

Circuit Court for Baltimore City
Case No. 24-C-19-002608

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1483

September Term, 2021

OMID ILKHAN

v.

CRITICAL CARE
PROFESSIONALS, INC., ET AL.

Kehoe,
Arthur,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 23, 2022

* 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.

A court found that appellant Omid Ilkhan converted a car that, in prior litigation, had been determined to belong to a closely-held corporation. The court awarded compensatory and punitive damages to the corporation's controlling shareholder and ordered that title be transferred to him. The court, however, also awarded attorneys' fees and expenses under Rule 1-341 to both the shareholder and the corporation. Ilkhan appealed.

We shall hold that the court erred in awarding damages to the shareholder and in ordering that title be transferred to him, because he has previously been determined not to have an ownership interest in the car. Because of ambiguities and inconsistencies in the court's order, we remand the case for clarification as to whether the court intended to award damages to the corporation and intended to require that title be transferred to the corporation. We also remand for a reassessment of the award of fees and expenses.

FACTUAL AND PROCEDURAL BACKGROUND

Critical Care Professionals, Inc. ("Critical Care"), is a closely-held corporation that is owned, indirectly, by Ricardo Muscolino.

In early 2013, Critical Care entered into an agreement with the owners of a used car dealership to purchase a salvaged 2011 Ferrari at an auction. Because Critical Care and Muscolino were not registered to bid in the auction, the parties agreed that the dealership would place the bid.

Critical Care was the highest bidder. Hence, on February 7, 2013, Critical Care transferred \$100,575.00 to the auctioneer, and the Ferrari was sent to the dealership in Baltimore County.

When it became apparent that the dealership could not complete the necessary repairs on the Ferrari, Muscolino's friend, Omid Ilkhan, advised him to ship the car to a body shop in Florida for repairs. In 2015, Muscolino took Ilkhan's advice and had the Ferrari shipped to Florida for repairs. Ilkhan arranged the shipment.

In 2016, Muscolino was charged with murder. Muscolino reached out to Ilkhan to borrow funds for bail and for his defense. Ilkhan lent Muscolino approximately \$300,000.00, secured by three pieces of real estate.

Muscolino was convicted of second-degree murder in November 2017. At the time of the proceedings in this case, he was incarcerated.

Following his conviction, Muscolino began to liquidate his assets in order to pay back monies owed to Ilkhan and to provide for his children. During this process, Muscolino authorized his nephew, Bruno Muscolino, to contact Ilkhan in an effort to resolve all outstanding matters regarding the loan and the Ferrari.

Bruno met with Ilkhan on January 13, 2018, to review Ilkhan's accounting of what Muscolino owed to him. The parties agreed that, with interest and with credit for the payments that Muscolino had previously made, the debt totaled \$270,124.60. Of that amount, \$21,791.00 was attributable to the repairs on the Ferrari.

On January 16, 2018, Bruno transferred \$270,125.00 into Ilkhan’s bank account. The transfer constituted a complete and final payment of Muscolino’s debts to Ilkhan, per the accounting. Yet, after the transfer, Ilkhan refused to return the Ferrari.¹

In March 2018, Muscolino filed suit against Ilkhan in the Circuit Court for Baltimore City in an effort to recover the Ferrari. Muscolino’s complaint asserted claims for detinue and conversion. Critical Care was not a party to that action.

The case went to trial in March 2019. At the end of Muscolino’s case, Ilkhan moved for judgment, apparently on the ground that the right to the Ferrari belonged to Critical Care, and not to Muscolino. The court agreed, ruling, in substance, that Muscolino was not the real party in interest. *See* Md. Rule 2-201. Although the court dismissed the case, it volunteered its opinion that Ilkhan’s testimony was “not believable.” In addition, the court expressed its “hope” that Muscolino would refile the case in Critical Care’s name.

On May 1, 2019, Muscolino, Critical Care, and its parent company, CCP Holdings, Inc.,² filed a complaint for detinue, conversion, and the imposition of a constructive trust against Ilkhan in the Circuit Court for Baltimore City. The complaint alleged that Ilkhan, in or about 2017, had fraudulently obtained the title to the Ferrari and

¹ Ilkhan also refused to release the liens on two houses, forcing Muscolino to file suit to obtain the release of those liens. In that litigation, the Circuit Court for Baltimore County entered summary judgment against Ilkhan.

