Circuit Court for Prince George's County
Case Nos. CAE-16-24745 & CAE-17-21699

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2711

September Term, 2018

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No. 832

September Term, 2019

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PEGGY ANN MARTIN

v.

JEAN ROBERT DOLET

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Fader, C.J.,
Leahy,
Alexander Wright, Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Fader, C.J.

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Filed: June 18, 2020

These cases, consolidated for purposes of this opinion, represent the third and fourth appeals in a tortuous dispute over ownership of a single-family home located on Peachtree Lane in Bowie, Maryland ("Peachtree Lane"). Since 2016, Jean Robert Dolet, the appellee, and Peggy Ann Martin, the appellant, have engaged in a multi-front legal battle. In one prior appeal, which we will call the "First Partition Appeal," we held that the circuit court had jurisdiction to order a sale in lieu of partition of Peachtree Lane. *See Martin v. Dolet*, No. 1218, Sept. Term, 2017, 2019 WL 449829 (Feb. 5, 2019). In another, which we will call the "Contempt Appeal," we reversed a contempt finding against Mr. Dolet for want of a sanction or a purge provision. *See Dolet v. Martin*, No. 102, Sept. Term, 2018, 2019 WL 1578686 (Apr. 12, 2019). In the two appeals now before us, the Circuit Court for Prince George's County awarded judgment against Ms. Martin on the ground that prior rulings precluded her claims. In one of the cases, the trial court also awarded attorneys' fees and costs against Ms. Martin and her counsel on the basis that Ms. Martin's litigation positions lacked substantial justification.

We agree that some of Ms. Martin's claims are precluded. Nonetheless, we hold that the earlier rulings do not preclude Ms. Martin's breach of contract claim to the extent that she seeks damages based on Mr. Dolet's alleged breach of the parties' divorce agreement. Consequently, we also hold that the court abused its discretion in awarding attorneys' fees against her and her counsel.

## BACKGROUND

### A. Factual Background

The factual background to these cases is set forth in the two previous appeals, *Martin*, 2019 WL 449829, and *Dolet*, 2019 WL 1578686. Briefly recapitulated, Ms. Martin and Mr. Dolet divorced in 2013. As part of their divorce, they reached a written agreement—incorporated, but not merged, into the divorce decree—that, among other things, disposed of Peachtree Lane as follows:

> The parties own as tenants by the entirety, in fee simple, the real property located at 1709 Peachtree Lane Bowie, Maryland 20721. Said property is subject to a lien of a mortgage. The parties agree that Husband shall have sole ownership of the Husband's home after the execution of this Agreement. Husband shall be solely responsible for all principal, interest, insurance and tax payments related to Husband's home, without any contribution from Wife. If Husband sells Husband's Home, Husband shall share any proceeds from the sale of the property 50/50 with Wife. Upon vacating the Husband's Home, Husband hereby agree[s] to deed the Home to the Wife in Fee Simple.

*Martin*, 2019 WL 449829, at *1; *Dolet*, 2019 WL 1578686, at *1.

In August 2013, Mr. Dolet left Peachtree Lane. He contends that he did so, without first selling the property, based on Ms. Martin's agreement to refinance the property in her own name. Ms. Martin denies any such agreement, although she does not dispute that she paid the mortgage, insurance, and taxes on the property for some time. Regardless, Ms. Martin did not refinance the property and Mr. Dolet did not deed it to her.

### B. Procedural History

The parties' ongoing battles have focused largely on differing interpretations of the divorce agreement. Ms. Martin argues that once Mr. Dolet vacated Peachtree Lane, the property became hers, but Mr. Dolet remained "responsible for all principal, interest,

insurance and tax payments" on it. Thus, she contends, she took ownership of Peachtree Lane free and clear of any debt, while Mr. Dolet owned no interest in the property but remained obligated—in perpetuity—to pay all the outstanding debt and other associated obligations.

Mr. Dolet contends that once he vacated Peachtree Lane, Ms. Martin was entitled to the property only if she assumed responsibility for all associated debts and payment obligations. Because she refused to do so, he argues, he was not required to deed her the property. He also suggests that Ms. Martin had no reasonable expectation of ever receiving an ownership interest in Peachtree Lane—especially free and clear of debt—because the divorce agreement (1) gave him sole ownership of the property as long as he continued to live there, and (2) provided him the right to sell the property before vacating it, which he asserts he would have done but for Ms. Martin's promise to assume the outstanding debt burden. Notably, the issue of responsibility for the mortgage and ongoing payment obligations on Peachtree Lane was apparently far from academic, as the record suggests that the property was encumbered by a substantial amount of debt.

The procedural history of this dispute spans three different actions, all filed in the Circuit Court for Prince George's County, which we will call the Partition Action (CAE-16-24745), the Divorce Action (CAD12-27902), and the Breach of Contract Action (CAE-17-21699). Because the parties litigated the actions simultaneously, our chronological path through the procedural history weaves back and forth through them as well.

### *1. The Partition Action: Complaint and Default Judgment*

Mr. Dolet filed the Partition Action on June 8, 2016. He sought a declaratory judgment that Ms. Martin was responsible for Peachtree Lane's mortgage and other obligations, that she was required to refinance the mortgage in her name alone, and that he was permitted to sell the property. *Martin*, 2019 WL 449829, at *1. He also sought a sale in lieu of partition of the property. *Id.* Mr. Dolet alleged in his complaint that he had vacated Peachtree Lane only after Ms. Martin agreed that she would assume the mortgage and other obligations and would refinance the mortgage into her name alone, but that she had not done so. *Id.*

After Ms. Martin failed to respond timely to the complaint, Mr. Dolet filed a motion for default. On August 4, 2016, Judge Herman C. Dawson entered an order of default and scheduled an ex parte hearing for September 30.[1] Shortly after entry of the order of default,

[1] Obtaining a default judgment involves a two-step process. At the first step, "[i]f the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default." Md. Rule 2-613(b). After such an order is entered, and notice is given, the defendant has 30 days to "move to vacate the order of default." Md. Rule 2-613(d). If the defendant moves timely to vacate the order and the court identifies an actual controversy on the merits and reason to excuse the defendant's failure to plead timely, then "the court shall vacate the order." Md. Rule 2-613(e).

