Circuit Court for Howard City
Case No. 13-C-18-114493

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1265

September Term, 2019

HAVTECH PARTS DIVISION, LLC, ET AL.

v.

ADVANCED THERMAL SOLUTIONS, LLC

Beachley,
Shaw Geter,
Harrell, Glenn T., Jr.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Harrell, J.

Filed: November 12, 2020

This appeal has its genesis in a dispute between Havtech, LLC, Havtech Parts Division, LLC, and Havtech Service Division, LLC, (collectively referred to as "Havtech"), appellants, Advanced Thermal Solutions, LLC, ("ATS"), appellee, and a party to an earlier underlying New York action, ABB, Inc. ("ABB"). As for the instant Maryland action, on 6 March 2018, Havtech, LLC filed in the Circuit Court for Howard County a complaint against ATS. Later an amended complaint was filed against ATS that added Havtech Parts Division, LLC and Havtech Service Division, LLC as plaintiffs. The amended complaint included two requests for declaratory judgment and set forth claims for aiding and abetting a violation of the Maryland Equipment Dealer Contract Act, § 19-101 *et seq.* of the Commercial Law Article ("MEDCA"); intentional and improper inducement of a breach of contract; tortious interference with business relationships and prospective economic advantage; civil conspiracy; and, a claim for attorneys' fees.

ATS filed motions for partial summary judgment, asserting that certain of Havtech's claims were barred by collateral estoppel, res judicata, and the full faith and credit clause of the United States Constitution, based on the earlier New York action litigated between Havtech as plaintiff and ABB as defendant. ATS sought also judgment on the claims for conspiracy and attorneys' fees. After a hearing, the court issued a written order dated 6 June 2019, granting partial summary judgment in favor of ATS as to both requests for declaratory judgment and the claims for aiding and abetting a violation of MEDCA and attorneys' fees. In addition, the court granted summary judgment in favor of ATS on the claims for tortious interference with business relationships and prospective economic advantage and civil conspiracy, to the extent that those counts relied upon MEDCA.

Thereafter, ATS filed a motion for summary judgment on the remaining claims, which the court granted on 9 August 2019. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the circuit court erred in granting summary judgment in favor of ATS. Perceiving no error, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The material facts of this case are not in dispute here. ABB, a Delaware corporation with its principal place of business in Wisconsin, manufactures heating, ventilation, and air conditioning ("HVAC") systems, parts, and equipment. Havtech is a limited liability company organized and existing under the laws of Delaware, with its principal place of business in Howard County, Maryland.[1] It is engaged in the business of selling, on commission and at retail, commercial HVAC equipment and repair parts. Havtech was an authorized distributor for ABB, a relationship memorialized in a written distributor agreement between them. ATS is a limited liability company organized and existing under the laws of Maryland, with its principal place of business in Anne Arundel County, Maryland. ATS sells also commercial HVAC equipment, was an authorized distributor for ABB, and was party to a separate distributor agreement with ABB that covered initially a territory different than that in the Havtech/ABB agreement.

[1] Havtech, LLC, is a limited liability company organized and existing under the laws of Delaware. Havtech Parts Division and Havtech Service Division are limited liability companies organized and existing under the laws of Maryland. They are all "sister companies" engaged in the business of marketing and selling commercial HVAC equipment in the construction industry.

A. The ABB-Havtech Distributor Agreement

In 2011, ABB and Havtech entered into their Distributor Agreement ("the Agreement"). Pursuant to the Agreement, Havtech was appointed as an authorized distributor for specified products and given a sales territory comprised of Calvert, Charles, Montgomery, Prince George's, and St. Mary's Counties in Maryland, the District of Columbia, and several locations in northern Virginia. The Agreement did not have a fixed term, but Sections 7.2 and 7.3 provided that it was effective from 22 August 2011 until it was terminated "without cause by either Party by giving thirty (30) days written notice to the other Party" or "with cause at any time by ABB."

Several additional sections of the Agreement are relevant to this case. Section 1.2 of the Agreement provided, in part, that ABB had the right to amend the territory and "to appoint additional Distributors in any market area (including, at ABB discretion [sic]" in Havtech's territory. Section 9.3 provided:

> If any provisions herein or portions thereof conflict with any statute or rule of law of the jurisdiction of applicable law or wherein this Agreement may be sought to be enforced, then such provisions or portions thereof shall be deemed void to the extent that they may so conflict, but without invalidating the remaining portions of such provisions or other provisions hereof.

