

Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000367

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1014

September Term, 2021

JAMES SUMMERS, ET AL.

v.

BELTWAY BUILDERS, INC.

Berger,
Friedman,
Albright,

JJ.

Opinion by Friedman, J.

Filed: February 7, 2023

* 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. R. 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Maryland's Rules provide for permissive—not mandatory—counterclaims. As a result, Maryland courts have modified the doctrine of *res judicata* so that it does not impose on a party's right to choose whether to bring a counterclaim.

BACKGROUND

James Summers and Dr. Steven Snyder own a home. They entered into a contract with Beltway Builders, Inc. for home remodeling. After a dispute about performance, Beltway did not complete the project and the homeowners did not pay the full contract amount. Beltway filed suit against the homeowners for breach of contract and unjust enrichment. The homeowners filed a counterclaim against Beltway alleging breach of contract. Because the homeowners' claim was filed late, Beltway moved to strike.¹ Thereafter, the homeowners filed a separate lawsuit against Beltway alleging breach of contract. In Beltway's lawsuit, the homeowners prevailed. Months later, Beltway moved to dismiss the homeowners' separate lawsuit based on the doctrine of *res judicata*. Essentially, Beltway argued that the homeowners should have brought their claims against Beltway as counterclaims in Beltway's lawsuit but, because they hadn't filed them in a

¹ Maryland Rule 2-331(d) requires counterclaims to be filed within 30 days after the time for filing that party's answer. If the counterclaim is filed beyond that 30-day limit, any party may move to strike the counterclaim within 15 days of service of the counterclaim. The court will grant the motion to strike the counterclaim unless there is a showing that the delay does not prejudice other parties to the action. MD. R. 2-331(d). Critically, however, and contrary to Beltway's theory of the case, a decision to strike a counterclaim does not foreclose the party from bringing the action, but merely prevents it from bringing the action in the form of a counterclaim in the same action as the original claim.

timely fashion, the claims were forever barred. The circuit court agreed and dismissed the homeowners' lawsuit. This timely appeal followed.

DISCUSSION

Maryland Rule 2-331(a) provides that

A party may assert as a counterclaim any claim that party has against any opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

MD. R. 2-331(a). Critically for our purposes, Maryland's counterclaim rule is permissive and not mandatory. *Rowland v. Harrison*, 320 Md. 223, 233 (1990); JOHN A. LYNCH, JR. & RICHARD W. BOURNE, MODERN MARYLAND CIVIL PROCEDURE §4.4(a), 4-20 (3d ed. 2016) ("All counterclaims are permissive. The Maryland Rules do not put a defending party in a 'use it or lose it' position with respect to counterclaims.")²

Here, that means that the homeowners had the choice whether to bring their claim against Beltway as a counterclaim in Beltway's lawsuit or as an independent claim in their own lawsuit.³ They attempted to do both. When they brought it as a counterclaim in

² Maryland's permissive counterclaim rule is different from the Federal Rules of Civil Procedure, which provide for mandatory counterclaims if the claims arise from the same transaction or occurrence, FED. R. CIV. P. 13(a), but allows permissive counterclaims if the claims arise from different transactions or occurrences, FED. R. CIV. P. 13(b).

³ At oral argument, homeowners asserted that the reason their counterclaim was filed beyond the 30-day time limit provided for in Rule 2-331(d) was that they did not yet definitively know of the existence and extent of their breach of contract claim against Beltway. But that is of no concern of ours. It is of no concern to us because Rule 2-331(d) does not set a time limit for bringing the claim but only a time limit for bringing the claim

Beltway’s lawsuit beyond the 30-day limit, *see supra*, n.1, Beltway was faced with a choice. Beltway could defend against the homeowners’ counterclaim in the context of Beltway’s own lawsuit or it could move to strike and defend against the homeowners’ claim later, in an independent lawsuit.⁴ Instead, Beltway seeks to have its cake and eat it too, by first striking the homeowners’ counterclaim and then using the doctrine of *res judicata* to dismiss the homeowners’ subsequent independent lawsuit.⁵ This, it cannot do.

The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)⁶ has made clear that in such circumstances, the doctrine of *res judicata* must

in the form of a counterclaim. *See supra* n.1. The only limit on the homeowners’ time to bring their claim is the 3-year statute of limitations. MD. CODE, CTS. & JUD. PROC. §5-101.

⁴ Beltway argues that the trial court was correct in granting Beltway’s motion to strike homeowners’ counterclaim under Rule 2-331(d), and in any event, that decision was not appealed. We agree that the *propriety* of the circuit court’s grant of the motion to strike is not before us. Nevertheless, the *effect* of the grant of the motion to strike is relevant to the disposition of this case. And, as is discussed *supra*, n.1, we disagree with Beltway as to the effect of the grant of that motion.

⁵ *Res judicata* is a doctrine that protects parties and courts from relitigating matters that have been or could have been litigated before. *Grady Mgmt. v. Epps*, 218 Md. App. 712, 736-37 (2014). Under Maryland law, the elements of *res judicata* are: (1) that the parties in the present litigation are the same or are in privity with the parties to the earlier litigation; (2) that the claim presented in the current action is identical to the one determined or which could have been brought in the prior litigation; and (3) that there was a final judgment on the merits in the prior litigation. *Spangler v. McQuitty*, 449 Md. 33, 65 (2016). Under *Rowland*, however, courts will not find that a party’s claims are barred by *res judicata* when that party still has the right to bring them as an independent suit. *Rowland*, 320 Md. at 232-33.

⁶ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also*, MD. R.1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any

give way to protect the permissive nature of the counterclaim rule. *Rowland*, 320 Md. at 232-33.⁷ That is, it is of no moment that the homeowners' claim against Beltway could have been brought as a counterclaim in Beltway's suit against the homeowners. That it was not, is not an appropriate basis for granting a motion to dismiss on the grounds of *res judicata*. *Id.* We, therefore, hold that the circuit court erred, as a matter of law, in granting Beltway's motion to dismiss. *See Litz v. Maryland Dep't of Env't*, 446 Md. 254, 264 (2016) (appellate courts review grant of motion to dismiss to ensure that it was legally correct).

**JUDGMENT REVERSED. CASE
REMANDED TO THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY FOR FURTHER
PROCEEDINGS NOT
INCONSISTENT WITH THIS
OPINION. APPELLEE TO PAY ALL
COSTS.**

statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....”).

⁷ The *Rowland* Court explained that where the defendants could have brought a counterclaim in the first suit but did not, they are not precluded from bringing that claim in a subsequent suit. *Rowland*, 320 Md. at 232-33. There is a limited exception to this general rule: If the effect of the judgment in the subsequent suit would be to “nullify” the judgment in the original action, the defendants must bring their actions as counterclaims in the original suit (and not in a subsequent suit). *See Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*, 338 Md. 1, 23-25 (1995) (describing these as common law compulsory counterclaims); *Rowland*, 320 Md. at 232-33, 236-37; LYNCH & BOURNE, *supra*, §12.2(e)(1). Although the caselaw is less than clear about when such a claim might be found to be “nullifying,” LYNCH & BOURNE, *supra*, §12.2(e)(1), 12-50 to -52 (discussing perceived inconsistency between *Fairfax Savings* and *Rowland*), there is no suggestion that the homeowners' counterclaim here would have the effect of nullifying the original judgment, not least of all because the homeowners prevailed in that case.