If not, the court proceeds to the second step. Md. Rule 2-613(f). At that step, "the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required . . . was mailed." *Id.* "If," however, "in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury." *Id.*

Ms. Martin moved to vacate it, asserting that she had not received notice of Mr. Dolet's motion. Both parties appeared at the September 30 hearing and jointly requested a continuance so that Ms. Martin could "attempt to refinance the property and hopefully avoid the cost and inconvenience of a trustee." The court granted the request and continued the hearing. Ms. Martin agreed on the record to January 13, 2017 as the new date for a combined hearing on the default and her motion to vacate it.

On January 13, Ms. Martin failed to appear. Judge Dawson went forward with the hearing and entertained testimony from Mr. Dolet to the effect that (1) he and Ms. Martin co-owned Peachtree Lane, (2) the property was subject to the divorce agreement, and (3) his promise to transfer possession to Ms. Martin was conditioned on her agreement to refinance the mortgage into her name alone. Mr. Dolet introduced into evidence, among other things, a certified copy of the deed for Peachtree Lane, which identified Mr. Dolet and Ms. Martin as owning the property "as Joint Tenants." After his evidentiary presentation, Mr. Dolet asked Judge Dawson "to appoint a trustee for sale of the property," which the court agreed to do.

Nearly two months later, on March 10, 2017, Judge Dawson issued a written order appointing a trustee to sell Peachtree Lane. Ms. Martin did not appeal.

#### *2. The Divorce Action: Motion for Contempt*

On May 24, 2017, instead of seeking relief in the Partition Action, Ms. Martin elected to mount a collateral attack by filing a "Motion for Modification and/or Contempt" in the parties' Divorce Action. Ms. Martin, through counsel, alleged that Mr. Dolet's failure to deed Peachtree Lane to her placed him in contempt of the divorce decree. *See*

*Dolet*, 2019 WL 1578686, at *2. As relief, Ms. Martin requested, among other things, that the court stay the sale that was proceeding in the Partition Action, deed the property to her, and require Mr. Dolet to reimburse her for amounts she had previously paid toward the mortgage, insurance, and taxes on the property. *See id.*

### *3. The Partition Action: Motion for Reconsideration*

On July 6, 2017—nearly four months after Judge Dawson appointed the trustee and six weeks after Ms. Martin moved for contempt in the Divorce Action—Ms. Martin moved for reconsideration of the order appointing the trustee in the Partition Action. In her motion, Ms. Martin asserted that she had not received notice of the January 13 hearing (even though she had agreed to that date on the record during the September 30, 2016 hearing); argued that Mr. Dolet was in contempt of the parties' divorce agreement; and asked the court to set aside its previous order or enjoin the sale of Peachtree Lane. Judge Dawson denied Ms. Martin's motion on August 21. He also sanctioned her $500.00.

Ms. Martin timely appealed the denial of the motion for reconsideration. Because she did not file a supersedeas bond[2] or otherwise obtain a stay, however, proceedings in the trial court continued. On August 26, the trustee contracted with two persons (the "Purchasers") to sell Peachtree Lane.

[2] A supersedeas bond is "[a]n appellant's bond to stay execution on a judgment during the pendency of the appeal." "Bond," *Black's Law Dictionary* (11th ed. 2019). "'[I]n the absence of a *supersedeas* bond to stay the judgment of a trial court,' . . . [t]he general rule is that 'the rights of a *bona fide* purchaser of mortgaged property would not be affected by a reversal of the order of ratification.'" *Mirjafari v. Cohn*, 412 Md. 475, 483-84 (2010) (quoting *Baltrotsky v. Kugler*, 395 Md. 468, 474 (2006)).

### *4. The Breach of Contract Action: Complaint*

On August 28, two days after the contract of sale was signed, Ms. Martin opened yet another front by filing the Breach of Contract Action. Ms. Martin alleged that Mr. Dolet had breached the parties' divorce agreement by failing to deed her Peachtree Lane upon vacating the property. As relief for the breach, Ms. Martin sought damages (in Count I); specific performance (in Count II); and injunctive relief in the form of an order enjoining Judge Dawson's appointment of a trustee in the Partition Action (in Count III).

### *5. The Partition Action: First Report of Sale*

The trustee filed a Report of Sale (the "First Report of Sale") in the Partition Action on September 13.

### *6. The Breach of Contract Action: Amended Complaint*

On October 6, Ms. Martin amended her complaint in the Breach of Contract Action to add the Purchasers as defendants.

### *7. The Divorce Action: Contempt Hearing*

On December 15, in the Divorce Action, Judge Ingrid M. Turner held a hearing on Ms. Martin's motion to find Mr. Dolet in contempt of the divorce decree. Mr. Dolet did not attend personally—apparently because his attorney believed mistakenly that the hearing would be limited to argument on a service dispute—but he was represented by counsel. *See Dolet*, 2019 WL 1578686, at *2. Ms. Martin testified that she had never agreed to refinance the property into her own name and that Mr. Dolet had vacated the property, turned it over to her, and eventually stopped paying the mortgage and other obligations. *Id.* She urged that Mr. Dolet be found in contempt for failing to deed her the

property as required by the divorce decree. *Id.* Mr. Dolet's counsel argued that the court should not find Mr. Dolet in contempt because doing so would conflict with Judge Dawson's order to sell Peachtree Lane. *Id.* "At the close of the hearing, Judge Turner found Mr. Dolet in contempt[,] but 'reserve[d] ruling on the remedy' pending resolution of the other cases." *Id.*

### *8. The Partition Action: Exceptions Hearing and Ratification of the First Report of Sale*

On January 11, 2018, in the Partition Action, Judge Dawson held an exceptions hearing on the First Report of Sale. Ms. Martin, Mr. Dolet, and the trustee all appeared. Ms. Martin argued that the court lacked jurisdiction to order the sale in lieu of partition because "there was no co-ownership" of Peachtree Lane due to Mr. Dolet's "agreement to convey [the] property." Speaking for the Purchasers, the trustee responded that Ms. Martin's jurisdictional argument was "not raised in the exceptions" and that "the only thing before" the court was whether "the sale was fairly and properly made." After hearing the parties' arguments, Judge Dawson stated that he "d[id]n't see where . . . there ha[d] been any irregularities in the sale" and "f[ound] that the sale was fairly and properly made." Accordingly, he "den[ied] and overrule[d] the exceptions." Soon after, on January 24, the court ratified the First Report of Sale.