Lastly, Section 12, titled "Governing Law," provided:

> This Agreement shall in all respects be construed and interpreted in accordance with the laws of the State of New York, USA, excluding its conflicts of laws rules, and both Parties hereby agree that any litigation concerning or growing out of this Agreement shall be conducted only in the state or federal courts functioning in the State of New York and waive the defense of an inconvenient forum in respect to any such litigation.

B. MEDCA

MEDCA is a Maryland statute, codified at Md. Code § 19-101 *et seq.* of the Commercial Law Article, that provides protections for local dealers with respect to supply contracts. Section 19-101(l) defines a supplier as, among other things, a "wholesaler, manufacturer, or distributor who enters into a contract with a dealer[.]" A dealer is defined in § 19-101(e)(2) as, among other things, "a person engaged in the business of selling, on commission or at retail, commercial heating, ventilation, and air-conditioning equipment or repair parts." Section 19-103(a) provides that a "supplier may not directly or through an officer, agent, or employee terminate, cancel, fail to renew, or substantially change the competitive circumstances of a contract without good cause." Remedies are addressed in § 19-303:

> Notwithstanding an agreement to the contrary, and in addition to any other available legal remedies, a person who suffers monetary loss due to a violation of this title or who refuses to accede to a proposal for an arrangement that, if consummated, would be in violation of this title may bring a civil action to enjoin further violations and to recover damages and the costs of the action, including reasonable attorney's fees.

C. Actions Leading to the Termination of the Agreement

Havtech maintains that, at some point in 2016, ATS began selling products in its sales territory and that, at some point in November 2016, ABB authorized ATS to do so. Also in November 2016, without any allegation of good cause, ABB notified Havtech that it was terminating the Agreement effective 8 December 2016. Havtech advised ABB that, although Section 7.2 of the Agreement permitted termination without good cause, the contractual provision was in contravention of MEDCA, which prohibited termination

without good cause. On 21 November 2016, Havtech filed an action in Maryland seeking a temporary restraining order and preliminary injunction to prevent ABB from terminating the Agreement and to enjoin ATS from selling ABB products in Havtech's claimed territory. Shortly thereafter, ABB rescinded its termination notice and Havtech dismissed its action.

According to Havtech, ATS continued to sell products in its territory and, in January 2017, ABB authorized ATS to do so. In April 2017, ABB removed the District of Columbia from Havtech's sales territory. On 19 January 2018, ABB provided written notice to Havtech that it was terminating the Agreement without cause. Thereafter, ATS became the sole authorized dealer for ABB products in what had been previously Havtech's sales territory.

D. The New York Litigation

ABB filed an action against Havtech in the Supreme Court of the State of New York seeking a declaratory judgment that: (1) under the terms of the Agreement, New York law governed the rights and obligations of the parties; (2) any litigation concerning or growing out of the Agreement must be brought in a state or federal court in New York; and, (3) it was permitted to terminate the Agreement without cause upon 30-days' written notice to Havtech. *See ABB, Inc. v. Havtech, LLC*, Index No. 650277/2018 ("the New York case"). In response, Havtech filed counterclaims seeking, *inter alia*, a declaratory judgment that MEDCA applied, that any termination of the Agreement without cause was void as against public policy, and asserting that it had lost millions of dollars per year in gross profits due to ABB's violations of MEDCA. Havtech filed also counterclaims asserting wrongful

termination, breach of the covenant of good faith and fair dealing, fraudulent inducement, negligent misrepresentation, tortious interference with business relations, aiding and abetting tortious interference with business relations, and civil conspiracy.

Havtech and ABB filed competing dispositive motions asking the New York Court to determine whether New York law or MEDCA governed the Agreement. Specifically, Havtech sought summary judgment with respect to ABB's affirmative claim that New York law governed the Agreement and ABB moved to dismiss those counterclaims filed by Havtech that were based on MEDCA.

ABB argued that MEDCA did not implicate any strong public policy so as to nullify the Agreement's choice of law provision. Havtech countered that the choice of law provision in the Agreement applied only to the interpretation of the terms of the Agreement and that New York conflict of law analysis required application of Maryland substantive law, i.e., MEDCA. In addition, Havtech asserted that the New York choice of law provision in the Agreement should not be enforced because neither of the parties nor the transaction had a reasonable relationship to New York and application of the choice of law provision would violate Maryland public policy.

