

Circuit Court for Anne Arundel County
Case No. C-02-CV-18-003168

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 990

September Term, 2020

BOARD OF EDUCATION OF ANNE
ARUNDEL COUNTY

v.

KEY SYSTEMS, INC.

Friedman,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 18, 2021

*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.

Appellant, the Board of Education of Anne Arundel County (“local board” or “AACPS”¹), seeks reversal of a monetary judgment entered by the Circuit Court for Anne Arundel County against AACPS and in favor of appellee Key Systems, Inc. (“Key”), arguing that our recent decision in a parallel case, *Bd. of Educ. of Anne Arundel Cty. v. Key Sys., Inc.*, No. 2315, Sept. Term 2019 (filed March 18, 2021) (the “administrative appeal”), precluded entry of the monetary judgment under the doctrine of *res judicata*. Key responds that *res judicata* does not apply because there was no merits hearing in the administrative appeal case, and thus no final judgment on the merits of Key’s contract claim. As we shall explain, we agree with AACPS that *res judicata* applies, and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

As is true with many cases involving the doctrine of *res judicata*, the procedural history in this case is important, but somewhat complex. We recount basic facts from our unreported opinion in *Bd. of Educ. of Anne Arundel Cty. v. Key Sys., Inc.* The underlying dispute concerns whether the local board entered into a contract with Key to perform electrical work at an elementary school. In July 2018, the local board requested bids for electrical work. Only two companies responded—Key and CT Electrical Corporation (“CT”).

CT’s bid for electrical work was lower than Key’s, but CT’s bid paperwork contained a clerical error related to Minority Business Enterprise (“MBE”) participation that resulted in AACPS rejecting it. On September 5, 2018, Key was notified that it was

¹ The Board of Education of Anne Arundel County is commonly referred to as “Anne Arundel County Public Schools” or “AACPS.”

the presumptive low bidder and was asked to sign and return a contract document, which it did. On September 7, 2018, CT filed a bid protest, requesting AACPS to waive the MBE error and accept its bid as the low bid for the electrical work. A decision on that bid protest remained pending at the time of the local board’s September 12, 2018 public meeting to consider and vote on the electrical contract. After some discussion among board members about CT’s pending bid protest, the local board voted to award the contract to Key.

On September 28, 2018, Mary Jo Childs, AACPS’s Supervisor for Purchasing, signed the contract document, but did not notify Key that she had done so. Someone from Ms. Childs’s office provided a copy of the signed contract document to the third-party construction manager for the project; however, no copy of the signed document was provided to Key.

On October 3, 2018, Ms. Childs recommended that AACPS rescind its rejection of CT’s bid based on her assessment that CT’s error on the MBE affidavit was a “minor irregularity” that CT should be allowed to correct. On October 8, 2018, Key filed its own protest, asserting that the contract should not be awarded to CT or “any other bidder other than Key.” This bid protest later became part of Key’s administrative appeal.

After Key learned that the local board intended to consider the electrical contract at its October meeting, Key filed a petition for a temporary restraining order (TRO), injunction, and writ of mandamus in the circuit court, seeking to enjoin the local board from awarding the contract to CT.² On October 24, 2018, the circuit court granted the TRO

² This action commenced what would become the present appeal.

and scheduled the preliminary injunction for a hearing on October 31, 2018. After an evidentiary hearing, the circuit court denied Key’s request for a preliminary injunction.

The Administrative Appeal

On October 30, 2018, AACPS’s Chief Operating Officer denied Key’s bid protest. Key appealed that decision to the local board, which considered the appeal based on over 200 pages of documents and written arguments by the parties. On November 30, 2018, the local board issued its decision. The local board noted that

The timeline of events and other relevant information in this case, as set forth in the parties’ submissions to the Board and stripped of opinion and argument, do not suggest that there is any genuine dispute of material fact. . . . The parties agree as to the what and when of nearly everything that happened. Where they differ is on what effect to give the Board’s action on September 12, 2018, when it voted to authorize the Superintendent to proceed with awarding the electrical work contract to Key.

The local board upheld the denial of Key’s bid protest, concluding that AACPS’s personnel had the discretion to waive irregularities contained in CT’s bid.