### *9. The Breach of Contract Action: Motions to Dismiss*

Meanwhile, in the Breach of Contract Action, Mr. Dolet moved to dismiss on grounds of res judicata and collateral estoppel. After that motion was initially denied without explanation, Mr. Dolet moved for reconsideration as to Counts II (specific

performance) and III (injunctive relief). He argued that the Breach of Contract Action was filed "merely . . . as a bad faith attempt to frustrate the final judgment" in the Partition Action. Mr. Dolet also sought attorneys' fees and costs under Rule 1-341.

The trustee sought to intervene for the limited purpose of moving to dismiss all the claims as against the Purchasers so that the sale could proceed. The trustee's motion also was premised on the application of res judicata and collateral estoppel.

Ms. Martin opposed the motions to dismiss, arguing that res judicata and collateral estoppel did not apply for several reasons: (1) the order to sell Peachtree Lane in the Partition Action was not a final default judgment because no damages were assessed; (2) to the extent the order was a final judgment, it was void for lack of subject matter jurisdiction because Mr. Dolet lacked an equitable interest in Peachtree Lane; (3) the order was irregular under Rule 2-535(b) because it was made in response to an oral motion made by Mr. Dolet at an ex parte hearing; and (4) "Ms. Martin's claims for breach of contract and specific performance were not at issue in [the Partition Action]."

Judge Robin D. Gill Bright held a hearing on January 26, 2018. Judge Bright first granted the trustee's motion to intervene. At the conclusion of the hearing, Judge Bright ruled that (1) "[t]here was a final judgment" in the Partition Action and "the requirements of a declaratory judgment were met," and (2) the other issues raised by Ms. Martin with respect to Counts II and III "had been resolved in" the Partition Action. Accordingly, she granted the trustee's and Mr. Dolet's motions to dismiss with respect to Counts II and III. Judge Bright also granted the trustee's motion to dismiss Count I as against the Purchasers. Shortly thereafter, Judge Bright issued a written order that set forth those rulings,

authorized the sale "in conformance with the Court Order issued" in the Partition Action, and directed "that the claim of Breach of Contract in Count I against [Mr. Dolet] shall be scheduled for trial."[3]

### *10. The Divorce Action: Contempt Ruling*

Three weeks later, on February 15, Judge Turner issued a written ruling in the Divorce Action. Judge Turner found Mr. Dolet in contempt for failing to deed the Peachtree Lane property to Ms. Martin. The order stated that the "awarded relief shall be decided by the damages awarded, if any, in the parties' pending Breach of Contract claim." Mr. Dolet appealed.

### *11. The Partition Action: Second Report of Sale*

The first sale of Peachtree Lane fell through. The trustee alleged that it did so "because of [Ms. Martin]'s failure to vacate the [p]roperty so that the scheduled settlement . . . could occur." The trustee then filed a Second Report of Sale on May 23, 2018, and moved simultaneously to waive publication and exceptions and for immediate ratification. Ms. Martin opposed the motion.

On June 22, Judge Dawson granted the trustee's motion and ratified the sale. Judge Dawson approved the auditor's report and closed the case on September 17, 2018. Ms. Martin appealed. That appeal, No. 2711-2018, is the Second Partition Appeal, one of the two that is presently before us.

[3] Judge Bright also denied a motion for summary judgment filed by Ms. Martin.

### *12. The Breach of Contract Action: Motions for Summary Judgment*

Meanwhile, in the Breach of Contract Action, both parties moved for summary judgment on the sole remaining claim. Ms. Martin argued that "there [were] no facts in dispute that the Property was conveyed by Mr. Dolet to Ms. Martin 'on or about August 30, 2013,'" the day that Mr. Dolet vacated Peachtree Lane. Mr. Dolet moved for summary judgment based on res judicata and collateral estoppel. Because "the property ha[d] been judicially sold and the proceeds held by the court in [the Partition Action] for equitable distribution," he asserted that "relitigating the question of whether the agreement allowed a sale of the property to a 3rd party [would be] an impermissible collateral attack on a final judgment." Mr. Dolet concluded that "nothing c[ould] be gained by relitigating [Ms. Martin]'s claim that [Mr. Dolet] breached the parties' settlement agreement, except an inconsistent ruling that would usurp the trial judge's authority in [the Partition Action] and the appellate court's jurisdiction in" the two pending appeals.

Judge Bright held a hearing on October 18, 2018, during which she denied Ms. Martin's motion for summary judgment and granted Mr. Dolet's.[4] Judge Bright reasoned that she had "found that [Ms. Martin's claims] w[ere] barred by res adjudicata and collateral estoppel" with respect to Counts II and III, and that Count I "involve[d] the same subject matter, . . . the same parties[,] and . . . the same allegations and request for

[4] The court did not initially issue a written judgment in a separate document as required by Rule 2-601(a). After oral argument in these cases, we ordered the Breach of Contract Action remanded for the court to enter judgment in favor of Mr. Dolet on the docket in a separate document. The circuit court entered judgment in compliance with Rule 2-601(a) on April 16, 2020, after which the case returned to this Court.

monetary judgment." Judge Bright also denied Ms. Martin's oral motion "to forego any attorney's fees" and stated that she "w[ould] entertain a schedule of attorney's fees provided by [Mr. Dolet]."

### *13. The First Partition Appeal*

On February 5, 2019, we issued our opinion resolving the First Partition Appeal. In that appeal, Ms. Martin had asserted that "the court should have granted her revisory motion on the grounds of mistake because the court lacked subject matter jurisdiction over Mr. Dolet's claim." *See Martin*, 2019 WL 449829, at *3. She argued that the circuit court lacked jurisdiction to partition Peachtree Lane because Mr. Dolet was not a "concurrent owner" of the property. *Cf.* Md. Code Ann., Real Prop. § 14-107(a). Under her theory, Mr. Dolet was divested of equitable title to Peachtree Lane upon vacating it by operation of the divorce agreement, leaving him with only "naked legal title" to the property. Ms. Martin contended that was insufficient to request a partition under § 14-107(a). *See Martin*, 2019 WL 449829, at *4.

