

Circuit Court for Frederick County
Case No. C-10-CV-18-000782

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0541

September Term, 2019

SHERRIE LYNN SMITH

v.

MARSHALL T. HORMAN

Graeff,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 27, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Marshal Horman, appellee, was appointed Successor Trustee to sell property that Sherrie Smith, appellant, and her sister inherited when their mother died in 2015. After the sale, Ms. Smith filed a complaint against Mr. Horman in the Circuit Court for Frederick County seeking damages for an alleged breach of his duty of care to her.

Mr. Horman filed a motion to dismiss the complaint, asserting, among other things, that all of the allegations made by Ms. Smith in the complaint had been addressed in litigation regarding the sale of the property, and therefore, Ms. Smith’s claims were barred by the doctrines of collateral estoppel, collateral attack, and res judicata. The circuit court granted Mr. Horman’s motion to dismiss, and it subsequently denied Ms. Smith’s motion for reconsideration.

On appeal, Ms. Smith presents the following question for this Court’s review, which we have rephrased slightly, as follows:

Did the trial court err in dismissing Ms. Smith’s complaint based upon the doctrine of collateral estoppel?

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

FACTUAL AND PROCEDURAL BACKGROUND¹

On April 15, 2015, Peggy Sue Keyser, mother of Ms. Smith and Tammy Keyser, died. Her home (“the Property”) passed to her two daughters upon her death. On August

¹ Because we are reviewing an order granting a motion to dismiss, the facts are taken from the complaint, other documents in the record, and proceedings of which this Court can take judicial notice.

30, 2016, the circuit court appointed Marshall Horman as Successor Trustee to sell the Property.²

On November 22, 2016, Mr. Horman entered into a Contract of Sale for the Property, with a purchase price of \$180,000. Ms. Keyser agreed to pay \$90,000 for Ms. Smith's half of the Property, with a \$2,000 deposit. The contract provided that settlement would occur on or before January 10, 2017, and if the court did not ratify the Report of Sale, the deposit would be returned to Ms. Keyser.

On November 23, 2016, Mr. Horman filed a Report of Sale. On December 22, 2016, Ms. Smith filed Exceptions to the sale, asserting that the sale was for substantially less than fair market value, and Ms. Keyser had depressed the market value by damaging the interior of the premises. Ms. Smith then filed a motion to reschedule the Exceptions hearing.

On May 5, 2017, Ms. Keyser's attorney wrote a letter to Mr. Horman, informing him that the date for settlement had passed, and at that point, she had no further interest in the Property. She advised that the contract was null and void, and she requested the return of her \$2,000 deposit.

On June 28, 2017, Mr. Horman entered into a contract of sale for the Property with Chad Keyser, a second cousin to Ms. Smith and Ms. Keyser. Mr. Keyser agreed to pay \$183,000 for the Property, with a \$4,000 deposit. This contract also included a provision

² Two other trustees previously had been appointed, but conflicts subsequently occurred.

that, if the Report of Sale was not ratified by the court, then Mr. Horman would return the security deposit.

Ms. Smith filed Exceptions to the sale, and Mr. Keyser then advised that he no longer wanted to purchase the Property. Mr. Horman filed a Motion for Authority to Permit Trustee to Terminate Contract of Sale and Return One-Half of Purchaser's Security Deposit.

On August 22, 2017, Ms. Smith filed a motion to remove Mr. Horman as Successor Trustee to sell the Property. In her motion, she alleged that Mr. Horman was acting in "contravention of his fiduciary duty to both co-owners to maximize the net proceeds of the sale" of the Property, stating, among other things, that he: (1) never retained a real estate broker to sell the property, despite her request and her "many resources in the real estate field"; (2) never advertised the property; (3) never arranged for the Property to be placed on a listing service; (4) obtained a new appraisal dated October 7, 2016, for \$175,000, despite having an appraisal in June 2016 from the prior trustee with a value of \$192,000; (5) "failed to retain the \$2,000 earnest money deposit" paid by Ms. Keyser when the sale to her fell through; and (6) failed to maintain the property, by, among other things, failing "to maintain electricity in the house, which prevented the basement sump pump from removing water that entered the interior of the premises during recent heavy storms, thereby causing property damage." Ms. Smith asserted that Mr. Horman was "biased, careless, and incompetent" as the court-appointed Successor Trustee.