On 10 January 2019, the Supreme Court of the State of New York issued a decision and order in which it held that: (1) New York law governed the Agreement; (2) MEDCA did not apply; and, (3) ABB did not violate MEDCA when it modified Havtech's sales territory and later terminated the Agreement. The New York Court determined that Section 12 of the Agreement indicated clearly and unambiguously "that the parties chose New York substantive law to govern disputes arising out of the Agreement." Although the Court

recognized that non-contractual tort claims fall generally outside the scope of contractual choice of law provisions, Havtech's counterclaims did not sound in tort, but were contractual in nature because they arose out of a dispute over the validity of several contracted-for provisions of the Agreement. The Court rejected Havtech's argument that the Agreement's choice of law provision should not be enforced because the Agreement had no reasonable relationship to New York. In doing so, the Court quoted N.Y. General Obligations Law, § 5-1401(1), which provides:

> The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars . . . may agree that the law of this state shall govern their rights and duties in whole or in part, **whether or not such contract, agreement or undertaking bears a reasonable relation to this state**.

(Emphasis in Court's decision).

The Court determined that the Agreement satisfied the requirements of § 5-1401(1), and that no reasonable relation to New York was required in order for the choice of law provision to be enforceable. The Court rejected also Havtech's argument that the choice of law provision should be voided on public policy grounds, finding that Havtech made no showing that the application of New York law would violate any important public policy. The Court explained:

> That the Agreement may implicate [MEDCA] is not sufficient grounds to override the parties' choice of law provision here. "The fact that a statute is a policy choice is not evidence of an interest materially greater than New York's."
>
> "[W]hen parties include a choice-of-law provision in a contract, they intend that the law of the chosen state – and no other state – will be applied."

> Consistent with the unambiguous terms of the Agreement, New York substantive law applies to the Agreement and Havtech may not assert the Maryland Counterclaims pursuant to [MEDCA].

(Internal citations omitted).

The Court found also Havtech's remaining arguments to be without merit and denied its motion for summary judgment. On 22 February 2019, Havtech "discontinue[d], without prejudice" its "common law counterclaims" for wrongful termination, breach of the covenant of good faith and fair dealing, fraudulent inducement, negligent misrepresentation, tortious interference with business relations, aiding and abetting tortious interference with business relations, and civil conspiracy.

Subsequently, the Court entered a declaratory judgment in favor of ABB and against Havtech declaring that the Agreement was governed by New York law, that "any litigation concerning or growing out of the Agreement must be brought in a state or federal court in New York[,]" and that "pursuant to Section 7.2 of the Agreement, ABB has the contractual right to terminate the Agreement without cause by giving 30 days' notice to Havtech, LLC."

E. The Howard County Circuit Court Litigation

Shortly after filing its counterclaims in the New York case, Havtech filed in the Circuit Court for Howard County, a complaint, and later an amended complaint, against ATS. ABB was not a party to that action. In its amended complaint, Havtech asserted that its action arose "out of ATS's efforts to encroach upon and take over" its sales territory and induce ABB to terminate the Agreement. Havtech claimed that it had "been damaged," that it would "lose more than one million dollars a year in gross profit on direct sales of

ABB Drives," and that it would "continue to sustain substantial damages due to lost sales of other equipment." In addition, Havtech claimed that its "brand equity and business reputation" had been damaged.

The amended complaint included seven counts. In Count I, Havtech sought a declaratory judgment that, among other things, "ABB could not lawfully substantially change the competitive circumstances" of the Agreement or terminate the Agreement without good cause and that ABB terminated the Agreement without good cause, in violation of MEDCA. In Count II, Havtech alleged that ATS aided and abetted ABB's violation of MEDCA by, among other things, changing the competitive circumstances of the Agreement and terminating the Agreement without good cause. In Count III, Havtech sought another declaratory judgment that Section 7.2 of the Agreement was invalid because it was in direct conflict with MEDCA and, therefore, the termination of the Agreement by ABB constituted a breach of the Agreement. In Count IV, Havtech asserted that ATS induced intentionally and improperly ABB to terminate the Agreement. Count V set forth a claim against ATS for intentional and improper interference with business relationships and prospective economic advantage by, among other things, encroaching on Havtech's sales territory, persuading ABB to terminate the Agreement in violation of MEDCA, and persuading ABB to authorize ATS to sell in Havtech's sales territory. In Count VI, Havtech asserted a claim for civil conspiracy. Havtech claimed that, at some time prior to November 2016, ATS and ABB entered into an agreement to divert future sales of ABB drives in Havtech's sales territory from Havtech to ATS. Havtech's final claim, set forth in Count VII, was for attorneys' fees, as provided for by § 19-303 of MEDCA.