² CCP Holdings, Inc., is the parent holding company for Critical Care. Muscolino is the sole owner of CCP Holdings.

had it assigned either to himself or to his company, Ultimate Auto, Inc. The complaint also alleged that Ilkhan had refused to return the Ferrari despite the plaintiffs' demands. As a result of Ilkhan's alleged misconduct, the plaintiffs claimed to have suffered the loss of use and enjoyment of the vehicle. In the event that Ilkhan had sold the vehicle, the complaint claimed that he had been unjustly enriched by obtaining the title to the vehicle and keeping the proceeds from the sale.

On May 4, 2020, Muscolino, Critical Care, and the parent company moved for summary judgment against Ilkhan, citing the lack of documentation to support Ilkhan's defenses. The court denied the motion.

Following a bench trial, on October 21, 2021, the circuit court determined that Ilkhan had converted the Ferrari. The court found that Ilkhan used the Ferrari in a manner that was inconsistent with "the plaintiff's" rights and that Ilkhan should have returned the vehicle on January 16, 2018, when Muscolino paid the entirety of his debts.

The court credited the testimony of Muscolino and his nephew, but expressed consternation about Ilkhan's testimony. The court observed that Ilkhan had given numerous, inconsistent, and incredible explanations for why he had not returned the Ferrari. The court specifically found that Ilkhan had defended the case in "bad faith" and suggested that he had lied under oath. The court also found that Ilkhan had acted with "malice" and that his conduct "almost amounts" to "extortion." The court observed that punitive damages "are allowed" in a claim for conversion.

On October 26, 2021, the court issued a written judgment ordering Ilkhan: to deliver the Ferrari to the home of Bruno Muscolino by 4:00 p.m. on October 28, 2021; to

transfer the title to the Ferrari to Ricardo Muscolino no later than 4:00 p.m. on October 29, 2021; and to pay \$18,064.00 in money damages and \$54,192.00 in punitive damages to Ricardo Muscolino.³ In addition, the Court ordered Ilkhan to pay “Plaintiffs’” reasonable attorneys’ fees, “upon submission of a petition by “Plaintiffs’ counsel.” The court did not identify the basis for the award of fees, but its oral comments imply that it relied on Md. Rule 1-341, which permits a court to award costs, expenses, and reasonable attorneys’ fees against a party who has maintained or defended an action in bad faith or without substantial justification.

On November 1, 2021, Critical Care and Muscolino submitted a petition for fees, purportedly pursuant to Md. Rule 2-703.⁴ The costs and fees included those from the instant matter, as well as costs and fees from the earlier case brought by Muscolino alone, which the court dismissed because he was not the proper party. In total, the petition requested \$52,517.52 in fees and \$8,762.60 in costs.

³ The court calculated the compensatory damages by looking, first, to the market value of the Ferrari at the time of the conversion, which was \$80,000.00. The \$18,064.00 figure equals the amount of interest, at the legal rate of six percent, on \$80,000.00 from the date of the conversion to the date of the judgment. The amount of punitive damages is three times the amount of compensatory damages.

⁴ Rule 2-703 “applies to claims for attorneys’ fees allowable by law to a party in an action in a circuit court.” Md. Rule 2-703(a). “This Rule applies predominantly to actions in which attorneys’ fees are allowed by statute.” *Id.* committee note. The Rule also applies when a party has a right to attorneys’ fees at common law or under certain rules of court. Rule 2-703 does not apply “in a proceeding under Rule[] 1-341.” Md. Rule 2-702(b).

On November 15, 2021, Ilkhan objected to the award of attorneys’ fees. Among other things, he argued that “the Plaintiffs” were not entitled to recover the fees and expenses incurred in the earlier litigation, in which Ilkhan had prevailed.

In a written order dated December 27, 2021, the circuit court granted “Plaintiffs’ Petition for Fees” and ordered Ilkhan to pay “Plaintiffs’ costs” and “Plaintiffs’ attorneys[’] fees” in the full amounts requested.

Ilkhan filed a notice of appeal on November 19, 2021, within 30 days of the order that awarded compensatory and punitive damages to him and required him to return the car. On January 26, 2022, Ilkhan filed a second notice of appeal from the court’s order awarding attorneys’ fees.⁵

QUESTIONS PRESENTED

Ilkhan raises three questions for review, which we have reworded as follows:

1. Did the circuit court err in failing to conclude that the claims of plaintiff Ricardo Muscolino were barred by *res judicata*?
2. Did the circuit court err in assessing punitive damages against the defendant?
3. Did the circuit court err in assessing attorneys’ fees against the defendant?⁶

⁵ Under Maryland law, an award of fees and expenses under a statute or rule, such as Rule 1-341, is deemed to be “collateral” to the merits of the action. *See, e.g., Johnson v. Wright*, 92 Md. App. 179, 181-82 (1992). Consequently, to preserve his right to appellate review of the court’s judgment on the merits, Ilkhan was required to note an appeal within 30 days after that judgment was entered on the court’s electronic case-management system. *See id.* Had Ilkhan waited to note an appeal until after the court decided the issue of attorneys’ fees, he would have lost his right to challenge the judgment on the merits. *Id.* In those circumstances, he could challenge only the award of fees and expenses.