On September 25, 2017, the circuit court granted Mr. Horman's Motion for Authority to Permit Trustee to Terminate Contract of Sale and Return One-Half of Purchaser's Security Deposit. It ordered Ms. Smith to pay \$1,225.75 to the Trustee as a reimbursement of expenses. On the same day, the court denied Ms. Smith's motion to remove Mr. Horman as Successor Trustee.

On September 15, 2017, Mr. Horman entered into a contract of sale for the Property with MTR, LLC ("MTR"). MTR agreed to pay \$185,000 for the Property. On September 18, 2017, Mr. Horman filed a Report of Sale.

On October 7, 2017, Ms. Smith filed Exceptions to the sale of the Property to MTR. She alleged that Mr. Horman had a duty to obtain a fair market price for the Property. She reiterated the concerns that she had with Mr. Horman and noted that she had obtained appraisals indicating that the fair market value was in excess of \$220,000. Nevertheless, Mr. Horman relied on appraisals preferred by Ms. Keyser, which were "highly suspect." Ms. Smith alleged that Mr. Horman "colluded with" Ms. Keyser to sell the Property at a price less than fair market value.

The Exceptions hearing took place on December 22, 2017, December 26, 2017, and January 19, 2018. During the hearing, several parties testified about the value of the Property and damage to the Property. Ms. Smith and Ms. Keyser were both present with their attorneys. Mr. Horman also was present, and he participated in the hearing by giving an opening statement and questioning witnesses.

In Ms. Smith's opening statement, her attorney stated: "What we intend to prove today, your honor, is that, in a nutshell, Mr. Horman has not fulfilled his responsibilities as a trustee to properly market and maximize the sale of this property to the benefit of its two owners." Ms. Smith then testified at length about her background in real estate, and the appraisals done on the Property. She testified that she had asked her colleague to appraise the property and sent emails to Mr. Horman explaining why he should be getting a different price for the Property. Ms. Smith testified that Mr. Horman ignored information about the Property from her realtor colleagues.³

Ms. Smith testified that she initially had agreed to Ms. Keyser purchasing her half of the Property for \$95,000, but when Mr. Horman sent Ms. Smith the contract with Ms. Keyser, it was for only \$90,000. She then filed Exceptions to the sale, and when it ultimately did not go through, she did not have the opportunity to object to Mr. Horman returning Ms. Keyser's deposit. Ms. Smith filed Exceptions to every sale because she knew the price was under value.

Ms. Smith testified that Mr. Horman stopped paying the electric bill, and therefore, it was turned off, and the lack of electricity led to mold problems that previously had not

³ On cross-examination, Ms. Smith agreed that Mr. Horman did eventually contact one of the realtors that said she would assist in the selling of the Property without commission, but by the time Mr. Horman contacted the realtor, she said she would no longer help.

been there.⁴ Mr. Horman did nothing to protect the floors and walls, even after she brought the issue to his attention.

Ms. Smith also testified about the insurance claim Mr. Horman filed because of the basement flooding. She was not consulted before the claim was filed, and she testified that the claim would be on her record for five years, leading to higher insurance rates.

Susan Kelley, an expert in real estate appraisal, testified that Ms. Smith asked her to appraise the Property. Ms. Kelley found that the window of assessment was from \$180,000–\$250,000. She estimated that, once all the repairs were completed, the Property would be worth \$230,000.

Robert Sheets, a licensed real estate broker, testified that he looked at the appraisals Mr. Horman showed him for the Property. He told Mr. Horman that they were “logical.”

On January 25, 2018, Ms. Smith filed a Post-Trial Memorandum in Support of Plaintiff’s Exceptions to Report of Sale of the Property (“Post-Trial Memorandum”). She alleged that Mr. Horman failed to advertise the Property, rejected her efforts to maximize the sale price, reduced the value of the real property by not properly caring for it, engaged in self-dealing by selecting friends for the appraisal and his brother’s company for repairs, incorrectly filed an insurance casualty claim, which will have negative effects on future rates. She further asserted that the sales price was inadequate.