In our opinion, we observed that the question before us was limited by the procedural posture of the case, which came before us as (a) an appeal from the denial of a motion for reconsideration, (b) of an order of sale that had been entered while Ms. Martin was in default, after (c) she failed to appear for the hearing at which the court was to consider both her motion to vacate that default and any remedy for the default. *Id.* at *4 n.8. Moreover, because Ms. Martin had neither appealed from the order of sale itself nor filed a supersedeas bond, the sale had already occurred by the time the appeal reached us. *Id.* at *2. Thus, we emphasized that our decision was restricted to whether the court had

the power to order the (already completed) sale under § 14-107(a). *Id.* at *4 n.8. We held that the court did have that power. Rejecting Ms. Martin's arguments, we observed that § 14-107(a) provides specifically that "[a] circuit court may decree a partition of any property, *either legal or equitable*, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase." *Id.* at *4 (emphasis in *Martin*) (quoting § 14-107(a)). Mr. Dolet had "proved through evidence that he still maintained at least bare legal title to th[e] property." *Martin*, 2019 WL 449829, at *4. Therefore, we concluded, the circuit court had jurisdiction over the case. *See id.*

Notably, we expressed no opinion in the First Partition Appeal regarding whether, had we been able to reach the merits, we would have upheld the circuit court's decision to order a sale at the request "of a party who held only bare legal title to the property, if that in fact is all Mr. Dolet possessed." *Id.* at *4 n.8. Ms. Martin had forfeited her right to raise that issue by "fail[ing] to respond to the initial complaint and fail[ing] to timely appeal from the order to sell the property." *Id.*

We also rejected Ms. Martin's argument that the court abused its discretion in appointing the trustee. Ms. Martin contended that the court's order violated Rule 2-311(a) because "Mr. Dolet's motion to appoint a trustee . . . was made orally at a hearing noticed for the damages phase for default judgments." *Id.* at *5. We disagreed with Ms. Martin for four reasons: (1) Ms. Martin did not raise her objection before the circuit court, which meant that it was waived under Rule 8-131(a); (2) Mr. Dolet made his request for a sale in lieu of partition in writing when he sought that relief in Count II of his complaint, and the appointment of a trustee "was simply the necessary mechanism to carry out [that] relief";

(3) appointing a trustee to sell the property was "an entirely appropriate step to take during the damages phase for default judgments"; and (4) as Rule 2-311(a) states explicitly, "a motion 'made during a hearing or trial' need not be in writing." *Id.* Thus, we affirmed the circuit court's ruling with respect to its grant of the alleged oral motion, as well.

In the First Partition Appeal, we emphasized that we were not "address[ing] or decid[ing] the merits of either party's other claims relating to the divorce agreement and the Peachtree Lane property," including "whether Mr. Dolet breached the divorce agreement . . . when he failed to deed the property to Ms. Martin upon vacating it, whether Ms. Martin breached any obligation to Mr. Dolet by failing to refinance the property, and whether either party owes damages to the other." *Id.* at *6 n.9. Ms. Martin did not seek review of our decision in the Court of Appeals.

### *14. The Breach of Contract Action: Fee Award*

On April 10, 2019, following briefing by both parties, Judge Bright granted Mr. Dolet's motion for attorneys' fees and costs under Rule 1-341. In an accompanying opinion, Judge Bright "f[ound] no reasonable basis for Ms. Martin to believe that [her] claims . . . would generate an issue of fact" and determined "that the Complaint and Amended Complaint w[ere] filed without substantial justification." She reasoned that (1) "the terms in the Agreement . . . [were] clear and unambiguous," such that "[w]hen Mr. Dolet conveyed the Property to Ms. Martin, the plain meaning of the Agreement explicitly stated that Ms. Martin would assume financial responsibility and refinance the

Property in Ms. Martin's name";[5] (2) "the instant case was in direct response to Ms. Martin's inability to prevail in" the Partition Action, and compelled the trustee and Mr. Dolet "to relitigate matters previously resolved" without raising any "new issues or material facts"; and (3) "Ms. Martin elected to not dismiss the claims for specific performance and injunctive relief even after knowing that the Property had been sold to a third party." Having found that Ms. Martin had acted in bad faith and without substantial justification, Judge Bright ruled that "the application of Rule 1-341 [was] mandatory," that "the attorney's fees affidavit . . . [was] in conformance with the requirements in Maryland Rule 1-341," and that Mr. Dolet incurred $8,445 in fees "defending the frivolous claim filed by Ms. Martin." Judge Bright ordered that judgment in that amount be entered against Ms. Martin and her counsel, Adam Levi, jointly and severally.

Ms. Martin, still represented by Mr. Levi, timely appealed. That appeal, No. 832-2019, which we will call the "Breach of Contract Appeal," is the second appeal that is presently before us. Mr. Levi did not appeal separately from the judgment as against him.

### *15. The Contempt Appeal*

On April 12, 2019, we reversed the contempt order entered against Mr. Dolet in the Divorce Action because it "fail[ed] to include either a sanction designed to coerce compliance or a purge provision." *Dolet*, 2019 WL 1578686, at *3; *see* Rule 15-207(d)(2) (constructive civil contempt order must specify both "the sanction imposed for the

[5] The basis for the circuit court's statement that the divorce agreement "explicitly stated that Ms. Martin would assume financial responsibility" for the property is unclear. The agreement contains no such explicit statement.

contempt" and "how the contempt may be purged"). As in our decision in the Partition Appeal, we stressed that "[t]his opinion should not be interpreted as having addressed or decided the merits of either party's other claims relating to the Peachtree Lane property," including "whether Mr. Dolet breached the divorce agreement when he failed to deed the property to Ms. Martin upon vacating it, whether Ms. Martin breached any obligation to Mr. Dolet by failing to refinance the property, and whether either party owes damages to the other." *Dolet*, 2019 WL 1578686, at *3 n.4. Ms. Martin did not seek review of our decision in the Court of Appeals.

## DISCUSSION

In both present appeals, Ms. Martin contends that the circuit court erred in concluding that her claims were barred by the allied doctrines of law of the case, res judicata, and collateral estoppel. With regard to the Second Partition Appeal, we agree that Ms. Martin's claims are precluded. Her claims in that appeal are virtually identical to the claims we resolved previously in the First Partition Appeal, and are barred by the law of the case. Consequently, we will affirm the judgment in the Second Partition Appeal.

With respect to the Breach of Contract Appeal, we hold that Counts II (specific performance) and III (injunctive relief) of the complaint are barred by res judicata. But Count I, which seeks damages for Mr. Dolet's alleged breach of contract, is not precluded. Accordingly, we will reverse the judgment in the Breach of Contract Appeal with respect to Count I, vacate the court's award of sanctions under Rule 1-341, and remand for further proceedings consistent with this opinion.