On 21 March 2019, ATS filed in the Circuit Court for Howard County a motion for partial summary judgment arguing that Havtech was collaterally estopped from re-litigating whether MEDCA applied to the Agreement. ATS sought summary judgment on Counts I, II, III, and VII in their entirety, and on Counts V and VI, to the extent that those claims were based on purported violations of MEDCA. It argued that the issue of whether MEDCA applied to the Agreement was before, and decided by, the New York Court when it considered whether to dismiss Havtech's first three counterclaims and grant summary judgment on the declaratory judgment action brought by ABB.

Havtech opposed ATS's motion for partial summary judgment on the ground that "the New York court was wrong." It asserted that the choice of law clause in Section 12 of the Agreement, which provided that the Agreement "shall in all respects be construed and interpreted in accordance with the laws of the State of New York," was inapplicable in the Maryland case, that the choice of law provision had no bearing on its tort claims against ATS or ABB, and that because New York had no substantial relationship to the parties or the transaction, there was no reasonable basis for the choice of New York law. According to Havtech, under Maryland law, and contrary to the decision in the New York case, the Agreement's choice of law provision did not apply to its statutory or tort claims against ABB and, because ATS was not a party to the Agreement, was not a defense available to ATS.

Havtech argued further that MEDCA reflected Maryland's strong public policy of protecting HVAC equipment dealers from contract terminations without cause and that application of New York law violated fundamental public policy of Maryland, which had

a greater interest in the matter than New York. Havtech maintained, among other things that: (1) ABB's change in the competitive circumstances of the Agreement, and its termination of it without good cause, violated MEDCA; (2) the New York choice of law set forth in the Agreement was narrow in scope and applied only to construing and interpreting the Agreement; (3) that MEDCA "trumps conflicting contract provisions;" and, (4) the parties' substantive rights should be determined according to the law of Maryland, where the alleged injuries were suffered.

A short time after the New York Court entered its declaratory judgment declaring that the Agreement was governed by New York Law, that "any litigation concerning or growing out of the Agreement must be brought in a state or federal court in New York," and that ABB had "the contractual right to terminate the Agreement without cause by giving 30 days' notice" to Havtech, ATS filed in the Maryland action a supplement in support of its motion for partial summary judgment in which it argued that Havtech's claims based on MEDCA were precluded by res judicata and the full faith and credit clause of Article IV, § 1 of the United States Constitution.[2] ATS asserted that it was "in privity" with ABB because its rights and obligations under the Agreement were conditioned or derivative of the rights of ABB. ATS asserted also that Havtech's allegations of conspiracy

[2] Article IV, § 1 of the United States Constitution provides, in part, that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State[.]"

with ABB were sufficient to establish privity. Havtech did not file a response to ATS's supplemental memorandum.

On 5 June 2019, the circuit court held a hearing on ATS's motion for partial summary judgment based on collateral estoppel and res judicata. Havtech argued that the judge in the New York case "had it upside down." As to collateral estoppel, Havtech claimed that because New York law was the basis of the decision in the New York case, and Maryland law was the basis of the circuit court case, collateral estoppel could not apply. Havtech pointed-out that the New York Court did not address various issues pertinent to MEDCA, and because those issues had not been decided as matters of fact, collateral estoppel did not apply. It contended also that New York law should not have been applied because it violated established public policy in Maryland.

With respect to res judicata, Havtech maintained that the parties in the New York case had to be the same as the parties in the Maryland action for that doctrine to apply. Because they were not, res judicata did not apply. It argued also that because the conspiracy claim in the New York case had been dismissed voluntarily, there was no final judgment and, therefore, res judicata was not applicable. As to the full faith and credit clause, Havtech maintained that the New York Court should have given full faith and credit to MEDCA. Havtech claimed also that ATS was not a party in the New York case because it could not "get personal jurisdiction against ATS up there."

The circuit court entered an order, dated 6 June 2019, granting ATS's motion for summary judgment on Counts I, II, III, and VII, and with respect to Counts V and VI to the extent they relied upon MEDCA. The court did not provide a memorandum setting

forth the reasons for its ruling. Thereafter, ATS filed a motion for summary judgment as to each of the remaining claims in the case. After a hearing on 8 August 2019, the circuit court granted summary judgment in favor of ATS as to Counts IV (tortious interference with contract), V (tortious interference with prospective economic advantage), and VI (conspiracy). Again, the court did not provide a memorandum setting forth the reasons for its decision.