⁶ Ilkhan framed his questions as follows:

STANDARD OF REVIEW

When reviewing a bench trial decision, we will not set aside a trial court’s judgment on the evidence unless it is clearly erroneous, giving “due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). We view the evidence in the light most favorable to the party who prevailed at trial. *Brault Graham, LLC v. Law Offices of Peter G. Angelos, P.C.*, 211 Md. App. 638, 660 (2013) (citations omitted). If a trial court does not make findings of fact, no presumption as to them arises merely from the decision. *Burroughs Int’l Co. v. Datronics Eng’rs, Inc.*, 254 Md. 327, 338 (1969). In contrast to factual findings, we review a trial court’s legal conclusions without deference. *Plank v. Cherneski*, 469 Md. 548, 569 (2020).

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- I. DID THE CIRCUIT COURT ERR IN FAILING CONCLUDE [sic] THAT THE CLAIMS OF PLAINTIFF, RICARDO MUSCOLINO WERE BARRED BY RES JUDICATA?
 - II. DID THE CIRCUIT COURT ERR IN ASSESSING PUNITIVE [sic] DAMAGES AGAINST DEFENDANT?
 - III. DID THE CIRCUIT COURT ERR IN ASSESSING ATTORNEYS FEES AGAINST DEFENDANT?

DISCUSSION

A. Res Judicata

Ikhan argues that Muscolino’s individual claims in this case are barred by res judicata. He cites the decision in Muscolino’s lawsuit, in which the circuit court ruled that the claim against Ikhan belonged to Critical Care, and not to Muscolino.

The doctrine of res judicata bars the relitigation of a claim where there is a final judgment in a previous litigation in which the parties, the subject matter, and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation. *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005). This doctrine “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.’” *Murray Int’l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989) (quoting *Montana v. United States*, 440 U.S. 147, 153-54 (1979)).

“Res judicata restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly.” *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. at 107 (emphasis in original). The elements of res judicata under Maryland law 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. *Id.*; *see also Colandrea v. Wilde Lake Cmty. Ass’n, Inc.*, 361 Md. 371, 392 (2000).

The first element of *res judicata*, that the parties in the present litigation are the same or in privity with the parties to the earlier dispute, is easily met here, as to Muscolino. In the first action brought in the Circuit Court for Baltimore City, Muscolino filed an action for detinue and conversion of the Ferrari against Ilkhan. In the present action, Muscolino again brought suit against Ilkhan, the subject of which is the same Ferrari.

The second element, whether a party is raising the same claim in the current action, is also met. In this case, Muscolino alleges the same claims of detinue and conversion that he alleged in the first circuit court case. The only difference between the two is that Muscolino, in the second case, advances an additional theory of liability based on unjust enrichment, seeking the remedy of constructive trust. For this theory he argues that Ilkhan obtained title to the vehicle by fraudulently misrepresenting to the title holder that Muscolino intended to assign the vehicle to Ilkhan. This additional theory, however, does not preclude the application of *res judicata*.

“Even if ‘a number of different legal theories casting liability on an actor may apply to a given episode, [they do] not create . . . multiple claims’ depriving a prior judgment of its preclusive bar.” *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. at 111 (citing *Lockett v. West*, 914 F. Supp. 1229, 1233 (D. Md. 1995)). “Once a set of facts has been litigated, *res judicata* generally prevents the application of a different legal theory to the same set of facts, assuming that ‘the second theory of liability existed when

the first action was litigated.” *Id.* (quoting *Gertz v. Anne Arundel Cnty.*, 339 Md. 261, 270 (1995)).

Muscolino’s new theory is simply another attempt to recover from Ilkhan for the same conduct that was the subject of the previous litigation. Because each of Muscolino’s arguments arise out of the same nucleus of facts, they form “the basis of the litigative unit or entity which may not be split.” *Kent Cnty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 498 (1987).