On December 17, 2018, Key appealed this decision to the Maryland State Board of Education (“MSBE” or “State Board”), arguing that AACPS had formed a contract with Key on September 12, 2018, prior to rescinding its rejection of CT’s bid. Key then learned the next day that Ms. Childs had signed the contract on September 28, 2018, and therefore amended its appeal to reflect this fact. On December 19, 2018, the local board voted to rescind the contract award to Key and instead awarded the contract to CT. Key also appealed that decision to MSBE. Key’s two appeals were consolidated before MSBE as *Key I* (appeal of denial of Key’s bid protest) and *Key II* (appeal of the award of the contract to CT). In both appeals, Key stated that “[t]he facts of this matter are not in dispute,” and

argued that the local board formed a contract with Key when it voted to accept the contract on September 12, 2018.

In the MSBE proceedings, the local board filed a Motion for Summary Affirmance. A motion for summary affirmance, which has since been replaced in the regulations with a memorandum in response to the appeal, COMAR 13A.01.05.03C, functioned similarly to a motion for summary judgment in that summary affirmance could be granted where “there are no genuine issues of material fact and the respondent is entitled to affirmance as a matter of law.” COMAR 13A.01.05.03D (2004). *See Mayberry v. Bd. of Educ. of Anne Arundel Cty.*, 131 Md. App. 686, 706 (2000) (analogizing motion for summary affirmance to motion for summary judgment). In its reply to the local board’s motion, Key agreed that “the Appeal is not based on a claim that the [local board’s] Opinion and Order were factually incorrect. Indeed, none of the facts are in dispute. Rather, the Appeal is based upon a contention that the Opinion and Order were legally incorrect.” Key later stated, “the issue in this case is the legal issue of whether a contract with Key was formed.”

On April 23, 2019, MSBE granted the local board’s motion for summary affirmance. MSBE concluded that the parties did not form a contract because, under state law, “no binding contract could exist between [Key] and AACPS until [Key] received the executed contract signed by the board and superintendent.” MSBE additionally concluded that Ms. Childs’s decision not to present the signed contract to Key while the bid protest was pending was not “arbitrary or unreasonable.”

Key then sought judicial review in the Circuit Court for Anne Arundel County. Key posed a relevant question for review as follows: “Was a contract formed between Key and

[the local board] for the electrical work on the project for the revitalization of Edgewood Elementary School?” The circuit court reversed MSBE’s decision, ruling that a contract was formed when “Key received notice that the local board had accepted its offer and had manifested it[s] assent through its public vote [on September 12, 2018,] to award the contract to Key, and the fully executed contract left AACPS’s possession when it was delivered to a third party.”

The local board then noted an appeal to this Court on January 22, 2020, arguing that MSBE was correct that no contract was formed between the parties. In Key’s brief, it stated that “[t]he operative facts of this case are not in dispute,” and referenced MSBE’s opinion for the factual recitation.

On March 18, 2021, we reversed the judgment of the circuit court with instructions to affirm MSBE’s decision. We held that “no contract was formed between Key and the local board.” *Key Sys., Inc.*, slip op. at 22. We found no error in MSBE’s interpretation of Md. Code (1978, 2018 Repl. Vol.), § 4-205(d) of the Education Article (“ED”), that “[t]he local board’s approval alone . . . does not create a binding contract” because “[t]he local superintendent must also give his or her written approval” of the contract. “Because Ms. Childs, the superintendent’s designee to execute school construction contracts, did not sign the Key contract until September 28, 2018, MSBE properly rejected Key’s argument that the contract was formed when the local board approved it on September 12, 2018.” *Id.*, slip op. at 16. In response to Key’s alternative argument that a contract was formed when Ms. Childs signed it on September 28, 2018, we relied on *Cochran v. Norkunas*, 398 Md. 1 (2007), to hold that “no enforceable contract was formed” because Ms. Childs “had no

intention of presenting it to Key . . . until CT’s bid protest was resolved.” *Key Sys., Inc.*, slip op. at 24.

Key filed a petition for certiorari, which the Court of Appeals denied on May 28, 2021. At that point, the administrative appeal became final.

The Breach of Contract Case

The case which is the subject of this appeal started with Key filing in the circuit court the previously mentioned petition for temporary restraining order, injunction, and writ of mandamus in which Key sought to enjoin the local board from awarding the contract to CT. Although the court granted the TRO, it later denied Key’s request for a preliminary injunction. On January 30, 2019, a hearing was held on Key’s request for mandamus relief. The result of that hearing was a 60-day stay of the circuit court case because of the then pending administrative appeal to MSBE. The stay was later extended until May 31, 2019.