DISCUSSION

Havtech contends that the circuit court erred in granting ATS's motion for summary judgment as to Counts I, II, III, and VII in their entirety, and as to Counts V and VI, to the extent those claims relied upon MEDCA, because its claims were not precluded by either res judicata or collateral estoppel. Because Havtech's claims are precluded by res judicata, we shall affirm the judgment of the circuit court.

A. Standard of Review

A circuit court may grant a motion for summary judgment, entering judgment in favor of the moving party, "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(e). We review a trial court's decision to grant summary judgment *de novo*, examining the record independently to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law. *Charles County Comm'rs. v. Johnson*, 393 Md. 248, 263 (2006). "We review the record in the light most favorable to the non-

moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party." *Id.*

B. Applicable Law Regarding Preclusive Effect of New York Judgment

Preliminarily, Havtech argues that the Full Faith and Credit Clause of the United States Constitution requires application of New York law in determining the preclusive effect to be given to the judgment of the New York Court. That is not in dispute, as ATS agrees that New York law dictates whether Havtech presented a meritorious challenge to the circuit court's grant of summary judgment on the basis of res judicata or collateral estoppel. We agree. The Court of Appeals has made clear that, "[u]nder the Maryland law of conflict of laws, the *res judicata* effect to be given to the judgment of a court of a foreign state is the *res judicata* effect that that judgment has in the state where the judgment was rendered." *Jessica G. v. Hector M.*, 337 Md. 388, 404, *cert. denied*, 516 U.S. 829 (1995); *see also Rourke v. Amchem Products, Inc.*, 384 Md. 329, 344-51 (2004) (holding same). Accordingly, we shall apply New York law in determining the res judicata effect to be given here to the judgment of the New York Court.

C. New York Law on Res Judicata and Collateral Estoppel

New York law recognizes that res judicata "is an umbrella term encompassing both claim preclusion and issue preclusion, which are described as two separate aspects of an overarching doctrine." *Rojas v. Romanoff*, 186 A.D.3d 103, 107, 128 N.Y.S.3d 189 (2020)(citing *Gramatan Home Investors Corp. v. Lopez*, 46 N.Y.2d 481, 485, 414 N.Y.S.2d 308, 386 N.E.2d 1328 (1979)). Claim preclusion, referred to frequently and confusingly as res judicata, "bars successive litigation based upon the same transaction or

series of connected transactions . . . if: (i) there is a judgment on the merits rendered by a court of competent jurisdiction, and (ii) the party against whom the doctrine is invoked was a party to the previous action, or in privity with a party who was." *People ex. rel. Spitzer v. Applied Card Sys., Inc.*, 11 N.Y.3d 105, 122, 863 N.Y.S.2d 615, 894 N.E. 1 (2008), *cert. denied* 555 U.S. 1136 (2009)(internal quotation marks and citations omitted). Stated otherwise, res judicata, or claim preclusion, acts to bar relitigation between the same parties, or those in privity[3] with them, of a cause of action arising out of the same transaction or series of transactions that either were raised or could have been raised in the prior proceeding. *Landau, P.C. v. LaRossa, Mitchell & Ross*, 11 N.Y.3d 8, 12, 862 N.Y.S.2d 316, 892 N.E.2d 380 (2008)(quoting *Parker v. Blauvelt Vol. Fire Co., Inc.*, 93 N.Y.2d 343, 347, 690 N.Y.S.2d 478, 712 N.E.2d 647 (1999)).

Res judicata "applies not only to claims actually litigated but also to claims that could have been raised in the prior litigation." *Matter of Hunter*, 4 N.Y.3d 260, 269, 794 N.Y.S.2d 286, 827 N.E.2d 269 (2005). "As a general rule, 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions

[3] Privity is an amorphous concept that is not susceptible to a hard-and-fast definition. *Buechel v. Bain*, 97 N.Y.2d 295, 304, 740 N.Y.S.2d 252, 766 N.E.2d 914 (2001), *cert. denied*, 535 U.S. 1096 (2002). In determining whether privity exists, a court must analyze the relationship between the parties to determine whether preclusion would be fair, and "[d]oubts should be resolved against imposing preclusion to ensure that the party to be bound can be considered to have had a full and fair opportunity to litigate." *Buechel*, 97 N.Y.2d at 305. "Ultimately, we must determine whether the severe consequences of preclusion flowing from a finding of privity strike a fair result under the circumstances." *Applied Card*, 11 N.Y.3d at 123 (citing *Buechel*, 97 N.Y.2d at 304-05). This inquiry is "informed by reference to the policies that res judicata is designed to protect." *Id.* (citing *Matter of Reilly*, 45 N.Y.2d at 28).

