

Circuit Court for Baltimore County
Case No. 03-C-17-009311

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 946

September Term, 2018

DOUGLAS C. MYERS

v.

RONALD B. KATZ, *et al.*

Friedman,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 1, 2019

*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.

In 2011, Ronald B. Katz, appellee, acting as substitute trustee, sold two properties owned by Douglas C. Myers, appellant, at a foreclosure sale. The circuit court ratified the sale on June 28, 2011, and Mr. Myers appealed. While the appeal was pending, Mr. Myers also filed a motion to vacate the foreclosure sale pursuant to Maryland Rule 2-535(b), which the circuit court denied. He then appealed the denial of his motion to vacate. We consolidated both appeals and affirmed. *See Myers v. Katz*, No. 1058, Sept. Term 2011 (filed June 4, 2013).

After the mandate issued, Mr. Myers filed a second motion to vacate pursuant to Rule 2-535(b), which the circuit court again denied. He filed a notice of appeal from the denial of that motion and we again affirmed, holding that his claims were barred by the law of the case doctrine because they were either raised on or could have been raised in his appeal from the denial of his first motion to vacate. *See Myers v. Katz*, No. 1091, Sept. Term 2014 (filed Oct. 19, 2015).

In 2017, Mr. Myers filed a “Complaint for Declaratory Judgment and Injunctive Relief” in the Circuit Court for Baltimore County against Mr. Katz; CFG Community Bank, his mortgage lender; and Frederick Burgesen, the purchaser of the properties at the foreclosure sale. As relief, he sought \$450,000 in compensatory damages and a declaration that “the foreclosure sale of [his] property [was] void ab initio, [] the subsequent judgment of ratification, and the Deed to the third-party purchaser [was] a nullity, and that [he] still own[ed] the property.” The circuit court granted summary judgment and dismissed his complaint as being barred by *res judicata*. Mr. Myers now raises three issues on appeal, which reduce to one: whether the circuit court erred in dismissing his complaint. Because

all the claims raised in his complaint are barred by res judicata, we shall affirm the judgment of the circuit court.

Res judicata is “an affirmative defense [that] bar[s] the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not – raised in the first suit.” *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005) (internal quotation marks and citation omitted). By preventing parties from relitigating matters that “have been or *could have been* decided fully and fairly,” the doctrine of res judicata “avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions.” *Id.* at 107 (citation omitted) (emphasis in original). Under Maryland law, the elements of res judicata, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits. *See Colandrea v. Wilde Lake Comm. Ass’n.*, 361 Md. 371, 392 (2000).

All three elements of res judicata were met in this case. First, Mr. Myers and Mr. Katz were both parties to the foreclosure action. Moreover, CFG Community Bank, as the mortgage lender, and Mr. Bergerson, as the purchaser at the foreclosure sale, were in privity to Mr. Katz because they shared a common interest in upholding the validity of the foreclosure sale. *See FWB Bank v. Richman*, 354 Md. 472, 498 (1999) (“Privity in the res judicata sense generally involves a person so identified in interest with another that he

represents the same legal right.” Second, all the allegations in Mr. Myers’s complaint have either been raised or could have been raised in his prior motions to vacate the foreclosure sale. Finally, because both motions to vacate the foreclosure sale were denied, and their denial affirmed by this Court on appeal, there has been a final judgment on the merits.¹ Consequently, the circuit court did not err in dismissing Mr. Myers’s complaint as barred by res judicata.²

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

¹ Mr. Myers asserts that res judicata does not preclude the court from vacating a judgment based on fraud, mistake, or irregularity pursuant to Rule 2-535(b). This is true as far as it goes. However, it does preclude a litigant from repeatedly raising the same claims of fraud, mistake, or irregularity after those claims have been fully litigated in a previous action between the parties, as is the case here.

² As in Mr. Myers’s appeal from the denial of his second motion to vacate, his claims are also barred by the law of the case doctrine.