The third element – that there has been a final judgment – is also met, as to Muscolino. Muscolino argues that because the order of dismissal was based on a “technical error” in identifying the real party in interest, it cannot be a final judgment on the merits for the purposes of res judicata. He is incorrect. The ruling was a final adjudication concerning Muscolino’s right to pursue the action against Ilkhan. The ruling does not bar a second action by the person or entity with the right to pursue the action, but it does bar a second action by Muscolino. *See Gillig v. Nike, Inc.*, 602 F.3d 1354, 1361 (Fed. Cir. 2010).⁷

In summary, for the purposes of res judicata, all three required elements are met as to Muscolino. Thus, the circuit court erred in allowing Muscolino a second bite at the apple and in denying Ilkhan’s motion to dismiss Muscolino’s claims.

⁷ Muscolino urges us to ignore the formal distinction between himself and Critical Care. He argues that because he owns Critical Care (indirectly, through the parent company, it appears), Critical Care’s recovery is his. His contention is not necessarily correct. If Critical Care has creditors, their claim to the recovery would take precedence over Muscolino’s.

Our ruling has no effect on the claims of Critical Care, the entity that was found, in the first litigation, to own the claims against Ilkhan. The circuit court’s order, however, does not expressly mention Critical Care. By its terms, the order awards compensatory and punitive damages only to “Muscolino” and orders that title be transferred to “Muscolino.” On the other hand, the order invites the “Plaintiffs[],” which include Critical Care, to petition for their attorneys’ fees. Moreover, the subsequent order required Ilkhan to pay “Plaintiffs’ costs” and “Plaintiffs’ attorneys[’] fees,” which obviously include Critical Care’s costs and fees.

In these circumstances, it is unclear why the order, by its terms, awarded damages only to “Muscolino” and ordered that title be transferred to “Muscolino,” but awarded costs and fees to all of the plaintiffs, including Critical Care, the closely-held corporation that Muscolino indirectly owns and controls. In view of this inconsistency, it is at least conceivable that the court intended the term “Muscolino” to serve as a shorthand reference that would include Critical Care. Because the order is ambiguous in this respect, we shall remand the case to the circuit court for further proceedings, in which the court must clarify the extent of Critical Care’s rights under the judgment.⁸

B. Punitive Damages

Ilkhan argues that the circuit court erred in awarding punitive damages. Because res judicata precludes an award of punitive damages to Muscolino, we address this issue

⁸ Critical Care’s parent company appears to have no right to damages, as the claim against Ilkhan belonged solely to Critical Care. On remand, the circuit court should make it clear that the award of damages does not run in favor of the parent company.

only because of the possibility that the court may clarify its ambiguous judgment to state that Critical Care is entitled to damages.

Ilkhan argues that the court could not award punitive damages because the plaintiffs did not make a specific demand for punitive damages in the complaint and did not request punitive damages until closing argument. Ilkhan further argues that, to be entitled to punitive damages, Muscolino and Critical Care were required to allege and prove actual malice. Because Ilkhan did not raise this argument in the circuit court, it is not preserved for our review. Md. Rule 8-131(a).

C. Attorneys' Fees

Maryland generally adheres to the American rule that each party to a case is responsible for the fees of its own attorneys, regardless of the outcome. *Friolo v. Frankel*, 403 Md. 443, 456 (2008); *see also Montgomery v. Eastern Correctional Inst.*, 377 Md. 615, 637 (2003) (“attorney’s fees are to be borne by the party that incurs them, irrespective of the outcome of the case”). One exception is Md. Rule 1-341(a), which states:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

Although the circuit court did not cite Rule 1-341(a) in the order in which it invited the “Plaintiffs[]” to submit a petition for attorneys’ fees, it is beyond any serious

dispute, from the court’s comments on the record, that it envisioned that rule as the basis for the award of fees and expenses.

Muscolino and Critical Care filed a post-trial petition for fees pursuant to Md. Rule 2-703, which does not apply to a claim for fees and expenses under Rule 1-341(a). *See supra* n.2. Nonetheless, the petition included an affidavit, which expressly follows the dictates of Rule 1-341 by listing:

- (i) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;
- (ii) the amount or rate charged or agreed to in writing by the requesting party and the attorney;
- (iii) the attorney’s customary fee for similar legal services;
- (iv) the customary fee prevailing in the attorney’s legal community for similar legal services;
- (v) the fee customarily charged for similar legal services in the county where the action is pending; and
- (vi) any additional relevant factors that the requesting party wishes to bring to the court’s attention.