In the interim, on February 28, 2019, Key filed an Amended Complaint, adding a breach of contract claim. Although the Amended Complaint is not the model of clarity, Key alleged that a contract was formed either when the local board voted to award the contract to Key on September 12, 2018, or when Ms. Childs signed the contract documents on September 28, 2018.

The circuit court stay was lifted on May 7, 2019, after MSBE issued its decision in the administrative appeal and after Key requested judicial review of that decision. A pretrial order, issued after a hearing before Judge Donna Schaeffer on Key’s petition for judicial review, set trial on the breach of contract action for February 19, 2020, and noted:

Judge Schaeffer has the Administrative Appeal which has some issues impacting this case in it under advisement. Her decision is likely to be appealed by one side or other and is likely to impact this case to a certain extreme. If possible case should be set to give time to clarify issues after her ruling.

On January 27, 2020, after Judge Schaeffer reversed the MSBE decision and concluded that a valid contract existed, the local board noted its appeal to our Court. Shortly thereafter, the local board requested the circuit court to stay the breach of contract case pending our resolution of the administrative appeal. Key filed an opposition, and the circuit court denied the motion to stay on February 7, 2020.

Two days prior to the February 19, 2020 trial, the parties filed a stipulation and joint statement of facts whereby, for the purposes of that trial only, the parties agreed that a contract had been formed, thus limiting the issues to whether the contract had been breached and, if so, the amount of damages.

A one-day trial was held on February 19, 2020, before Judge Paul F. Harris, Jr. During Key’s opening argument, it became clear that the parties did not agree on the terms of the contract, and consequently the entire stipulation was withdrawn. Judge Harris was therefore charged not only with determining breach and damages, but also whether the parties had formed a contract. In his bench opinion, Judge Harris stated that he was not relying on Judge Schaeffer’s decision regarding the existence of a contract, but was independently “convinced absolutely beyond any doubt” that a valid contract was formed on September 12, 2018, when the local board voted to award the contract to Key. The court proceeded to determine that the local board breached the contract and entered judgment in favor of Key in the amount of \$517,818.87. AACPS then noted this timely

appeal.

DISCUSSION

AACPS contends that our decision in the administrative appeal precludes Key's breach of contract claim that resulted in the entry of the substantial monetary judgment in the instant appeal. Specifically, AACPS relies on language in our opinion "that no contract was formed between Key and the local board" in support of its argument that the doctrine of *res judicata* barred Key's breach of contract action.

Key responds that *res judicata* is inapplicable because the breach of contract action tried before Judge Harris was "the first and only full opportunity for an adversarial trial on the merits." In Key's view, our opinion "dealt solely with three undisputed facts" that "did not compel a finding that there was a contract." Thus, Key continues, it was entitled to produce additional evidence concerning the "actual intentions" of the parties to prove that AACPS and Key formed a binding contract.

In *Powell v. Breslin*, Judge Harrell concisely summarized the basic principles of *res judicata*:

Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that "is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit."

In Maryland, the doctrine of *res judicata* precludes the relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action. The overarching purpose of the *res judicata* doctrine is judicial economy.

430 Md. 52, 63–64 (2013) (citations omitted).³

Key does not dispute that the administrative appeal and the breach of contract action involve the same parties. Nor does Key dispute that there was a final judgment in the administrative appeal, although it seemingly disputes whether that final judgment was “on the merits” because it contends it was entitled to a “full opportunity for an adversarial trial on the merits.” As to the second element of *res judicata*, Key inferentially contends that its breach of contract action is not identical to the claims determined in the administrative appeal.

In the administrative appeal, Key argued two separate bases to support its claim that a contract was formed with AACPS. First, Key asserted that a contract was formed when the local board approved the contract at its regular September 12, 2018 meeting. Key alternatively argued that, if a contract was not formed on September 12, 2018, it “was indisputably formed” when Ms. Childs signed it on September 28, 2018, and “delivered it to the construction manager.” *Key Sys, Inc.*, slip op. at 17.