## I. IN THE SECOND PARTITION APPEAL, MS. MARTIN'S ARGUMENTS ARE PRECLUDED BY THE LAW OF THE CASE DOCTRINE.

A court's "determination[s] as to the applicability of the doctrines of res judicata and collateral estoppel" are decisions on "questions of law," *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 666 (2017), as is its application of the law of the case doctrine.[6] We review decisions on questions of law without deference. *Id.*

In different but related ways, the doctrines of res judicata, collateral estoppel, and the law of the case prevent parties from relitigating matters that already have been decided. *See Scott v. State*, 379 Md. 170, 182-84 (2004); *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 387-92 (2000). Res judicata, or claim preclusion, applies when a subsequent "proceeding . . . involves the same cause of action as a previous proceeding between the same parties." *Colandrea*, 361 Md. at 388 (quoting *Mackall v. Zayre Corp.*, 293 Md. 221, 228 (1982)). Under res judicata, the judgment in the previous proceeding is conclusive "not only as to all matters which *were litigated* in the earlier case, but as to *all matters which could have been litigated*." *Colandrea*, 361 Md. at 388 (emphasis in *Colandera*) (quoting *Mackall*, 293 Md. at 227). Collateral estoppel, or issue preclusion, applies when

[6] Although it appears that no Maryland case has addressed expressly whether the applicability of the law of the case doctrine is a question of law, we agree with our sister jurisdictions that it is. *See, e.g.*, *Benzrent 1, LLC v. Wilmington Sav. Fund Soc'y*, 273 So. 3d 107, 109 n.1 (Fla. Dist. Ct. App. 2019) ("Whether a ruling is the law of the case is a question of law, which this court reviews de novo." (quoting *TRW Auto. U.S. v. Papandopoles*, 949 So. 2d 297, 300 (Fla. Dist. Ct. App. 2007))); *Commonwealth v. Lancit*, 139 A.3d 204, 206 (Pa. Super. Ct. 2016) ("Whether the Law of the Case Doctrine precludes review in a given situation is a pure question of law. Therefore, our standard of review is *de novo*." (internal citations omitted)); *accord, e.g.*, *Buntin v. City of Boston*, 857 F.3d 69, 72 (1st Cir. 2017) ("Whether the law of the case doctrine applies is a question of law, which we review de novo.").

a subsequent "proceeding . . . does not involve the same cause of action as a previous proceeding between the same parties." *Colandrea*, 361 Md. at 388 (quoting *Mackall*, 293 Md. at 228). Under collateral estoppel, the judgment in the previous proceeding precludes relitigation "only [of] those facts or issues actually litigated in the previous action." *Id.*

The law of the case doctrine operates similarly to res judicata, but "differs . . . in that it applies to court decisions made in the same, rather than a subsequent, case." *Scott*, 379 Md. at 182 n.6. Under the law of the case doctrine, "once an appellate court rules upon a question presented on appeal, litigants and [trial] courts become bound by the ruling." *Id.* at 183. Furthermore, on any subsequent appeal in the same litigation, the parties are "bar[red] . . . from raising arguments on questions that have been decided previously or could have been decided in that case." *Dabbs v. Anne Arundel County*, 458 Md. 331, 345 n.15 (2018). The doctrine thereby "prevent[s] piecemeal litigation." *Id.*

Ms. Martin's Second Partition Appeal implicates the law of the case, because we heard and decided her previous appeal in the same action. In her current appeal, Ms. Martin identifies two questions presented:

> 1. Whether the circuit court erred in issuing the decree of sale in lieu of partition pursuant to Real Property Article § 14-107 when [Mr. Dolet]'s complaint and testimony established that he did not possess concurrent ownership interest as a matter of law?
>
> 2. Whether the trial court erred in granting [Mr. Dolet]'s oral motion for a decree of sale in lieu of partition pursuant to Real Property Article § 14-107, which was required to be made in writing pursuant to Md. Rule 2-311 and was prejudicial?

Those are essentially the same questions Ms. Martin raised in the First Partition Appeal.[7]

Ms. Martin has not offered any grounds on which we could reconsider our prior opinion, either with respect to the questions we addressed or how we resolved them. She did not seek further review of our earlier decision in the Court of Appeals; she has not cited any subsequent decision calling that ruling into question; and she has not identified any other change of circumstances such that "following the decision would result in manifest injustice." *See Scott*, 379 Md. at 184 (identifying reasons why appellate courts sometimes reconsider decisions made in previous appeals). Indeed, apart from noting that the First Partition Appeal did not decide "the merits of whether the decree of sale was legally correct," Ms. Martin barely acknowledges the existence of our previous opinion. Under the circumstances, we will not depart from the salutary principle that "'[d]ecisions rendered by a prior appellate panel will generally govern the second appeal' at the same appellate level." *Id.* (quoting *Hawes v. Liberty Homes*, 100 Md. App. 222, 231 (1994)). The law of the case is that the circuit court had fundamental jurisdiction to order a sale and it did not

[7] In the First Partition Appeal, the questions presented by Ms. Martin were:

> 1. Whether the trial court's decree of sale in lieu of partition pursuant to Real Property Article § 14-107 was issued by mistake when [Mr. Dolet]'s Complaint conceded that he did not possess a concurrent ownership interest in the subject property?
>
> 2. Whether the trial court, in granting [Mr. Dolet]'s oral motion for a sale in lieu of partition pursuant to Real Property Article § 14-107, violated Md. Rule 2-311, which requires motions to be made in writing; and thus, was irregular?

Appellant's Br., *Martin v. Dolet*, No. 1218, Sept. Term 2017, 2018 WL 2759452, at *viii (Md. Ct. Spec. App. May 9, 2018).

err procedurally in appointing a trustee to sell the property. *See Martin*, 2019 WL 449829, at *4-*5.

Ms. Martin has not challenged any of the rulings the circuit court made after the First Partition Appeal—e.g., its ratification of the Second Report of Sale—other than on the same grounds addressed in our decision in that appeal. Instead, Ms. Martin again asks us to do what we concluded we could not do in the First Partition Appeal—namely, to reach back and address the merits of her objection to the sale. Ms. Martin appears to believe that her appeal at the conclusion of the Partition Action permits us to revisit any decisions made by the circuit court at any point during the case, irrespective of her default, her failure to appear at the hearing to consider the remedy for her default, her failure to appeal the order to sell the property, and her failure to post a supersedeas bond or otherwise obtain a stay of the sale of the property during the pendency of either appeal. As a result of those deficiencies, however, we are no more able to reach the merits of the order to sell Peachtree Lane now than we were in the First Partition Appeal.