The award of attorneys’ fees under Rule 1-341 requires an “explicit finding that a claim or defense was ‘in bad faith or without substantial justification.’” *Zdravkovich v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200, 210 (1991). Furthermore, “[t]he record must reflect that the trial judge made the requisite findings, as well as the basis for those findings.” *Id.* Under Rule 1-341, “bad faith” “means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.” *Inlet Assocs. v.*

Harrison Inn Inlet, Inc., 324 Md. 254, 268 (1991). A claim lacks substantial justification if it is beyond “the realm of legitimate advocacy.” *Id.*

Here, the record reflects that the trial judge made an explicit finding that Ilkhan’s defense was in bad faith, citing Ilkhan’s multitude of lies during each stage of the proceedings. Ilkhan’s behavior led to an unreasonable delay of almost four years, the court found, improperly preventing Muscolino and Critical Care from liquidating the Ferrari.

Despite the finding of bad faith, however, it does not necessarily follow that Ilkhan’s adversaries are entitled to every cost incurred in pursuing the claim. In denying the plaintiffs’ motion for summary judgment, the circuit court recognized that there were disputed questions of fact that required a trial. If the evidence was “sufficiently debatable” to merit the denial of summary judgment (*Needle v. White, Mindel, Clarke and Hill*, 81 Md. App. 463, 479 (1990)), it may have been adequate to justify Ilkhan in defending the case at trial. *Id.* at 478-80.

On the other hand, if the court denied the motion for summary judgment on the basis of evidence that it later found to be false or on the basis of defenses that the court later found to lack substantial justification (because they were based on lies), the court could reasonably conclude that Ilkhan had no right to force his adversaries to trial. In addition, the court could reasonably conclude that Ilkhan had no right to force his adversaries to trial if the court denied the motion for summary judgment on the basis of evidence that had been found to be “not believable” in the first trial. Because we must remand the case for other reasons, we direct the court, on remand, to evaluate the effect,

if any, of the denial of the motion for summary judgment on the entitlement to fees and expenses.

Lastly, Ilkhan argues that the court erred in awarding the attorneys' fees and costs arising out of the first case brought against him by Muscolino. His argument has some merit: Why should Ilkhan have to pay the attorneys' fees that one of his adversaries incurred in a case in which Ilkhan prevailed? And why should Critical Care recover the fees and expenses that Muscolino may have paid in the first action?

The response, however, is that in the first action Ilkhan did not prevail on the substantive issue of whether he had converted the Ferrari; he prevailed only because the first action was not brought by the real party in interest. Moreover, because both actions concerned the same transactions, the fees incurred in the second action were significantly reduced because of the legal work done in preparing the first action.

In our judgment, Ilkhan is correct that Critical Care should not recover any fees and expenses in the first action unless Critical Care actually paid those fees. If, however, Critical Care can show that it paid the fees and expenses (on Muscolino's behalf) in the first action, then it may be entitled to recover them in the second action under Rule 1-341. On remand, the court should inquire into the extent, if any, to which Critical Care paid the fees and expenses in the first action and fashion a remedy accordingly.

CONCLUSION

In summary, we reverse the judgment in favor of Ricardo Muscolino, because he was not entitled to relitigate these claims for relief after the first trial, at which the court found that he did not own the claims and was not the real party in interest. We remand

the case to the circuit court so that it can clarify whether the reference to “Muscolino” in its ambiguous judgment was intended to encompass Critical Care, the entity that owns the claims against Ilkhan. If the court intended the judgment to encompass Critical Care, it should enter a revised money judgment in favor of that entity and should order that title to the Ferrari be transferred to that entity.

We affirm the award of punitive damages, provided that those damages are awarded to Critical Care, the entity that owns the claim and has the right to the damages.

Finally, we remand for reconsideration of the award of costs, expenses, and attorneys’ fees. If the court denied the plaintiffs’ motion of summary judgment in this case because Ilkhan had a bona fide defense, then it should reevaluate whether to award the fees incurred in pursuing the case through trial. If, however, the court denied the motion for summary judgment on the basis of evidence that that court later found to be false (or on the basis of that evidence the court had found to be false in the earlier proceeding), then the court may award costs, expenses, and attorneys’ fees on the ground that Ilkhan defended the case in bad faith or without substantial justification. The court may not award the costs, expenses, and attorneys’ fees incurred in the earlier litigation, in which Ilkhan prevailed, except to the extent that Critical Care establishes that it paid those expenses.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND REVERSED IN PART; CASE
REMANDED FOR THE ENTRY OF AN
ORDER DISMISSING THE CLAIMS OF
RICARDO MUSCOLINO AND FOR
FURTHER PROCEEDINGS CONSISTENT**

**WITH THIS OPINION. COSTS TO BE
EVENLY DIVIDED BETWEEN
APPELLEE AND APPELLANTS.**