Office of Child Care*, 226 Md. App. 224, 232 (2015) (emphasis added). In contrast, as we have explained, application of the rule of collateral estoppel is warranted only when the issue of fact or law was actually litigated and decided in the prior litigation and resolution of the issue was essential to the prior judgment. Thus, for purposes of deciding whether the circuit court properly applied the principles of collateral estoppel in the present case, it doesn’t matter whether Kim was given “a fair opportunity to be heard on all of these issues” in the tenant holding over action. What does matter is whether: (1) the parties actually litigated the issues of breach of contract and fraud; (2) Judge Reese actually decided those issues; and (3) whether a resolution of those issues were necessary elements of the judgment. To answer these questions, we review the record *de novo*.

Based on our reading of the excerpts of Brown’s and Kim’s testimony contained in that record, we conclude that the parties presented evidence as to the settlement agreement issue in the tenant holding over action, and that Judge Reese found that no

such agreement existed. Further, we conclude that resolution of the settlement agreement issue in US-1's favor was an essential element of the judgment. A finding that there was no settlement agreement between the parties in the tenant holding over action was essential to the District Court's decision because the court would not have evicted Kim if in fact US-1, through its agent Brown, had agreed to dismiss the tenant holding over action and allow her to rent a stall. Thus, each of the requisites for the application of collateral estoppel was satisfied. *See Murray International*, 315 Md. at 547.

We turn to the fraud claim. The portions of the transcript from the tenant holding over trial that are in the extract do not clearly indicate that Kim asserted in that action that Brown intentionally made false statements to her to induce her to dismiss her pending lawsuits. Judge Reese's findings that there had been "a translation problem" and that Kim had not understood "what was really being communicated to her" fall short of an affirmative finding that there had been no fraud. Finally, on the record before us, a finding as to fraud was not essential to the judgment in the tenant holding over action. This conclusion requires some explanation.

Md. Rule 3-711 provides that landlord-tenant actions "shall be governed by the procedural provisions of all applicable general statutes[.]" The applicable general statute in this case is RP § 8-402. Section 8-402 is one of a "trilogy of statutes providing

landlords an expedited remedy for the recovery of leased premises.”² *Brown v. Housing Opportunities Commission of Montgomery County*, 350 Md. 570, 577 (1998). The Court explained:

Section 8-402 deals with tenants holding over after termination of the lease. It permits the landlord **to recover both possession of the property**, provided that the landlord has given written notice to quit at least one month prior to termination of the lease, **as well as damages in an amount not less than the apportioned rent for the holdover period**. If, upon trial or upon the tenant’s nonappearance, the court finds that the landlord had been in possession, that the lease has expired, that notice to quit had been given, and that the tenant refused to vacate, the court “shall thereupon give judgment for the restitution of the possession of said premises....” *Id.* § 8-402(b)(2).

Id. (emphasis added).

The spectrum of possible relief available to the District Court in an action brought under § 8-402 is limited to granting or denying a judgment in favor of a landlord for possession, and granting or denying a landlord’s request for unpaid rent. In making these decisions, a court may weigh whether considerations of equity militate against granting relief. *Brown*, 350 Md. at 583–84. Fraud certainly could be the basis of an equitable defense. But equitable defenses must be raised by the defendant; if they aren’t, there is no necessity for the court to address them. If there is no necessity for the court to address an issue, then that issue is not essential to the judgment.

² The other two statutes are RP §§ 8-401 and 8-402.1.

In the tenant holding over trial, Kim testified that she had an agreement with Brown and that he reneged on it. But there is nothing in the record before the summary judgment court that clearly indicates that Kim: (1) presented evidence as to Brown’s state of mind when he allegedly made the statement to her; or (2) argued to the court that it could infer intentional misrepresentation from the facts. The closest the record gets to supporting a conclusion in US-1’s favor on this issue is the excerpt from the unidentified lawyer’s closing argument. Assuming that the speaker was Kim’s lawyer, that person asserted that Brown and US-1 “changed their mind[s]” after Kim dismissed the two civil actions. But a change of mind is not fraud. And, if the allegation of fraud was not raised, it was not necessary for the court in the tenant holding over action to address it.

We conclude that US-1’s summary judgment motion failed to present evidence that the issue of fraud was actually litigated, was actually decided, or was an essential part of the District Court’s decision. Accordingly, Kim’s ability to pursue her fraud claim is not barred by collateral estoppel.

3. US-1’s Alternative Argument: The Statute of Frauds

To the circuit court, US-1 contended that Kim “alleged that a verbal contract” between her and Brown granted her “a perennial right” to occupy a stall at the flea market and that such an agreement, even if existed, would be unenforceable by operation of one aspect of Maryland’s Statute of Frauds, specifically, RP §§ 5-101 and 5-103. The circuit court did not address US-1’s Statute of Frauds argument. US-1 raises the same argument to us as an alternative basis for affirming the circuit court’s judgment.