Indeed, now that the property has been sold, "a reversal on appeal would have no effect." *See Baltrotsky v. Kugler*, 395 Md. 468, 474 (2006) (quoting *Pizza v. Walter*, 345 Md. 664, 674 (1997), *mandate withdrawn*, 346 Md. 315 (withdrawing by joint motion pursuant to settlement agreement)); *see also id.* ("The general rule is that 'the rights of a *bona fide* purchaser of mortgaged property would not be affected by a reversal of the order of ratification in the absence of a bond having been filed.'"). Thus, in addition to being

barred by law of the case, the Second Partition Appeal is moot.[8] We will therefore affirm the judgment of the circuit court in the Partition Action.

## II. IN THE BREACH OF CONTRACT APPEAL, MS. MARTIN'S CLAIM FOR DAMAGES IS NOT PRECLUDED BY RES JUDICATA OR COLLATERAL ESTOPPEL.

In the Breach of Contract Action, the circuit court held that Ms. Martin's breach of contract claim was barred by collateral estoppel, a decision that Mr. Dolet urges us to affirm. We conclude that the proceedings in the Partition Action did not resolve the factual and legal issues underlying Ms. Martin's claim for breach of contract and, therefore, that the circuit court erred in ruling that her claim for damages is precluded. We also conclude, however, that Ms. Martin's requests for specific performance and injunctive relief are barred by res judicata. Accordingly, we will reverse the judgment to the extent of Ms. Martin's request for damages in Count I; affirm the judgment to the extent of her requests for specific performance and injunctive relief in Counts II and III; vacate the award of sanctions; and remand for further proceedings.

[8] Ms. Martin seems to misunderstand footnote 8 of our opinion in the First Partition Appeal, in which we emphasized that "the sole question in this appeal is whether the [circuit] court was mistaken for purposes of Rule 2-535(b), in concluding that it had *subject matter jurisdiction* to proceed to act on the complaint." *Martin*, 2019 WL 449829, at *4 n.8 (emphasis added). Ms. Martin apparently interprets that footnote to draw a distinction between jurisdiction to address the complaint, on the one hand, and jurisdiction to order a sale in lieu of partition, on the other. That distinction is unwarranted. The principal relief at issue on appeal was Mr. Dolet's request for a sale of Peachtree Lane. Our opinion held expressly that Mr. Dolet possessed "the necessary concurrent interest to provide the court with at least subject matter jurisdiction over the complaint *for sale in lieu of partition*." *Id.* at *4 (emphasis added). In footnote 8, we merely clarified that our opinion did not reach the merits of the underlying decision to order a sale, which we explained we could not do because of Ms. Martin's procedural defaults. *Id.* at *4 n.8. Those same procedural defaults remain an impediment to Ms. Martin's claims in the Second Partition Appeal.

As an initial matter, we observe that, although styled as three separate "counts," Ms. Martin's complaint in the Breach of Contract Action really pleads only a single cause of action, for breach of contract based on Mr. Dolet's failure to deed her Peachtree Lane. In addressing whether Ms. Martin's cause of action is viable, we will discuss the preclusion doctrines' varying effects on the different forms of relief she has requested.

Res judicata and collateral estoppel both may prevent parties from relitigating matters in subsequent cases, but the distinction between the two doctrines is significant. Res judicata precludes relitigation "not only as to all matters which *were litigated* in the earlier case, but as to *all matters which could have been litigated*." *Colandrea*, 361 Md. at 388 (emphasis in *Colandrea*) (quoting *Mackall*, 293 Md. at 227). Collateral estoppel, by contrast, precludes relitigation "only [of] those facts or issues actually litigated in the previous action." *Colandrea*, 361 Md. at 388 (quoting *Mackall*, 293 Md. at 228). Thus, which doctrine we apply determines the extent to which the prior judgment is conclusive.

The three-part test for the application of claim preclusion (res judicata) is:

(1) Are the parties in the present litigation the same or in privity with the parties to the earlier dispute?

(2) Are the claims in the present litigation identical to those determined in the prior adjudication?

(3) Was there a final judgment on the merits?

*See Colandrea*, 361 Md. at 392. For purposes of res judicata, claims are "identical" when they involve a common "set of facts," even if a party seeks to "appl[y] [] a different legal theory to that same set of facts." *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 111 (2005).

The test for the application of issue preclusion (collateral estoppel) is:

(1) Was the issue decided in the prior adjudication identical with the one presented in the action in question?

(2) Was there a final judgment on the merits?

(3) Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?

(4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

*See Colandrea*, 361 Md. at 391.

**A. Res Judicata Bars Ms. Martin's Requests for Specific Performance and Injunctive Relief.**

We hold that res judicata bars Ms. Martin's breach of contract claim only to the extent she seeks specific performance and injunctive relief. Although the first and third elements of res judicata are met—the parties to the Partition Action and the Breach of Contract Action are identical, and there was a final judgment on the merits in the Partition Action—Ms. Martin's claim for breach of contract is not identical to the claims adjudicated in the Partition Action. *See id.* at 392. As we explained above, only Mr. Dolet brought claims in the Partition Action, and while he ultimately prevailed in obtaining a sale in lieu of partition of Peachtree Lane, the circuit court did not rule on whether he had breached the divorce agreement. To be sure, Ms. Martin could have pursued her own claims as counterclaims in the Partition Action, but she did not.

That, however, does not end our res judicata analysis. Because "Maryland's counterclaim rule . . . is permissive and not mandatory," a subsequent lawsuit bringing such a claim ordinarily is not precluded by res judicata. *Mostofi v. Midland Funding*, 223 Md.

App. 687, 698 (2015) (quoting *Rowland v. Harrison*, 320 Md. 223, 233 (1990)). Nevertheless, such a claim *is* precluded "where the [subsequent] claim 'would nullify the initial judgment or would impair rights established in the initial judgment.'" *Mostofi*, 223 Md. App. at 698 (quoting *Rowland*, 320 Md. at 236). For example, a losing defendant cannot bring a subsequent claim "to enjoin enforcement of the [previous] judgment," or seek to "depriv[e] the plaintiff in the first action of property rights vested in him under the first judgment." *Mostofi*, 223 Md. App. at 698 (quoting *Rowland*, 320 Md. at 237). But res judicata does not bar an erstwhile defendant from bringing subsequent claims that merely involve the same parties or the same general subject matter, provided that those claims "do not attack a[n] [earlier] judgment *per se*." *Mostofi*, 223 Md. App. at 703.

