Circuit Court for Allegany County
Case No. C-01-CV-18-000276

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2971

September Term, 2018

NELSON ELICK

v.

KEEFE COMMISSARY NETWORK, LLC

Fader, C.J.,
Nazarian,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: June 23, 2020

The appellant, Nelson Elick, filed a complaint in the Circuit Court for Allegany County against the appellee, Keefe Commissary Network, LLC, asserting claims related to the alleged mislabeling of a non-kosher food item as kosher on a commissary menu. Mr. Elick appeals the circuit court's ruling that granted Keefe's motion to dismiss the complaint based on the doctrine of collateral estoppel. We conclude that the circuit court erred in determining that collateral estoppel barred the complaint. Accordingly, we will reverse the judgment and remand for further proceedings.

BACKGROUND

Mr. Elick is an inmate at Western Correctional Institution in Cumberland. Keefe is a private company that provides commissary goods to the Department of Public Safety and Correctional Services (the "Department"), some of which are made available for purchase to inmates across the State. The products available for sale are listed on the "Maryland DPSCS State Wide General Population Menu." Among other notations for dietary needs, the menu denotes which commissary foods are kosher by marking those items with a "K."[1]

Mr. Elick, who identifies as "an observant Orthodox Jew," participates in a Religious Diet Program offered by the Department. To remain in the program, Mr. Elick may not "purchase[] or . . . eat[] food items from the Commissary inconsistent with [kosher] dietary requirements."

[1] The term "kosher" is a Hebrew word that does not have a direct English equivalent, but "[p]erhaps the nearest English word is 'fit' in the sense of proper or suitable." Gerald F. Masoudi, *Kosher Food Regulation and the Religion Clauses of the First Amendment*, 60 U. Chi. L. Rev. 667, 667 (1993). Jewish dietary laws, which "derive[] from general rules and enumerations of fit and unfit foods in the Bible[,]" *id.* at 668, "dictate what foods are kosher, or fit for consumption," *id.* at 667.

The Baltimore City District Court Action

On October 19, 2017, Mr. Elick filed a pro se complaint in the District Court of Maryland for Baltimore City. The complaint alleged that:

- On July 18, 2017, Mr. Elick bought a bag of chili cheese Fritos "which was listed and identified as a (K) Kosher commissary purchase item" on the menu.
- On July 25, 2017, Mr. Elick purchased a bag of Cheetos "which was listed and identified as a (K) Kosher Commissary Purchase item" on the menu.
- On August 2, 2017, Mr. Elick received a warning from his rabbi that he had violated his Religious Diet Agreement by purchasing the Fritos and Cheetos.

Mr. Elick further alleged that when he purchased those two food items, he "was under the impression and made to believe that" they were "Kosher Dietary Items being offered by Keefe." He claimed that Keefe's actions violated state consumer protection laws, several federal laws, and the Maryland and federal constitutions. Mr. Elick sought $2,000 "for the breach of [his] religious Diet purchases" and $3,000 in punitive damages.

On January 26, 2018, Mr. Elick tried his case before the District Court, which entered a judgment in favor of Keefe at the conclusion of the trial. The judgment states, in full:

> On January 26, 2018 the District Court of Maryland entered a judgment in favor of [Keefe] in the following amounts:
>
> | | | |
> |---|---|---|
> | $ | .00 | Judgment Principal |
> | $ | .00 | Pre-Judgment Interest |
> | $ | .00 | Costs |
> | $ | .00 | Other Amounts |
> | $ | .00 | Attorney's Fees |

The record does not contain a transcript of the proceedings.

On February 13, Mr. Elick sought a waiver of fees in the District Court to pursue an appeal to the Circuit Court for Baltimore City. According to the docket, the District Court denied his request based on his "fail[ure] to file appropriate form & documentation." Mr. Elick did not pursue the appeal further.[2]

The Allegany County Circuit Court Action

On June 7, 2018, Mr. Elick filed a pro se complaint against Keefe in the Circuit Court for Allegany County. As pertinent to this appeal, the complaint alleges:

- On September 12, 2017, Mr. Elick "purchased . . . Brushy Creek Cajun Rice with Chicken and Sausage marked with a (K) for Kosher . . . from Keefe Commissary and Maryland DPSCS's [menu]."

- On September 25, 2017, Mr. Elick "purchased . . . Brushy Creek Cajun Rice with Chicken and Sausage marked with a (K) for Kosher . . . from Keefe Commissary and Maryland DPSCS's [menu]."

- On October 25, 2017, Mr. Elick "was eating a package of purchased Brushy Creek Cajun Rice with Chicken and Sausage . . . when a friend . . . asked if [he] was eating '<u>pork</u>.'" [Mr. Elick] looked at the package . . . and identified it as having pork and pork renderings."

Mr. Elick claimed violations of the Maryland and federal constitutions; violations of consumer protection laws; gross negligence; actual malice; and intentional infliction of emotional distress. With respect to his consumer protection claims, he asserted that Keefe had engaged in deceptive practices "by failing to state the material fact that Brushy Creek

[2] Approximately one month after the District Court judgment, Mr. Elick petitioned for a fee waiver in the Circuit Court for Baltimore City to file a complaint in that court. The circuit court denied the petition based on its assessment that the complaint "appear[ed], on its face, to be frivolous." Although Keefe asserts in its brief that the complaint Mr. Elick attempted to file in Baltimore City is identical to the one he eventually filed in Allegany County, it is not included in the record and, therefore, we do not consider it.