are barred, even if based upon different theories or if seeking a different remedy.'" *Parker*, 93 N.Y.2d at 347 (citing *O'Brien v. City of Syracuse*, 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 429 N.E.2d 1158 (1981) and *Matter* of *Reilly v. Reid*, 45 N.Y.2d 24, 30, 407 N.Y.S.2d 645, 379 N.E.2d 172 (1978)). A core principle of res judicata is a party's right to rely upon the finality of the results of previous litigation. *Applied Card*, 11 N.Y.3d at 124.

Collateral estoppel, or issue preclusion, is a corollary of res judicata that "bars the relitigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment." *Paramount Pictures Corp. v. Allianz Risk Transfer AG*, 31 N.Y.3d 64, 72, 73 N.Y.S.3d 472, 96 N.E.3d 737 (2018)(internal quotation marks and citations omitted). There are two essential elements: "(1) the identical issue was necessarily decided in the prior proceeding and is decisive of the present action; and (2) there was a full and fair opportunity to contest that issue in the prior proceeding." *Zimmerman v. Tower Ins. Co. of N.Y.*, 13 A.D.3d 137, 139, 788 N.Y.S.2d 309, 311 (2004). "[O]nly the party sought to be collaterally estopped must have been a party to the action when the prior determination was made." *3 E. 54th St. New York, LLC v. Patriarch Partners Agency Servs. LLC*, 110 A.D.3d 516, 516-17, 972 N.Y.S.2d 549 (2013). Collateral estoppel preserves party and judicial resources by preventing relitigation of matters that have been resolved already and it prevents inconsistent results. *Paramount Pictures*, 31 N.Y.3d at 73. Collateral estoppel may be asserted in a new case by a nonparty to the original proceeding. *3 E. 54th St. New York, LLC*, 110 A.D.3d at 516-17 ("only the party sought to be collaterally estopped must have been a party to the action when the prior determination was made"); *Koch v. Consol. Edison Co. of New York, Inc.*, 62 N.Y.2d 548, 556, 479

N.Y.S.2d 163, 468 N.E.2d 1 (1984)(former res judicata requirement of mutuality is "a dead letter," and third parties are permitted to enforce issue preclusion); *B.R. DeWitt, Inc. v. Hall*, 19 N.Y.2d 141, 147, 278 N.Y.S.2d 598, 225 N.E.2d 195 (1967)("the 'doctrine of mutuality' is a dead letter").

In *Gramatan Home Inv'rs Corp. v. Lopez*, 46 N.Y.2d 481, 414 N.Y.S.2d 308, 386 N.E.2d 1328, 1331 (1979), the Court of Appeals of New York explained:

> As the consequences of a determination that a party is collaterally estopped from litigating a particular issue are great, strict requirements for application of the doctrine must be satisfied to insure that a party not be precluded from obtaining at least one full hearing on his or her claim. Although the previous requirement that there be mutuality of estoppel is now a "dead letter," the party seeking to invoke the benefits of the principle must still prove two necessary elements. First, it must be shown that the party against whom collateral estoppel is sought to be invoked had been afforded a full and fair opportunity to contest the decision said to be dispositive of the present controversy. Additionally, there must be proof that the issue in the prior action is identical, and thus decisive, of that in issue in the current action
>
> One of the fundamental principles of our system of justice is that every person is entitled a day in court notwithstanding that the same issue of fact may have been previously decided between strangers. Generally, therefore, a person may not be precluded from litigating issues resolved in an action in which that person was not a party. Considerations of due process prohibit personally binding a party by the results of an action in which that party has never been afforded an opportunity to be heard. This prohibition, of course, is not unconditional and identity of the parties, as opposed to identity of the issues, is not an absolute.
>
> Thus, it is well settled that the term parties to a judgment within the contemplation of the rule of collateral estoppel is not confined to those who are named in the record or enter an appearance. Yet, although the party sought to be collaterally estopped in the current action need not have been the one for or against whom judgment was rendered in the previous action, the relationship does bear a critical significance. For example, collateral estoppel bars not only parties from a previous action from litigating an issue decided therein, but those in privity with them as well.