⁴ Ms. Keyser testified that the electric had been turned off because she took her name off the bill.

On February 2, 2018, the circuit court issued its ruling. In addressing the claim that the sales price was inadequate, the court noted that numerous repairs were needed to the house, with numerous defects existing before the mother's death. The court also noted that, prior to Mr. Horman's appointment as trustee, counsel for Ms. Smith wrote a letter to Ms. Keyser saying that the Property was not marketable due to, among other things, mold, which Ms. Smith blamed on Ms. Keyser for not running a humidifier.

The court then found that, although Ms. Smith alleged collusion, she had presented no evidence to support that. The court further noted that Ms. Smith's lawyer sent Mr. Horman a letter instructing him not to contact her, so her complaints and emails to him about him not responding to her did not make sense.

The court went on to explain that, just because someone is willing to pay more for a property, does not make a sale for less than that amount invalid. To invalidate a sale, the inadequacy of the price would need to reach the level of "fraud or unfairness." The court found that Ms. Smith had not presented any evidence of fraud or improper dealing, and she had "not shown the price was inadequate, let alone grossly inadequate." With respect to the claim that the trustee did not advertise the Property, the court stated that it could not find any case, rule, or statute requiring that for a private sale, noting that "a partition sale is not the same as a foreclosure" sale. The court found that, under the totality of circumstances, Ms. Smith had not met her burden, and it would deny the exceptions and ratify the sale to MTR.

On February 13, 2018, Ms. Smith filed a Motion to Alter or Amend, and on February 14, 2018, she filed a Motion for Reconsideration. In these motions, she alleged that Mr. Horman had failed to fulfill his fiduciary duties in the sale of the Property, arguing that the sales price of \$185,000 in the 2017 contract did not reflect an effort to get the “best offer obtainable.” Ms. Smith asserted that Mr. Horman did not advertise the Property, did not list the Property with a real estate agent, and did not utilize appraisals stating that the Property had a higher value. On February 15, 2018, the court denied these motions.⁵

On April 14, 2018, Ms. Smith filed an Emergency Motion to Compel Trustee to Provide Entry to Property and Disclose Proof of an Enforceable Contract of Sale (“Emergency Motion”). She alleged that she had learned that Mr. Horman changed the locks to the Property, that she wanted access to *her* Property due to concerns about the condition of the house, and the Trustee had no legal right to deny her access to the Property until settlement occurred. The motion included emails from Mr. Horman advising that the contract required that the locks be changed, and he put a lockbox on the house in case he needed someone to have access to the house without his being present. He offered to give Ms. Smith the code for the lockbox if she would pay the \$100 for the locks to be changed again. Ms. Smith refused to pay to have the locks rekeyed. On May 2, 2018, the court issued an order denying the Emergency Motion.

⁵ On February 23, 2018, Ms. Smith filed a notice of appeal. On June 18, 2018, Ms. Keyser filed a motion to dismiss the appeal as moot because the Property already had been sold and the Deed filed. This Court granted the motion to dismiss on July 17, 2018.

On August 3, 2018, the auditor's account and report was filed with the court. Both Ms. Smith and Mr. Horman filed Exceptions to the auditor's report. On January 9, 2019, the circuit court held a hearing on the Exceptions. As relevant to this case, Ms. Smith took issue with: the reimbursement to Mr. Horman for the repairs performed on the Property; the reimbursement of Mr. Keyser's earnest money; and the auditor's fees. With respect to the auditor's fees, she alleged that, if Ms. Keyser and Mr. Horman had gone through with the initial sale for \$95,000, there would have been no need for a judicial sale. With respect to the repairs, she alleged that water and mold damage to the Property was due to Mr. Horman's failure to maintain electrical service, which prevented the sump pump from operating to remove excess water that entered the basement after heavy rain, allowing the growth of mold, and therefore, Mr. Horman should not be entitled to reimbursement for repairs of those conditions in the amount of \$450. And she asserted that, because she did not agree to allow Mr. Keyser to cancel the contract or be reimbursed \$2,000 of his deposit, she should be given a credit for that cost.

