UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1887

September Term, 2014

EDWARD G. TINSLEY,
IN HIS CAPACITY AS TRUSTEE OF THE
EDWARD G. TINSLEY LIVING TRUST

v.

SUNTRUST BANK

Kehoe,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: February 18, 2016

*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 Edward G. Tinsley, in his capacity as trustee of the Edward G. Tinsley Trust, appeals from the Order of the Circuit Court for Prince George's County dismissing appellant's amended complaint against appellee SunTrust Bank. Appellant challenged a writ of garnishment granted by the circuit court in his divorce case. The primary question we address in this appeal is whether appellant's claim in the circuit court is barred by the doctrine of *res judicata*. Appellant maintains that because the prior adjudication of the matter of the garnishment was against Edward G. Tinsley in his individual capacity, the court erred in dismissing the claim Edward G. Tinsley brought in his capacity as trustee of the Edward G. Tinsley Trust on *res judicata* grounds.

Appellant raises the following questions for our review:

> "1. Whether the lower Court was legally correct in dismissing the Plaintiff's amended Complaint based on the *res judicata*.
>
> 2. Whether the lower Court was legally correct in granting the Defendant's Motion for Summary Judgment.
>
> 3. Whether SunTrust Bank waived its right to assert the defense of *res judicata*.
>
> 4. Whether the Edward G. Tinsley Living Trust is entitled to prevail on its Motion for Summary Judgment."

We shall hold that the circuit court did not err in dismissing appellant's amended complaint on *res judicata* grounds, and shall affirm.[1]

[1]In light of our holding that the circuit court did not err in dismissing the amended complaint based on the doctrine of *res judicata*, we do not address the other questions raised by appellant.

I.

This case stems from a writ of attachment before judgment and a writ of garnishment that resulted from a divorce action. The validity of the writs was the subject of an appeal in *Edward G. Tinsley v. Michelle Townsend*, Nos. 1483 & 2516, Sept. Term 2012 (filed April 15, 2014). To the extent that circumstances of that case inform the matter on appeal, we included those facts.

According to a marital settlement agreement entered in the divorce action, the marital home of Mr. Tinsley and his ex-wife would be sold with the proceeds of the sale to be distributed equally between the parties. Mr. Tinsley refused to cooperate with the sale. Accordingly, the circuit court appointed a trustee to sell the marital home. After Mr. Tinsley refused to cooperate with the court appointed trustee, the circuit court awarded possession of the marital home to the court appointed trustee and ordered the Sheriff of Prince George's County to evict Mr. Tinsley from the marital home.

Notwithstanding the court's order of August 17, 2009, appellant conveyed the property to The Edward G. Tinsley Living Trust. After initially deterred in evicting Mr. Tinsley, the Sheriff observed Mr. Tinsley exit the marital home, a locksmith changed the locks on the house, and an eviction crew removed property and placed it on the curb in front of the marital home. Shortly thereafter, Mr. Tinsley moved all of the property into the marital home and changed the locks again. In response, the court appointed trustee filed a

Motion for Contempt, Attorney's Fees, Expenses, Possession and Other Relief against Mr. Tinsley. Mr. Tinsley was arrested on three counts of trespassing.

While the Motion for Contempt was pending, and without the knowledge of the court appointed trustee or authorization from the circuit court, Mr. Tinsley secretly sold the marital home for $150,000 and received, after closing costs, the sum of $138,612.98. Mr. Tinsley deposited the $138,612.98 in an account at SunTrust Bank in the name of the Edward G. Tinsley Living Trust.

After learning of the sale, the court appointed trustee filed a Supplemental Motion for Contempt, Attorney's Fees, Expenses, Possession and Other Relief against Mr. Tinsley. The trustee filed an Emergency Motion for Attachment Before Judgment to freeze the funds held by SunTrust Bank pending the court's ruling on the Motion for Contempt. The circuit court granted the trustee's Emergency Motion and ordered the Clerk of the Court to issue a writ "garnishing any and all bank accounts in the name of Edward G. Tinsley, or the Edward G. Tinsley Living Trust, held by SunTrust Bank." The Clerk of the Court issued a writ of garnishment and sent the writ to SunTrust Bank.

Mr. Tinsley filed an objection to the writ of garnishment and filed a motion to vacate the writ of attachment before judgment. Upon receipt of the court's Order and writ of garnishment, SunTrust Bank placed a levy on the account of the Edward G. Tinsley Living Trust pending further order of the circuit court and confirmed to the court that it was holding funds in excess of $138,612.98. The trustee requested that the court enter a judgment in his

favor in the amount of $138,612.98, to enable the trustee to deposit the funds into an appropriate account for later division of the proceeds. The circuit court entered the order and entered a judgment in favor of the trustee and against SunTrust Bank, as garnishee, in the amount of $138,612.98. SunTrust Bank complied and sent all the funds to the trustee.

Mr. Tinsley noted an appeal to this Court, challenging several rulings made by the circuit court, including whether the circuit court erred in issuing a writ of garnishment to SunTrust Bank. This Court dismissed the appeal. *Edward G. Tinsley v. Michelle Townsend*, Nos. 1483 & 2516, Sept. Term 2012 (filed April 15, 2014).