Gramatan, 46 N.Y.2d at 485-86 (internal citations omitted).

Whether a party had a "full and fair opportunity" to contest the prior determination "involves a practical inquiry into 'the realities of the litigation,'" and "cannot be reduced to a formula." *Gilberg v. Barbieri*, 53 N.Y.2d 285, 441 N.Y.S.2d 49, 51, 423 N.E.2d 807, 809 (1981)(quoting *Schwartz v. Pub. Adm'r of Cty. of Bronx*, 24 N.Y.2d 65, 298 N.Y.S.2d 955, 246 N.E.2d 725, 729 (1969)). The proponent of collateral estoppel bears the burden of establishing that the issue in the prior action was identical and determined decisively and the opponent bears the burden of establishing the absence of a full and fair opportunity to litigate the issue in the prior proceeding. *Parker*, 93 N.Y.2d at 349.

The primary purposes of res judicata and collateral estoppel are grounded in public policy and are to ensure finality, prevent vexatious litigation, and promote judicial economy. *Allen v. McCurry*, 449 U.S. 90, 94 (1980)(these doctrines serve to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.")(citing *Montana v. United States*, 440 U.S. 147, 153 (1979). *See also Matter of Hodes v. Axelrod*, 70 N.Y.2d 364, 372, 520 N.Y.S.2d 933, 515 N.E.2d 612 (1987)("Putting an end to a matter for all time is fair to the party who has endured the cost and travail of a litigation, fair to the party whose claim has once been heard, and in the interest of the judicial system generally"); *Matter of Reilly*, 45 N.Y.2d at 28 ("*Res judicata* is designed to provide finality in the resolution of disputes"); *B.R. DeWitt*, 19 N.Y.2d at 144 (The principle of collateral estoppel is necessary to conserve judicial resources by discouraging redundant litigation

and is grounded on the premise that once a person has been afforded a full and fair opportunity to litigate a particular issue, that person may not be permitted to do so again).

D. Havtech's Attempted Refutation of Res Judicata

Havtech contends that "the doctrine of res judicata has no applicability" with respect to its MEDCA-based claims in the instant case because it could not have included its claims against ATS in the New York action due to the asserted lack of personal jurisdiction over ATS in the New York action.[4] ATS counters that New York employs a res judicata standard that asks only whether Havtech was a party to an earlier action in which an adverse judgment was entered against it on the issue it seeks to re-litigate in the Circuit Court for Howard County. Havtech calls ATS's assertion " a gross oversimplification of New York law[.]"

Havtech directs our attention to three cases in which a New York court held that res judicata did not apply even though the party against whom the doctrine was asserted had been a party to the prior action. In *Wheeler v. Linden Plaza Preservation LP*, 172 A.D.3d 608, 102 N.Y.S.3d 17 (2019), the Appellate Division of the Supreme Court considered an appeal from a decision to dismiss a tenant's claims on the ground that they were precluded by res judicata based on a prior action in a housing court with limited jurisdiction. *Wheeler*, 172 A.D.3d at 609. The tenant's claims were for money damages

[4] The record does not reveal that Havtech attempted to bring ATS into the New York action and, thus, the New York Court did not make any determination with respect to personal jurisdiction (or the lack thereof) over ATS. In any event, it is inconsequential whether ATS was or could have been a party to the New York action. Havtech was a party to that case. ATS's liability, if any, was derivative of ABB's liability, and the New York Court determined that ABB was not liable to Havtech.

arising out of torts unrelated to the possession of rented premises or the collection of rent, and involving parties other than the landlord. *Id.* The Appellate Division determined that res judicata did not apply to claims "that are not inextricably 'intertwined' with the landlord's recovery of possession or collection of rent." *Id.* The Court wrote:

> To require a party to raise claims outside the housing court's purview solely to preserve them for severance and transfer to another court would be a waste of judicial resources. What is more, requiring the housing court to hear any manner of claim merely because they arise, however tangentially, out of the same facts as an article 7 proceeding would turn the housing court into a court of general jurisdiction.

Id. The Court also noted that res judicata would not have applied to a management company and a security company who were not, and could not have been, parties to the landlord's summary proceeding against the tenant. *Id.*

In *Parker v. Blauvelt Vol. Fire Co., Inc.*, 93 N.Y.2d 343 (1999), the Court of Appeals of New York held that the plaintiff, who was dismissed from a fire company for disciplinary reasons, was not precluded by either res judicata or collateral estoppel from bringing a federal civil rights claim under 42 U.S.C. §1983 when, in a prior administrative action, that same claim had been dismissed without prejudice and the plaintiff's right to bring that claim in a separate action had been preserved expressly. *Parker*, 93 N.Y.2d at 346-47. The Court noted that the plaintiff was not seeking in his civil rights action "the restoration of any economic benefits derivable from his status as a member of the" fire company. *Id.* at 348.