At the conclusion of the hearing, the court discussed the background of the case. With respect to the initial discussions between the sisters buying out the other's interest in the Property, the court concluded that "there was no meeting of the minds to let one of the two parties purchase the home from the other." With respect to the \$450 in disputed costs for repairs, the court found that Mr. Horman properly exercised his discretion in

determining that these repairs should be done, and he should be reimbursed for them.⁶ With respect to the reimbursement of the deposit money to Mr. Keyser, the court noted that it previously had approved that. It further stated that it was a reasonable decision for Mr. Horman to decline to use Ms. Smith's offered real estate connections due to the "litigious" nature of the case.⁷ On January 10, 2019, the circuit court issued an order denying Ms. Smith's Exceptions.

On October 1, 2018, Ms. Smith filed the complaint at issue in this appeal. She alleged that Mr. Horman breached the duty of care he owed to her as a beneficiary of the trust in multiple ways, including: (1) failing to consider Ms. Smith's buyout offer of the Property and unsuccessfully negotiating Ms. Keyser's agreement to purchase the Property; (2) failing to list the Property with a real estate broker; (3) proceeding with a private sale with MTR, even though Ms. Smith told him she was concerned about collusion to sell the Property under market value; (4) returning Ms. Keyser's deposit money after the sale failed; (5) returning half of Mr. Keyser's earnest money after the sale failed; (6) failing to properly maintain and repair the Property; (7) changing the locks on the Property; and (8) filing an improper casualty insurance claim.

⁶ The court noted that Mr. Horman said that he had paid \$2,000 of his own money to perform remediation of the mold in the basement due to problems caused by his failure to ensure that the electricity remained on. It further noted that another witness stated that there was a defect in the home before the flooding.

⁷ The court did grant Mr. Horman's Exception, increasing Mr. Horman's commission due to Ms. Smith's actions in "litigating everything at every turn."

On November 13, 2018, Mr. Horman filed a motion to dismiss the complaint. He asserted that Ms. Smith's allegations that he breached his fiduciary duties as Successor Trustee had previously been raised and rejected by the court in the underlying matter. He argued that the claims should be denied because: (1) they constituted an impermissible collateral attack on the ruling in the underlying matter; (2) they were barred by collateral estoppel; (3) they were barred by res judicata; (4) plaintiff could not prove that the acts or omission proximately caused her damages; (5) the complaint failed "to plead that Mr. Horman breached an applicable duty owed to her."

On March 11, 2019, the court held a hearing on the motion to dismiss. After hearing argument of counsel, the court granted Mr. Horman's motion to dismiss, stating that the complaint was barred by collateral estoppel and collateral attack. The court further found that the items of damages were not "actual causes of action," and it was "not a cause of action for him having filed an insurance claim that impacted [Ms. Smith's] insurance rates."⁸

That same day, the court issued an order granting Mr. Horman's motion to dismiss and dismissing Ms. Smith's complaint with prejudice.

⁸ With respect to the claim for property damage, which Ms. Smith estimated to be in the amount of \$15,000, the court stated that it did not know how it was a claim that was properly raised, noting that Ms. Smith did not pay for repairs and there was no evidence that the house would have sold for more if repairs had been made. The court also noted that the amount claimed was "less than the jurisdiction of the Circuit Court." The court then stated that this issue fell outside its ruling dismissing the complaint based on collateral estoppel and collateral attack. It granted leave to transfer the \$15,000 claim to District Court within 30 days, stating, however, that "[a]t some point in time, it's okay to stop fighting over something that's already dead in the water."

On March 21, 2019, Ms. Smith filed a motion for reconsideration. She argued, among other things, that the court stated at the hearing that she could transfer her property damages claim to the District Court, but the order did not reflect this portion of the ruling, and instead, it dismissed the Complaint.

On April 4, 2019, Mr. Horman filed an opposition to Ms. Smith's motion for reconsideration. He asserted that evidence was admitted at the Exceptions hearing regarding the property damage as evidence of failure to perform his fiduciary duty and causing a reduction in the value of the Property, and the doctrines of collateral attack and collateral estoppel barred her from reasserting the property damage claim.

On May 2, 2019, the court issued the following order:

ORDERED, that Plaintiff Sherrie Smith's Request for Leave of Court to refile claim for property damage against Marshal [Horman] in the District Court of Maryland for Frederick County, Md is DENIED, as all issues were previously considered in the previous litigation of the underlying matters, and it is further

ORDERED, that Plaintiff's Motion for Reconsideration of Order of March 11, 2019 is DENIED.