In this case, Ms. Martin's requests for specific performance and injunction were brought with the "explicit purpose . . . to render the [Partition Action]'s judgment a nullity," *see id.* at 699, as both sought to prevent or unwind the sale. That puts her "on the wrong side of *Rowland*," *id.*, and so those forms of relief are barred by res judicata. Conversely, to the extent Ms. Martin seeks compensatory damages for Mr. Dolet's alleged breach of a contractual obligation to convey the property to her, her claim "would [not] nullify the initial judgment" and "would [not] impair rights established in the initial action," *id.* at 698 (quoting *Rowland*, 320 Md. at 236), and so is not barred by res judicata.[9]

[9] Even were Ms. Martin's requests for specific performance and injunctive relief not barred by res judicata, they would now be moot. "[S]pecific performance cannot be decreed once performance has become impossible." *Charles County Broad. Co. v. Meares*, 270 Md. 321, 325 (1973), *disapproved on other grounds by Beard v. S/E Joint Venture*, 321 Md. 126 (1990). And "[a]n appeal of the denial of an injunction to prohibit an act is

### B. Collateral Estoppel Applies, but the Factual and Legal Issues Underlying Ms. Martin's Breach of Contract Claim Were Not Actually Litigated and Decided in the Two Previous Appeals.

Although res judicata does not bar Ms. Martin's claim for breach of contract to the extent she seeks compensatory damages, collateral estoppel still precludes her from relitigating any issues that were actually decided in the Partition Action. That is so even though the Partition Action was adjudicated through a default judgment. Ordinarily, "[i]n the case of a judgment entered by . . . default, none of the issues is actually litigated. Therefore, the rule of [issue preclusion] does not apply with respect to any issue in a subsequent action." *John Crane, Inc. v. Puller*, 169 Md. App. 1, 36 (2006) (emphasis removed) (quoting *United Book Press v. Md. Composition Co.*, 141 Md. App. 460, 477 (2001)); *see also Lowery v. Minh-Vu Hoang*, 240 Md. App. 240, 250 n.15 ("[T]he most common view is that a default judgment should not be considered to have been 'finally litigated' for purposes of collateral estoppel."), *cert. granted*, 464 Md. 7 (2019), *rev'd on other grounds*, ___ Md. ___, No. 17, Sept. Term 2019, 2020 WL 3023263 (filed June 5, 2020). That principle governs, however, only "when [the judgment is] not actually litigated." *United Book Press*, 141 Md. App. at 478. In cases where a party appears and "extensively litigate[s]" an issue, courts generally hold that collateral estoppel may be applied notwithstanding that liability was resolved on default. *See id.* at 479 (citing *In re Weiss*, 235 B.R. 349, 357 (Bankr. S.D.N.Y. 1999)).

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rendered moot by the happening of the act." *Ry. Labor Execs. Ass'n v. Chesapeake W. Ry.*, 915 F.2d 116, 118-19 (4th Cir. 1990). Here, Mr. Dolet lost his ability to convey title to Peachtree Lane, and the event he sought to enjoin was completed, once the property was sold in the summer of 2018.

The latter scenario frequently arises in the bankruptcy context. For example, cases from Maryland's federal courts have involved bankruptcy filings by defendant debtors whose "investment in the former litigation drift[ed] from participatory to unresponsive." *E.g.*, *In re Reecher*, 514 B.R. 136, 153 (Bankr. D. Md. 2014) (internal quotation marks omitted). The plaintiffs in the underlying cases obtained judgments by default against debtors who had initially participated actively in the cases, but then ceased to do so. *See, e.g.*, *id.* at 145-46. When the plaintiffs then initiated adversarial proceedings as judgment creditors in the bankruptcy cases, the courts held that collateral estoppel barred the debtors from contesting the claims. *E.g.*, *id.* at 153. "To hold otherwise," the courts reasoned, "would allow defendants to play the litigation game, while providing them with a mechanism by which to escape the collateral estoppel effects of an adverse judgment if things start to go badly." *E.g.*, *In re Bernstein*, 197 B.R. 475, 481 (Bankr. D. Md. 1996), *aff'd mem.*, 113 F.3d 1231 (4th Cir. 1997) (per curiam). Therefore, default judgments are conclusive as to all "issues pertinent to th[e] adversary proceeding [that] were actually litigated in the [earlier] action." *E.g.*, *In re Durant*, 586 B.R. 577, 586 (Bankr. D. Md. 2018). The United States District Court for the District of Maryland summarized the caselaw as follows:

> Most courts hold that the "actually litigated" requirement is met, even if there is no adversarial hearing, when (1) a defendant files an answer to the complaint or otherwise appears in the action, (2) the issues are submitted to a jury or finder of fact, (3) the issues are determined after the party has notice and an opportunity to be heard, and (4) the defendant had proper incentive to litigate the matter in the prior hearing and could reasonably foresee litigation on the same issue.

*Nestorio v. Assocs. Commercial Corp.*, 250 B.R. 50, 56 (D. Md. 2000), *aff'd sub nom. In re Nestorio*, 5 F. App'x 283 (4th Cir. 2001) (per curiam).

Those criteria are met in this case. Ms. Martin appeared in the Partition Action, filed a motion to vacate the initial order of default, and was present at a hearing before the circuit court. *See Martin*, 2019 WL 449829, at *1. She then sought a postponement of the hearing, failed to appear on the rescheduled date, and subsequently brought her claims in a different action instead of litigating them in the Partition Action. She had the proper incentive to litigate her claims in the Partition Action but did not. *See Nestorio*, 250 B.R. at 56. Finally, when Ms. Martin did not appear at the January 13, 2017 hearing, the circuit court "did not just enter a default judgment on liability, but conducted an evidentiary hearing." *See In re Durant*, 586 B.R. at 586. After hearing testimony and accepting evidence, the court granted Mr. Dolet's motion to appoint a trustee to sell the property. *See Martin*, 2019 WL 449829, at *2. In such circumstances, Ms. Martin's default does not preclude application of collateral estoppel to issues that were actually decided against her.[10]

Moreover, although Ms. Martin initially defaulted, she eventually returned to participate in the Partition Action. As a result, some issues in that action were adjudicated with her full participation, including both of those we decided in the First Partition Appeal. *See In re Corey*, 583 F.3d 1249, 1253 (10th Cir. 2009) ("[T]he 'actual litigation'

[10] Ms. Martin argues that the default judgment cannot be afforded preclusive effect because "pursuant to Md. Rule 2-601, a declaratory judgment requires a separate document and writing declaring the rights of the parties." But the application of collateral estoppel does not turn on whether the default judgment constituted a declaratory judgment. Rather, collateral estoppel applies to any issues that were actually decided by the circuit court in ordering the sale in lieu of partition.

requirement may be satisfied by substantial participation in an adversary contest in which the party is afforded a reasonable opportunity to defend himself on the merits but chooses not to do so." (quoting *FDIC v. Daily (In re Daily)*, 47 F.3d 365, 368 (9th Cir. 1995))).