Following dismissal of his appeal, Mr. Tinsley, in his individual capacity, filed a complaint against appellee SunTrust Bank for wrongful honor of the circuit court's writ of garnishment pursuant to § 5-306 of the Financial Institutions Article of the Annotated Code of Maryland. The circuit court dismissed the complaint as improper because Mr. Tinsley brought the suit in his individual capacity, but provided leave to amend. Appellant then filed an amended complaint as Trustee of the Edward C. Tinsley Living Trust, seeking compensatory and punitive damages against appellee. Appellee filed a motion to dismiss the amended complaint, or in the alternative, for summary judgment. The court held that appellant's amended complaint was barred by the doctrine of *res judicata*, and granted the motion to dismiss.

This timely appeal followed.

II.

Appellant argues that the circuit court misapplied the doctrine of *res judicata*. Appellant argues that the parties in the case *sub judice* (Edward G. Tinsley in his capacity as trustee of the Edward G. Tinsley Living Trust and SunTrust Bank), are not the same as those in the divorce action (Edward G. Tinsley in his individual capacity, Michelle Townsend Tinsley, and SunTrust Bank as garnishee), and there is no privity between the ostensibly related parties. Appellant argues that the final judgment entered by the circuit court was binding on Edward G. Tinsley, but not on the Edward G. Tinsley Living Trust. Further, appellant contends that the claim presented in the case *sub judice*, a claim for damages under § 5-306 of the Financial Institutions Article, is not identical to that adjudicated in the divorce action. Appellant agues that any final judgment in the divorce action was not binding on the Edward G. Tinsley Living Trust as the Living Trust was not a party to the divorce action.

Appellee argues that the circuit court determined correctly that appellant's amended complaint was barred and dismissed the amended complaint properly based on *res judicata*. Appellee argues that Mr. Tinsley is sufficiently in privity with the Tinsley Living Trust, and as such, appellant had a chance to challenge the writ of garnishment to SunTrust Bank and, in fact, he moved to vacate the writ of attachment. His challenge failed, the Order of the circuit court was affirmed on appeal, and the case *sub judice* is appellant's third attempt to challenge the writ of garnishment.

III.

Before this Court, appellant attempts to recover the proceeds of the sale of the marital home by attacking the garnishment. This same claim was litigated to a final judgment by the same interested parties in the divorce action; the appeal of that judgment was dismissed by this Court. *Edward G. Tinsley v. Michelle Townsend*, Nos. 1483 & 2416, Sept. Term 2012 (filed April 15, 2014). It is subject to the defense of *res judicata*, the circuit court did not err in dismissing the claim on that basis, and we shall affirm.

We review the grant of a motion to dismiss by the circuit court for legal correctness. *GAB Enters., Inc. v. Rocky Gorge Dev., LLC*, 221 Md. App. 171, 185 (2015). The doctrine of *res judicata* provides an affirmative defense that bars re-litigating matters previously litigated between parties and their privies. *Poteet v. Sauter*, 136 Md. App. 383, 411 (2001); *see also Gertz v. Anne Arundel Cnty*, 339 Md. 261, 269 (1995).

The traditional defense of *res judicata* has three elements: (1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction. *deLeon v. Slear*, 328 Md. 569, 580 (1992). The parties do not dispute that in the divorce action there was a final judgment on the merits.

Appellant asserts that the parties and claims are different in the divorce action and in the instant action. Generally, the "parties" to a suit are those persons or entities entered as

parties of record. In this sense, Mr. Tinsley is not the same "party" as the Tinsley Living Trust. Sameness of parties for purposes of *res judicata*, however, is determined differently, by including all persons who have a direct interest in the subject matter of the suit, and includes those who have a right to control the proceedings, assert defenses, examine witnesses, and appeal. *Poteet*, 136 Md. at 411. If parties are "so far represented by another that their interests receive actual and efficient protection, any judgment recovered therein is conclusive upon them to the same extent as if they had been formal parties." *Ugast v. La Fontaine*, 189 Md. 227, 233 (1947). The Tinsley Living Trust was interested in the adjudication of the divorce action in the same manner as Mr. Tinsley—avoiding garnishment of the proceeds of the sale of the marital home. Mr. Tinsley, who is the settlor, trustee, and beneficiary of the Living Trust, adequately represented the interests of the Living Trust in his failed attempt to vacate the attachment and avoid the garnishment.

The means of identifying the cause of action for purposes of *res judicata* also requires a particular analysis. Appellant notes that the case *sub judice* seeks damages from SunTrust for fulfilling the garnishment under § 5-306 of the Financial Institutions Article, where the order in the divorce action was an adjudication under the Family Law Article, with a writ of attachment before judgment effectuated under Rule 2-115, and a garnishment of property ordered pursuant to Rule 2-645. This difference is not definitive for purposes of a *res judicata* analysis, where instead one claim is deemed to be raised in two actions if the two

actions are factually related, regardless of the variant theories that could be applied to litigate the claim:

> "The present trend is to see claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split."

Richman v. FWB Bank, 122 Md. App. 110, 150-51 (1998) (quoting *Kent Cty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 497-98 (1987)). As the factual predicate for the case *sub judice* flows from the divorce action, and the overall goal of the claim presented here and that litigated previously to completion, are the same—for Mr. Tinsley to keep the proceeds of the sale of the marital home—these two actions are but one claim. This second action is barred by *res judicata*. The circuit court did not err in so ruling.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.