This appeal followed.

STANDARD OF REVIEW

In *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018), the Court of Appeals explained the standard of review for a grant of a motion to dismiss, as follows:

“We review the grant of a [M]otion to [D]ismiss de novo.” *Reichs Ford Rd. Joint Venture v. State Roads Commission of the State Highway Administration*, 388 Md. 500, 509, 880 A.2d 307, 312 (2005). In determining whether the decision of a lower court was legally correct, we give no deference to the trial court findings and review the decision under a de novo

standard of review. *See Walter v. Gunter*, 367 Md. 386, 392, 788 A.2d 609, 612 (2002). *See also Breslin v. Powell*, 421 Md. 266, 277, 26 A.3d 878, 885 (2011).

DISCUSSION

I.

Collateral Estoppel

Ms. Smith contends that her complaint for damages against Mr. Horman set forth multiple ways that Mr. Horman breached his fiduciary duty to her, and the circuit court erred in determining that her claims were barred by the doctrine of collateral estoppel. Mr. Horman, by contrast, contends that the court properly dismissed the complaint based on the doctrine of collateral estoppel, asserting that each issue raised in Ms. Smith’s complaint “relate[s] exclusively to the sale of the Property and the actions of” Mr. Horman, and each issue was raised and rejected in one or more of her prior filings.

Collateral estoppel is a common law doctrine, which provides that, “[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.” *Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 387 (2000) (quoting *Janes v. State*, 350 Md. 284 (1998)); *see also R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008). For collateral estoppel to bar the action, the “facts or issues in the previous action” need to be “identical to the facts or issues presented in the subsequent proceeding.” *Colandrea*, 361 Md. at 388–98. The doctrine of collateral estoppel only applies when the issue was explicitly raised

below; it does not apply to issues that could have been raised. *MPC, Inc. v. Kenny*, 279 Md. 29, 33 (1977).

The purpose of the doctrine is to “avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions.” *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 457 (2006) (quoting *Colandrea*, 361 Md. at 387). “Collateral estoppel is concerned with the issue implications of the earlier litigation of a different case[.]” *Colandrea*, 361 Md. at 390. It focuses on the findings of ultimate fact, not on the legal consequences. *Id.* at 391.

The following four questions must be answered in the affirmative for collateral estoppel to apply:

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?

Garrity v. Bd. of Plumbing, 447 Md. 359, 369 (2016).

The first question is whether the issues decided in the prior litigation are identical. Because there are multiple issues involved, we will address this question last.

The second question is whether there was a final judgment on the merits. “To constitute a final judgment, a trial court’s ruling ‘must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests

in the subject matter of the proceeding.’” *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300, 312 (2011)). As we have explained, Ms. Smith filed multiple motions in the case, which ended with the ratification of the sale and the order denying the Exceptions to the auditor’s report. There was a final judgment here. See *Fetting v. Flanagan*, 185 Md. 499, 506 (1946) (“An order finally ratifying and confirming an auditor’s report and account is an order in the nature of a final decree from which an appeal will lie. It is in every sense a judgment of the Court It is conclusive as to the matters in controversy to which it relates and has the effect of a final decree.”); *McLaughlin v. Ward*, 240 Md. App. 76, 83 (2019) (“[I]f the court refers the matter to an auditor to state an account, as it may under Rule 14-305(f), it may not enter a final judgment until it has adjudicated any exceptions to the auditor’s report.”).

With respect to the third question, whether the party against whom the plea of collateral estoppel is being asserted was a party to the proceeding, that question can easily be answered in the affirmative. There is no question that Ms. Smith was a party to the prior proceedings. There similarly is no dispute regarding the fourth question, Ms. Smith clearly had a fair opportunity to be heard at the prior proceedings.

