

Circuit Court for Baltimore City
Case No. 24-C-18-004753

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3486

September Term, 2018

RODNEY GEORGE LIVING TRUST, ET AL.

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, ET
AL.

Kehoe,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: March 20, 2020

*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.

The Mayor and City Council of Baltimore (the “City”) petitioned the District Court of Maryland for Baltimore City to appoint a receiver to sell a dilapidated property owned by The Rodney George Living Trust and the Tiffany George Living Trust (the “Trusts”), after the Trusts failed to correct notices of building code violations issued by the City. The district court appointed a receiver and later authorized the sale of the property. After the receiver sold the property, the Trusts filed exceptions to the receiver’s report of sale, claiming that the City discriminated against them in the receivership process. The district court rejected the exceptions and ratified the sale. The Circuit Court for Baltimore City affirmed the district court’s decision on appeal.

During the receivership process, the Trusts filed a separate action in the circuit court, alleging that the City’s discriminatory conduct constituted an inverse condemnation of the property. After the district court had rejected the exceptions to the sale in the receivership action, the City moved to dismiss the inverse condemnation action. The circuit court ruled that the inverse condemnation claim was barred by the doctrine of res judicata and dismissed the action with prejudice.

The Trusts appealed the dismissal. We affirm the decision on the merits, but vacate the judgment with directions to enter a declaratory judgment in accordance with the court’s ruling.

FACTUAL AND PROCEDURAL HISTORY

The Trusts owned a property on West Baltimore Street in Baltimore City. On July 17, 2014, the City, acting through the Baltimore City Department of Housing and Community Development, issued a building code violation notice to the Trusts. The

notice stated that the property was a “vacant structure” under § 116.4 of the Building, Fire, and Related Codes of Baltimore City (the “BFR Codes”)¹ and ordered the Trusts to rehabilitate the property.²

On March 24, 2016, the City filed a vacant building receivership action against the Trusts in the District Court for Baltimore City under § 121 of the BFR Codes, because the Trusts had failed to rehabilitate the property.³ On August 24, 2016, the Trusts and the City entered into a consent order before the district court. The consent order permitted a court-appointed receiver to sell the property, but stayed the sale until June 28, 2017, to allow the Trusts an opportunity to rehabilitate the property under specific deadlines and maintain ownership.⁴

By December 21, 2016, the Trusts had failed to meet the consent order’s deadlines, and the parties amended the order to extend the deadline for completing the

¹ Section 116.4 defines a “vacant structure” as “an unoccupied structure that is: 1. unsafe or unfit for human habitation or other authorized use, or 2. a nuisance property.” BFR Codes § 116.4.1.2 (2015).

² Under § 116.5, “a structure found to be unsafe or unfit for human habitation or other authorized use must be rehabilitated.” BFR Codes § 116.5.

³ Under § 121, the City “may petition the court for appointment of a receiver to rehabilitate a vacant property, to demolish it, or to sell it to a qualified buyer.” BFR Codes § 121.2.

⁴ Instead of appointing a receiver to sell the property, the Code allows the court to permit a property owner “to rehabilitate or demolish it, if that person: 1. demonstrates ability to complete the rehabilitation or demolition within a reasonable time, 2. agrees to comply with a specified schedule for rehabilitation or demolition, and 3. posts bond, in an amount determined by the court, as security for performance of the required work in compliance with the specified schedule.” BFR Codes § 121.7.

rehabilitation to October 18, 2017. The court granted another extension to January 31, 2018, after the Trusts failed to meet the amended consent order’s deadline. After the Trusts had failed to meet the deadline for the third time, the City petitioned the court to remove the stay and to permit the receiver to sell the property.

On April 4, 2018, the district court removed the stay and authorized the receiver to sell the property to a qualified buyer.⁵ The receiver sold the property at an auction on August 21, 2018, and subsequently filed a report of sale with the district court.

The Trusts appealed the district court’s removal of the stay to the Circuit Court for Baltimore City. The Trusts argued that they had already performed substantial repairs on the property and that the City was using the receivership process to steer the “property to the owner of the adjacent burned out properties.” On December 18, 2018, the circuit court held that there was “sufficient evidence presented at trial to demonstrate” that the Trusts did not rehabilitate the property with due diligence. Consequently, the court affirmed the district court’s decision to remove the stay.

On October 18, 2018, while the appeal of the decision to remove the stay was pending in the circuit court, the Trusts filed exceptions to the report of sale.⁶ In the

⁵ At the hearing on the matter, the court acknowledged the “significant steps” the Trusts made toward rehabilitating the property, but found that “all of the significant steps came at least a year into the entire process” and were therefore “too late.”