Cajun Rice with Chicken and Sausage is not Kosher, however labeled such item on [its] list approved by [the Department] as Kosher." He also asserted that Keefe deceptively "advertis[ed] food that is non-Kosher to the Public," and that Keefe was "deliberate in [its] intent" to mislabel the product. Mr. Elick sought damages of $1,000,000 and, among other relief, punitive damages.

Keefe filed a motion to dismiss the complaint or, in the alternative, for summary judgment. In arguing that Mr. Elick's action should be dismissed, Keefe relied on the doctrine of collateral estoppel. Specifically, Keefe asserted that the issue before the circuit court—which Keefe characterized as whether it was liable for "a typographical error on the DPSCS menu"—had already been decided against Mr. Elick in the District Court action. In opposing the motion, Mr. Elick argued that collateral estoppel was inapplicable because "the allegations and products are completely different" in the two actions.

After a hearing, the circuit court ruled that Mr. Elick's complaint was barred by collateral estoppel and, on that ground, granted the motion to dismiss. This appeal followed.

DISCUSSION

We review the grant of a motion to dismiss without deference. *Unger v. Berger*, 214 Md. App. 426, 432 (2013). "[W]e must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Adamson v. Corr. Med. Servs.*, 359 Md. 238, 246 (2000). "[B]ecause

we must deem the facts to be true, our task is confined to determining whether the trial court was legally correct in its decision to dismiss." *Id.*

THE CIRCUIT COURT ERRED IN GRANTING THE MOTION TO DISMISS THE COMPLAINT ON THE GROUND OF COLLATERAL ESTOPPEL.

Mr. Elick's sole contention on appeal is that circuit court erred when it granted Keefe's motion to dismiss based on the doctrine of collateral estoppel. In response, Keefe contends that the court correctly ruled that collateral estoppel precluded the complaint because "the sole issue in both cases was whether [Keefe] could be civilly liable for typographical errors made on the DPSCS Menu," an issue that had been "fully and fairly decided" by the District Court. We hold that the doctrine of collateral estoppel does not preclude Mr. Elick's complaint.

Collateral estoppel, also known as issue preclusion, "is premised on the notion that a judgment in a prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action." *Thacker v. City of Hyattsville*, 135 Md. App. 268, 288 (2000) (internal quotation marks omitted) (quoting *Fullerton Aircraft Sales & Rentals v. Beech Aircraft Corp.*, 842 F.2d 717, 720 (4th Cir. 1988)). Under the doctrine, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 626 (2017) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 387 (2000)); *see also Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (collateral estoppel applies "even if the issue recurs in the context of a different claim").

Collateral estoppel bars a party from litigating only the specific issues that were actually decided in the prior action. For collateral estoppel to apply, the following four prongs must be satisfied:

> 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
>
> 2. Was there a final judgment on the merits?
>
> 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
>
> 4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Colandrea, 361 Md. at 391 (quoting *Wash. Suburban Sanitary Comm'n v. TKU Assocs.*, 281 Md. 1, 18-19 (1977)).

Here, the second and third prongs are met because (1) the District Court issued a final judgment on the merits, and (2) Mr. Elick was a party to the District Court action. Because Mr. Elick does not argue that he was not given a fair opportunity to be heard in the District Court action, we will also assume for purposes of our analysis that the District Court trial satisfied the fourth prong for application of collateral estoppel.

Keefe has not demonstrated, however, that the first prong of the collateral estoppel test is satisfied, for the simple reason that we have no idea on what basis the District Court ruled. In applying the first prong, we must examine "the probable fact-finding that undergirds the judgment used to estop . . . to determine if the issues raised in that proceeding were actually litigated, or facts necessary to resolve the pertinent issues were adjudicated in that action." *Colandrea*, 361 Md. at 391-92. Keefe asserts that the District Court decided that Keefe can have no responsibility for "a typographical error" on the

Department's menu. Perhaps that is true, but we have no way of ascertaining it from the record. In the absence of a transcript of the District Court proceeding or an explanation of the basis for the District Court's judgment, we can draw no non-speculative conclusions regarding what issues were actually litigated or decided beyond the specific incidents and products that were at issue in that action. Collateral estoppel is, therefore, inapplicable.[3]

We hold that the circuit court erred in dismissing the complaint based on collateral estoppel. Because that is the sole issue that the parties briefed and argued before us, we do not opine on the availability or merits of any other defense Keefe may have to Mr. Elick's complaint. We will, therefore, reverse the order granting the motion to dismiss the complaint and remand the action for further proceedings in the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY REVERSED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY THE APPELLEE.

[3] We find unpersuasive Keefe's contention that, if collateral estoppel does not apply here, Keefe will be forced to perpetually relitigate its responsibility for typographical errors on the Department's menu. The problem with that argument is that Keefe has not established that it actually litigated *that* issue to resolution in the District Court action. If it had, the result today may have been quite different.