Critically, collateral estoppel applies only to issues that were actually decided against Ms. Martin in the previous litigation. Thus, having determined that issues resolved in the Partition Action may be given preclusive effect, we must decide what "issues [were] actually and necessarily litigated in that proceeding." *Welsh v. Gerber Prods.*, 315 Md. 510, 518 (1989). Section 14-107(a) of the Real Property Article, the statutory authority for the circuit court's order to sell Peachtree Lane, provides in pertinent part:

> A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights.

Based on that statute and the rulings of both the circuit court and this Court, the following issues were actually and necessarily decided in the Partition Action: (1) Mr. Dolet and Ms. Martin each had at least some "legal or equitable" interest in Peachtree Lane at the time Mr. Dolet sought a sale in lieu of partition, *id.*; (2) "the property c[ould ]not be divided without loss or injury to the parties interested," *id.*; (3) the circuit court had jurisdiction to order the sale of the property, *see Martin*, 2019 WL 449829, at *3-*4; and (4) the court did not err procedurally in appointing a trustee to sell the property, *id.*

None of those rulings precludes Ms. Martin's breach of contract claim, at least to the extent she seeks damages as relief. The elements of a breach of contract claim are:

(1) "the defendant owed the plaintiff a contractual obligation," and (2) "the defendant breached that obligation." *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 265 (2018) (quoting *Taylor v. NationsBank, N.A.*, 365 Md. 166, 175 (2001)). Neither of those elements was resolved against Ms. Martin in the Partition Action. To the contrary, we took pains to stress in the First Partition Appeal (as well as in the Contempt Appeal) that we were not "address[ing] or decid[ing] the merits of either party's other claims relating to the divorce agreement and the Peachtree Lane property," including "whether Mr. Dolet breached the divorce agreement . . . when he failed to deed the property to Ms. Martin upon vacating it." *Martin*, 2019 WL 449829, at *6 n.9; *see also Dolet*, 2019 WL 1578686, at *3 n.4 (same). In holding that Mr. Dolet had at least some property interest in Peachtree Lane when he sought a sale in lieu of partition, we did not resolve (either expressly or by implication) Ms. Martin's claim that Mr. Dolet was contractually obligated to transfer his interest—whatever it was—to her.

Mr. Dolet asserts that, in determining that he could seek a sale in lieu of partition of Peachtree Lane, the circuit court necessarily determined that he was not obligated to transfer his interest in the property to Ms. Martin pursuant to the divorce agreement. We disagree. Because Ms. Martin defaulted, the circuit court never addressed the merits of her claim that Mr. Dolet was obligated to transfer his interest in the property to her. Although it is *possible* that the court determined that Mr. Dolet had no such obligation, the court did not say so. The only conclusion the court *necessarily* reached is that Mr. Dolet still maintained some interest in the property at the time he requested a sale in lieu of partition, and it ordered Peachtree Lane to be sold on that basis.

We therefore hold that the circuit court in the Breach of Contract Action erred in concluding that Ms. Martin's breach of contract claim is barred to the extent she seeks an award of damages. We will reverse the judgment of the circuit court as to Count I of the Complaint and remand for further proceedings consistent with this opinion. On remand, Ms. Martin will be precluded from seeking relief in the form of specific performance or injunctive relief, as well as from arguing that the circuit court lacked authority to order the sale in lieu of partition of Peachtree Lane. But she will not be precluded from asserting a claim for damages, if any, based on her contention that Mr. Dolet had a contractual obligation to transfer the property to her upon vacating it, notwithstanding her refusal to assume responsibility for liabilities associated with the property. Similarly, Mr. Dolet is not precluded from asserting that (1) he had no obligation to transfer Peachtree Lane to Ms. Martin, or (2) if he did, Ms. Martin suffered limited (or nonexistent) damages because she would have taken ownership subject to the mortgage and other payment obligations.[11]

## III. THE CIRCUIT COURT'S FEE AWARD MUST BE REVERSED.

After concluding that Ms. Martin's breach of contract claim was barred in its entirety, the circuit court awarded attorneys' fees against Ms. Martin and her counsel on the ground that her claim "was filed without substantial justification." Because we have

[11] We express no opinion on the merits of Ms. Martin's breach of contract claim or Mr. Dolet's defenses to that claim. We decide only that they are not barred by collateral estoppel or res judicata.

concluded that Ms. Martin's claim was not barred entirely, we will vacate the court's finding of lack of substantial justification and its award of attorneys' fees.[12]

## CONCLUSION

In the Second Partition Appeal, we will affirm the judgment of the circuit court under the law of the case doctrine. In the Breach of Contract Appeal, we will (1) reverse the judgment of the circuit court with respect to Count I, (2) affirm that judgment with respect to Counts II and III, (3) vacate the award of fees and costs under Rule 1-341, and (4) remand for further proceedings consistent with this opinion.

**IN NO. 2711-2018: JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**

**IN NO. 832-2019: JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE SPLIT EVENLY BETWEEN APPELLANT AND APPELLEE.**

[12] Although Mr. Levi did not appeal the fee award as against him, because the award of attorneys' fees was imposed jointly and severally, we will vacate the award with respect to both Ms. Martin and Mr. Levi. *See, e.g., In re Marriage of Reese & Guy*, 87 Cal. Rptr. 2d 339, 344 (Ct. App. 1999) (holding that a joint and several sanctions award could be vacated with respect to a non-appealing party when sanctions were "interwoven and connected" as to both (quoting *In re McDill*, 537 P.2d 874, 879 (Cal. 1975) (en banc))).