In our opinion resolving the administrative appeal, we expressly rejected both of Key’s theories for contract formation. In rejecting the contention that a contract was formed when the local board approved it on September 12, 2018, we relied on MSBE’s interpretation of ED § 4-205(d), which provides that “[a] contract made by a county board

³ “An administrative agency’s decision is given preclusive effect based on three factors: (1) whether the agency was acting in a quasi-judicial capacity, (2) whether the issue presented to the circuit court was actually litigated before the agency, and (3) whether resolution of the issue was necessary to the agency’s decision.” *Smalls v. Md. State Dept. of Educ.*, 226 Md. App. 224, 231 (2015) (emphasis removed) (quoting *Neifert v. Dept. of Environment*, 395 Md. 486, 507 (2006)). All three factors clearly apply in this case.

is not valid without the written approval of the county superintendent.” We therefore affirmed MSBE’s interpretation that no contract was formed when the local board voted to approve the contract on September 12, 2018, because the county superintendent had not given written approval at the time of the local board’s vote. *Id.*, slip op. at 16. As to Key’s alternative argument, we relied on *Cochran*, 398 Md. 1, to reject Key’s assertion that a contract was formed when Ms. Childs signed it on September 28, 2018, and delivered it to the third-party construction manager:

Here, Ms. Childs signed the contract document but never presented it to Key or its agents. Indeed, both the local board and MSBE noted in their written opinions that Key never received a signed contract from Ms. Childs or any other representative of the local board. Just as Ms. Norkunas did not communicate to the buyers or their real estate agent that she had signed the contract, Ms. Childs did not communicate to Key or its agents that she had signed the contract. Moreover, the record amply supports the notion that, although Ms. Childs signed the document, she had no intention of presenting it to Key (and thereby forming a contract) until CT’s bid protest was resolved. In our view, *Cochran* is sufficiently analogous to allow us to conclude that no enforceable contract was formed under these circumstances and, accordingly, the local board’s identical conclusion in its written opinion (and MSBE’s affirmation on that point) was not “illegal” under COMAR 13A.01.05.06C.

Key Sys. Inc., slip op. at 24.

We specifically concluded that “no contract was formed between Key and the local board.” *Id.*, slip op. at 22. We therefore have no difficulty concluding that Key’s claim in its breach of contract action—that Key and AACPS entered into a valid contract that AACPS breached—is identical to Key’s claim in the administrative appeal. Indeed, in the breach of contract case, Judge Harris found that the parties formed a contract on September 12, 2018, when the local board approved the contract at its regular meeting. That

determination is in direct contravention of our holding in the administrative appeal that no contract was formed on September 12, 2018, in light of ED § 4-205(d)’s requirement for the superintendent’s written approval. Thus, application of *res judicata* in this case furthers its purpose to avoid inconsistent judgments. *See Jackson v. State*, 448 Md. 387, 402 (2016) (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.” (quoting *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005))).

Finally, we briefly address Key’s contention that it is entitled to a “full opportunity for an adversarial trial on the merits.” We initially note that “[t]he interposition of the defense of *res judicata* does not depend upon whether the case could have been more comprehensively or more persuasively presented at a second hearing, or for that matter, whether questions might have been presented at the second hearing which were not presented at the first.” *Johnson v. Johnson*, 265 Md. 327, 331 (1972) (citations omitted). That Key may have presented more or better evidence to support its contract claim in the proceedings before Judge Harris does not defeat the application of *res judicata* emanating from the administrative appeal.⁴

In any event, we reject Key’s suggestion that it was precluded from presenting

⁴ Key states in its brief that Bob Manns, Key’s president, testified before Judge Harris that he “was informed by [the construction manager] that the contract had been signed and that it was going to be mailed to him.” However, this overstates Mr. Manns’s actual testimony. Mr. Manns testified that he “had a phone call with [the construction manager] and they said that it [the contract document] should be in the mail soon.” At no point did Mr. Manns testify that he had been informed that the contract was already signed.

evidence in the administrative appeal. To the contrary, Key and AACPS presented extensive documentary and testimonial evidence for consideration by MSBE, including the following:

- The signed contract document and purchase order;
- A transcript of the circuit court’s injunction hearing, including testimony from Ms. Childs;
- The agendas and minutes of the local board’s public meetings;
- Emails and the letter of intent sent by the local board to Key;
- An affidavit from Ms. Childs concerning the relevant events; and
- Internal emails between Ms. Childs and others concerning CT’s bid protest and the Key contract document.

We see nothing in the administrative appeal record that prevented Key from presenting whatever evidence it wished to produce. Moreover, Key represented to MSBE that “none of the facts are in dispute.”

In conclusion, the doctrine of *res judicata* requires that we reverse the circuit court’s judgment.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REVERSED. CLERK OF CIRCUIT COURT SHALL VACATE JUDGMENT OF \$517,818.87 ENTERED IN FAVOR OF KEY SYSTEMS, INC. COSTS TO BE PAID BY APPELLEE.