As a general rule, in an “appeal from the entry of summary judgment, we review only the grounds upon which the trial court relied in granting summary judgment.”

Washington Mutual Bank v. Homan, 186 Md. App. 372, 388 (2009) (citations and quotation marks omitted). However, if the prevailing party presented an alternative argument that was “one upon which the circuit court would have had no discretion to deny summary judgment, summary judgment may be granted for a reason not relied on by the trial court.” *Id.* (quoting *Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 134 (2000) (citations omitted)). When the alternative basis for summary judgment was “based solely upon a pure issue of law that could not properly be submitted to a trier of fact, then we will affirm on an alternative ground.” *Ragin*, 133 Md. App. at 134 (quoting *Davis v. Goodman*, 117 Md. App. 378, 395 n. 3 (1997)).

US-1’s alternative argument is that the Statute of Frauds renders any agreement between Kim and Brown unenforceable because it was not in writing. This is a legal argument which, if it were persuasive, would provide a basis for us to affirm the circuit court’s judgment. However, there are two problems with US-1’s Statute of Frauds argument.

First, the Statute of Frauds in any of its manifestations has nothing to do with Kim’s fraud claim. To prevail on that claim, Kim must prove that: (1) Brown told Kim that US-1 would permit her to return to the flea market if she dismissed her two lawsuits and paid her back rent while knowing that US-1 in fact had no intention of doing so; (2) Brown’s statement was deliberately made to induce her to dismiss the two actions; (3) Kim

justifiably relied on Brown’s misrepresentation; and (4) she suffered damages as a result. *Thomas v. Nadel*, 427 Md. at 451 n.18. In other words, and relevant to the Statute of Frauds issue, she is required to prove that Brown’s alleged promise was false and had been deliberately made in order to mislead her to her detriment. Kim is not required to prove that the allegedly false promise would be legally enforceable even though it was oral.

Second, assuming that the Statute of Frauds is relevant to Kim’s fraud claim, US-1’s reliance on RP §§ 5-101 and 5-103 is misplaced. Those statutes pertain to the creation or transfer of interests in land. But the alleged agreement purported to settle three lawsuits and to permit Kim to return to the flea market as, from what the record discloses, a week-to-week tenant. If we view the purported settlement agreement as granting an interest in land, a lease for a term of less than one year need not be in writing to be enforceable. RP § 5-102.

Moreover, the “agreement” at issue was not a lease, but rather what Kim claims was a settlement agreement. Thus, the relevant part of the Statute of Frauds would not be RP §§ 5-101 and 5-103, but rather Courts and Judicial Proceedings Article (“CJP”) § 5-901, which states (emphasis added):

Unless a contract or agreement . . . is in writing and signed by the party to be charged or another person lawfully authorized by that party, an action may not be brought:

- (1) To charge a defendant on any special promise to answer for the debt, default, or miscarriage of another person;
 - (2) To charge any person on any agreement made on consideration of marriage;
- or

(3) On any agreement that is not to be performed within 1 year from the making of the agreement.

Subsection (3) means what it says—a contract that can be performed within one year from the date of its making is enforceable even if it is not in writing. *See, e.g., Lacy v. Arvin*, 140 Md. App. 412, 429 n.5 (2001) (“The Statute of Frauds does not apply, however, when a contract can be completed within the span of a year by **any** possibility, even if the parties intended for the contract to extend for a longer period of time.” (emphasis in original)); *Pitman v. Aran*, 935 F. Supp. 637, 648 (D. Md. 1996) (“Maryland courts have strictly applied the ‘one year’ provision of the Statute of Frauds, whereby the statute will not apply where the contract can, by any possibility, be fulfilled or completed in the space of a year.”) (brackets and some quotation marks omitted).

Obviously, the alleged settlement agreement, i.e., that US-1 would dismiss its tenant holding over action and permit Kim to resume occupancy in the flea market if Kim dismissed her pending actions and paid her arrears in rent, could have been performed within a year. *See Emerald Hills Homeowners’ Association, Inc. v. Peters*, 446 Md. 155, 165–66 (2016) (distinguishing between CJP § 5-901, which “simply sets out the circumstances in which contracts must be in writing to be enforceable,” and RP § 5-103, which pertains to transfers of interests in land).

In conclusion, we affirm the judgment of the circuit court as to Kim’s breach of contract claim and reverse the judgment as to the fraud claim. We remand the case to the

circuit court for it to resolve Kim's fraud claim and, if necessary, her respondeat superior assertions.

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED IN PART AND REVERSED IN PART AND THIS CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.