We thus turn to the question whether the issues decided in the prior proceedings were identical to the multiple claims alleged in the damages suit. Before addressing each specific claim, we note that the general complaint is that Mr. Horman breached his duty of care to Ms. Smith. A trustee’s duties “are prescribed and limited by the decree which appointed him.” *D’Aoust v. Diamond*, 424 Md. 549, 580 (2012) (quoting *Lurman v.*

Hubner, 75 Md. 268, 274 (1892)). The order appointing Mr. Horman as trustee provided that his duties were “to sell the real estate property.” “A trustee is bound for the protection of the interest of all the parties concerned to bring the property into the market in such manner as to obtain a fair market price[.]” *Id.* at 580–81 (quoting *Thomas v. Fewster*, 95 Md. 446, 449 (1902)).

Md. Rule 14-305 governs the judicial sale of real property. Within 30 days after the sale, “the person authorized to make the sale shall file with the court a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report.” Md. Rule 14-305(a). A party may file exceptions to the sale. Md. Rule 14-305(d). The court will ratify the sale if “the court is satisfied that the sale was fairly and properly made.” Md. Rule 14-503(e). “A ratification by the court signifies a finding that the sale was fairly made.” *D’Aoust*, 424 Md. at 580.

With that background in mind, we address Ms. Smith’s specific claims. Ms. Smith contends that Mr. Horman breached his fiduciary duty of care to her by: (1) failing to consider Ms. Smith’s buyout offer of the Property and unsuccessfully negotiating Ms. Keyser’s agreement to purchase the Property; (2) failing to list the Property with a real estate broker; (3) proceeding with a private sale with MTR, even though Ms. Smith told him she was concerned about collusion to sell the Property under market value; (4) returning Ms. Keyser’s deposit money after the sale failed; (5) returning half of Mr. Keyser’s earnest money after the sale failed; (6) failing to properly maintain and repair the

Property; (7) changing the locks on the Property; and (8) filing an improper casualty insurance claim.

We will address each claim, in turn.

A.

Buyout Offers

Ms. Smith first alleges that Mr. Horman breached his fiduciary duty by his handling of offers between the sisters to buy out the other's interest in the Property. She alleges that she agreed to her sister's offer to buy her interest in the Property for \$95,000, with a \$5,000 deposit, but Mr. Horman entered into a contract for \$90,000, with a \$2,000 deposit, and provided no explanation for the change in the terms. Ms. Smith filed exceptions, and her sister changed her mind when settlement did not occur on the required settlement date.

In her reply brief, Ms. Smith states that she also offered to buy her sister's interest, but Mr. Horman did not follow up on that offer. She contends that, by not properly following through with a buyout between the sisters, Mr. Horman breached his duty to maximize the net return for the co-owners.

Ms. Smith agrees that a sale between the sisters was "a matter of contention" in the prior litigation, noting that one issue discussed at the Exceptions hearing regarded the reasonableness of the sales price and whether the sisters would have received a greater return if there had been a buyout between the sisters at the beginning of the trusteeship. She asserts, however, that the issue in the prior litigation had nothing to do with Mr. Horman's satisfaction of his duty of care.

Our review of the record indicates that the issue was raised and decided in the prior litigation. In her Exceptions to the auditor's report, Ms. Smith argued that, if the initial buyout between the sisters had gone through, there would have been no need for maintenance fees or a judicial sale. The court rejected this argument when it denied her Exceptions to the auditor's report. The court noted that "none of those offers or counter-offers were accepted, so there was no meeting of the minds to let one of the two parties purchase the home from the other." Accordingly, the issue regarding an alleged buyout between the sisters was raised in and decided in the prior proceedings, and further litigation of the issue is barred by collateral estoppel.

B.

Listing the Property

Ms. Smith's second contention is that Mr. Horman breached his fiduciary duty by failing to list the Property with a licensed real estate broker. Ms. Smith raised the failure to retain a broker in several motions in the prior proceedings.

She raised the issue as one of the claims in her motion to remove Mr. Horman as Successor Trustee. In denying the motion to remove, the court rejected the argument that this constituted a violation of Mr. Horman's duties.

Ms. Smith also raised this issue in her Exceptions to the auditor's report, asserting that she should not have to pay for Mr. Horman's commission as trustee because she had a colleague who was willing to sell the home with no commission, except for some fees. The court noted, however, that Mr. Horman testified that this offer fell through when the

real estate agent got another job. The court additionally stated that Mr. Horman's exercise of his judgment, given "the litigious nature of this case," was entitled to weight, and the court found that he made the best decision he could, given the circumstances. The court found that Ms. Smith had not shown that the price for which the Property sold was inadequate.