In *LaDuke v. Lyons*, 250 A.D.2d 969, 673 N.Y.S.2d 240 (1998), the plaintiff sought judicial review of a hospital's decision to terminate her employment. *LaDuke*, 250 A.D.2d

at 969. The gravamen of that proceeding was to obtain review of the hospital's decision to discharge the employee from employment and reinstatement of employment with monetary relief in the form of back pay and benefits. *Id.* at 971. Ultimately, the trial court's dismissal of the employee's petition was affirmed on the ground that an at-will employee could be terminated without cause. *Id.* at 969. While plaintiff's appeal from that decision was pending, she commenced an action against the hospital and certain employees, alleging six causes of action sounding in tort, breach of contract, and breach of warranty. *Id.* at 970. The defendants moved to dismiss that action on the ground that plaintiff's proceeding was precluded under the doctrine of res judicata. *Id.* The appellate court determined that the employee's breach of contract action, which requested virtually identical relief to that sought in the administrative action, was barred by res judicata, but the other claims were not because compensatory damages for those claims were not recoverable in the administrative action to obtain reinstatement of employment. *Id.* at 971.

The cases relied upon by Havtech are inapposite to the case before us. In each case, the party's claims were not, and could not have been, adjudicated in the earlier action. In the instant case, it is immaterial under New York law that ATS was not a party to the New York action. Under New York law, the doctrine of mutuality is not an indispensable prerequisite to invoking res judicata. *B.R. DeWitt,* 19 N.Y.2d at 147 ("the 'doctrine of mutuality' is a dead letter."); *Clarcq v. Chamberlain Mobile Home Transport, Inc.*, 294 N.Y.S.2d 550, 555 (1968). Res judicata may be invoked in subsequent litigation by a non-party to the prior action so long as it can show that the opponent in the subsequent case participated in the prior litigation and had a full opportunity to litigate the action on its

merits. *Clarcq*, 294 N.Y.S.2d at 555. In the present case, the New York Court was a court of competent jurisdiction, Havtech was a party to the New York action, and Havtech litigated actually the precise issues regarding MEDCA that it sought to re-litigate in Maryland, including whether MEDCA applied and whether ABB violated MEDCA.

In determining whether prior claims duplicate current claims, New York law applies a "transactional approach," whereby "a set of facts will be deemed a single transaction for res judicata purposes if the facts are closely related in time, space, motivation, or origin, such that treating them as a unit would be convenient for trial and would conform to the parties' expectations." *Schwartzreich v. E.P.C. Carting Co.*, 246 A.D.2d 439, 441, 668 N.Y.S.2d 370 (1998). *See also Coliseum Towers Assoc. v. County of Nassau*, 217 A.D.2d 387, 390, 637 N.Y.S.2d 972 (1996)(stating same). Havtech's claims in the present case arise from the same transactions as were at the heart of the New York action, namely, ABB's removal of territory from Havtech and giving it to ATS and, eventually, to terminate its agreement with Havtech. The New York Court resolved all claims arising from those events as between Havtech and ABB, and determined that MEDCA did not apply and, therefore, ABB did not violate MEDCA in terminating the Agreement without cause. The present case advanced MEDCA-based claims. In the circuit court, Havtech sought a declaratory judgment that ABB violated MEDCA; that ATS assisted, aided and encouraged ABB's violation of MEDCA and was jointly and severally liable for Havtech's losses; that Section 7.2 of the Agreement was invalid because it was in direct conflict with MEDCA; that ATS tortiously interfered with business relationships and prospective economic advantage by persuading ABB to violate MEDCA; that ATS conspired with ABB to violate

MEDCA; and that it was entitled to attorneys' fees under MEDCA. Because the fundamental basis of the claims asserted by Havtech in the Circuit Court for Howard County are identical essentially to those litigated in New York, the Maryland action is little more than an attempt to reassert them in a new forum. Because the doctrine of res judicata precludes Havtech from re-litigating issues of fact and law relating to the application of MEDCA that were decided by the New York Court, the Circuit Court for Howard County did not err in granting summary judgment in favor of ATS.

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.