Ms. Smith then filed a motion for reconsideration and a motion to alter and amend, stating that Mr. Horman failed to fulfill his fiduciary duty in selling the Property because, among other things, he failed to list the Property with a real estate agent. The court denied the motions.

Accordingly, the issue whether Mr. Horman breached his fiduciary duty by failing to enlist a real estate agent was raised in and decided in the prior proceedings. Further litigation of this issue is barred by collateral estoppel.

C.

Alleged Collusion

Ms. Smith next contends that Mr. Horman breached his fiduciary duty by proceeding with the sale even after she told him she was concerned about collusion to sell the Property under market value. This issue was specifically raised in the Exceptions to the sale. The court rejected this contention, stating that, although Ms. Smith had alleged collusion, she had presented no evidence to support that allegation. This issue is barred by collateral estoppel.

D.

Return of Ms. Keyser's Earnest Money

Ms. Smith contends Mr. Horman breached his fiduciary duty when he returned Ms. Keyser's earnest money after the sale to her failed. This issue was raised in Ms. Smith's motion to remove Mr. Horman as Trustee. She asserted that, after the settlement date passed, "Trustee Horman failed to retain the \$2,000 earnest money deposit of Tammy Keyser for the purchase of the property and allowed her to cancel her contract." The circuit court, in denying Ms. Smith's motion to remove, rejected this claim. Accordingly, this issue was raised in and decided in the prior litigation, and it is barred by collateral estoppel.

E.

Return of Earnest Money to Mr. Keyser

Ms. Smith next argues that Mr. Horman breached his fiduciary duty by returning Mr. Keyser's deposit money when the sale fell through. The issue of the return of this money, however, has been addressed several times in the prior litigation.

Initially, Mr. Horman filed a Motion for Authority to permit him to return one half of Mr. Keyser's earnest money, and the court granted authorization. Moreover, Ms. Smith raised this issue in her Exceptions to the auditor's report. She argued she should get credit for the \$2,000 paid to Mr. Keyser. The court found that the return of the money to Mr. Keyser was "a business decision that the trustee had to make with respect to this buyer that felt he could no longer afford the property." The court explained that Mr. Horman "went to court to get approval of [return of the earnest money], and that has already been ruled

upon that Chad Keyser could be reimbursed the \$2,000.” The court found the issue was moot and denied Ms. Smith’s exception.

This issue has been raised and decided in the prior litigation. It is barred by collateral estoppel.

F.

Maintenance of the Property

Ms. Smith alleges in her complaint that Mr. Horman improperly maintained the Property, resulting in mold damage to the Property in the amount of \$15,000. This issue also was raised in and decided below.

Ms. Smith raised this issue in her motion to remove, arguing that Mr. Horman was not properly exercising his fiduciary duty because, among other things, he “failed to take reasonable efforts to maintain the subject real property while it [was] under his care and custody.” She alleged several specific failures to maintain, including the failure to maintain the electricity, which led to property damage. The court denied the motion.

Ms. Smith also raised this issue in her Exceptions to the sale to MTR. She argued that Mr. Horman “failed to fulfill his fiduciary duties in the sale of” the Property, stating that flooding and mold growth had occurred due to Mr. Horman’s failure to maintain

electricity for the Property. The court rejected Ms. Smith’s arguments when it denied her Exceptions and ratified the sale.⁹ This claim is barred by collateral estoppel.¹⁰

G.

Deprivation of Ms. Smith’s Access

Ms. Smith argues that Mr. Horman breached his fiduciary duty by changing the locks on the Property, which prevented her from monitoring damage to the Property. When Ms. Smith discovered that the locks were changed, she filed an Emergency Motion to compel Mr. Horman to give her keys to the Property, asserting that Mr. Horman did not have the right to change the locks until settlement occurred. The court rejected this argument by denying the motion. Because the issue raised in the complaint is the same as that raised in the prior proceeding, it is barred by collateral estoppel.

H.

Casualty Insurance Claim

Ms. Smith’s last claim relates to a casualty insurance claim that Mr. Horman filed for the water and mold damage. She asserts that the policy excluded coverage for mold

⁹ The court noted that there was evidence that numerous defects in the house existed prior to Mr. Horman’s appointment as trustee, and even prior to the mother’s death.

¹⁰ We further note that, at the motion to dismiss the complaint for damages against Mr. Horman, the court inquired about the relevance of this claim, asking whether the damage to the Property impacted the sales price of the Property. Counsel for Ms. Smith stated that he did not know and it was not important here.

remediation, and predictably, it was denied. As a result, she asserts that she will have to pay increased premiums in the future.¹¹

In her Post-Trial Memorandum in support of her Exceptions to the sale, Ms. Smith discussed, in support of her contention that Mr. Horman failed to fulfill his fiduciary duties, the same claim regarding the submission of the insurance claim for the mold. Thus, this issue was raised in the prior litigation.

It is not clear, however, that the issue was decided in that litigation. The court did not specifically mention it in its ruling. And although the order denied Ms. Smith's Exceptions, this particular issue was not included in the exceptions filed.

Accordingly, we are not convinced that the court's ratification of the sale decided this issue. Although the ratification of the sale determined that the sale was fairly made, *D'Aoust*, 424 Md. at 580, it did not determine Ms. Smith's claim regarding future insurance rates. This claim is not barred by collateral estoppel.

II.

Collateral Attack

The circuit court also dismissed the complaint on the ground of collateral attack. Based on our decision regarding collateral estoppel, we need consider the applicability of this doctrine only in connection with the insurance claim.

¹¹ At the hearing on the motion to dismiss, counsel for Ms. Smith stated that the policy was in the name of Mr. Horman, Ms. Smith, and Ms. Keyser, and the claim Mr. Horman filed was in her claim history. Counsel stated that he did not know how to monetize that, and he agreed it was speculative.

Collateral attack and collateral estoppel are distinct, but similar, doctrines. *Klein v. Whitehead*, 40 Md. App. 1, 12, *cert. denied*, 283 Md. 734 (1978). *Accord World Wide Imported Car Co., Ltd. v. Sav. Bank of Baltimore*, 41 Md. App. 263, 269 (1979). We have defined the doctrine of collateral attack as

an attempt to impeach the judgment by matters dehors the record, before a court other than the one in which it was rendered, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it. . . .

Finch v. LVNV Funding, LLC, 212 Md. App. 748, 764, *cert. denied*, 435 Md. 266 (2013) (quoting *Klein*, 40 Md. App. at 20). This doctrine “prevents a person from challenging the validity of the existing judgment from attacking the judgment itself rather than merely its scope or effect.” *Klein*, 40 Md. App. at 21.

Ms. Smith’s insurance claim is not an attempt to invalidate the sale of the Property. It is an attempt to collect damages from Mr. Horman due to alleged increased insurance premiums. Accordingly, it is not barred by the doctrine of collateral attack.

III.

Cause of Action

In addition to dismissing the complaint based on collateral estoppel and collateral attack, the court separately addressed the insurance claim. The court stated: “I don’t find that’s a cause of action for him having filed an insurance claim that impacted her insurance rates.”

Although Ms. Smith generally states that the complaint alleged sufficient facts to state a cause of action, she does not address the court's specific ruling on the insurance claim. In fact, she tries to ignore this ruling. She states in her reply brief that "the trial court's decision was based exclusively on the applicability of the legal doctrine of collateral estoppel, rather than the purported failure to state a cause of action for breach of fiduciary duty."

Because Ms. Smith has not addressed the court's specific ruling that the insurance claim did not state a cause of action, and she has not cited any legal authority to support an argument that the circuit court erred in this finding, we conclude that Ms. Smith has waived any argument she may have had with respect to the court's finding that the insurance claim did not state a cause of action. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); *Anderson v. Litzenberg*, 115 Md. App. 549, 577-78 (1997) (declining to address claim where appellant cited no legal authority, noting that it is "not our function to seek out the law in support of a party's appellate contentions"). The circuit court properly granted Mr. Horman's motion to dismiss the complaint.

**JUDGMENT OF THE CIRCUIT COURT
FOR FREDRICK COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**