⁶ A property owner may file exceptions to the receivership sale that allege particular irregularities with the sale process. Md. Rule 14-305(d)(1). After a hearing on the exceptions, the court must ratify the sale if (1) it overrules the exceptions filed by the property owner and (2) “the court is satisfied that the sale was fairly and properly made.” Md. Rule 14-305(e).

exceptions, the Trusts claimed that the City treated the Trusts less favorably than the owners of the neighboring properties that were also subject to receivership proceedings and that “the City ha[d] used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to” the buyer. Finding that “the sale was fairly and properly made,” the court overruled the Trusts’ exceptions and ratified the sale on November 9, 2018.

The Trusts appealed the ratification to the circuit court, arguing that the exceptions should have been sustained. After a hearing on April 22, 2019, the circuit court affirmed the district court’s decision.

In the meantime, on August 17, 2018, four days before the auction was scheduled to occur, the Trusts commenced the present case by filing a complaint against the City and the receiver in the circuit court. In brief, the complaint alleged that the receivership process amounted to an inverse condemnation.⁷ In addition to an award of damages, the Trusts asked for an order quieting title to the property and a declaration that the receivership action was “unlawful and unconstitutional” because it took the Trusts’ property without just compensation and was “not for the public good.”

⁷ Inverse condemnation is ““a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency.”” *United States v. Clarke*, 445 U.S. 253, 257 (1980) (emphasis removed) (quoting Donald G. Hagman, *Urban Planning and Land Development Control Law* 328 (1971)); accord *Litz v. Maryland Dep’t of Env’t*, 434 Md. 623, 652-53 (2013); *College Bowl, Inc. v. Mayor & City Council of Baltimore*, 394 Md. 482, 489 (2006).

On November 26, 2018, after the district court had overruled the Trusts’ exceptions to the sale, the City moved to dismiss the circuit court complaint on several grounds. Among other things, the City argued that the Trusts’ inverse condemnation claims had already been litigated in the district court receivership action and that, under the doctrine of *res judicata*, the parties were barred from relitigating the matter in a separate action.⁸

At a hearing on the motion, the circuit court held that the action was an “inappropriate separate litigation” because the claims raised in the action had already been raised or were “capable of being raised” in the receivership proceedings. The court, therefore, granted the motion to dismiss. Although the Trusts had requested a declaratory judgment, the court did not enter a separate order in which it declared the parties’ rights.

The Trusts noted their timely appeal thereafter.

QUESTION PRESENTED

The Trusts present one question for our review, which we rephrase for brevity:

Did the circuit court err in holding that the inverse condemnation claim was barred under

⁸ The City also argued that the Trusts’ complaint was an improper attempt to appeal the decisions of the trial courts and that inverse condemnation does not occur when the government acts under its police power to remedy a public nuisance and provides the property owner due process of law. Although the City mentioned collateral estoppel, it did not argue that the district court had decided the issue of whether the City had acted in an unlawful or discriminatory fashion and thus that the Trusts’ claims were barred by collateral estoppel. In granting the motion to dismiss, the circuit court relied solely on the doctrine of *res judicata*.

the doctrine of res judicata?⁹

For the reasons stated herein, we answer this question in the negative.

STANDARD OF REVIEW

A grant of a motion to dismiss is reviewed to determine whether the trial court was legally correct. *Sprenger v. Pub. Serv. Comm’n*, 400 Md. 1, 21 (2007). In reviewing the trial court’s decision, this Court “accept[s] all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.” *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004). The “universe of ‘facts’ pertinent to the court’s analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *RRC Ne., LLC v. BAA Maryland Inc.*, 413 Md. 638, 643 (2010) (citing *Converge Servs. Grp. v. Curran*, 383 Md. at 475). An appellate court will affirm the dismissal “only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Pendleton v. State*, 398 Md. 447, 459 (2007).

DISCUSSION

The Trusts contest the circuit court’s decision to dismiss their inverse condemnation claim under the doctrine of res judicata. Res judicata, otherwise known as claim preclusion, “restrains a party from litigating the same claim repeatedly and ensures

⁹ The Trusts formulated their question as follows: “Did the Circuit Court err in holding that the inverse condemnation claim, based on the City [sic] improper use of the Receivership Process to force the sale of Appellants’ property to the owner of multiple vacant properties on the same block, was barred under the doctrine of res judicata?” The Trusts’ brief says nothing about the dismissal of the claim to quiet title or the request for a declaratory judgment.

that courts do not waste time adjudicating matters which have been decided or could have been decided fully and fairly.” *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005) (emphasis removed). The 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.” *Id.* (quoting *Murray Int’l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)). For the doctrine to apply:

(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.

FWB Bank v. Richman, 354 Md. 472, 492 (1999) (quoting *deLeon v. Slear*, 328 Md. 569, 580 (1992)).

In short, “[i]f a final judgment exists as to a controversy between parties, those parties and their privies are barred from relitigating any claim upon which the judgment is based.” *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. at 108.

The City and the Trusts are parties to this litigation and the receivership action, and the district court entered a final judgment in the receivership matter by ratifying the sale. Therefore, the first and third elements of res judicata are not in dispute. The dispute relates solely to whether the Trusts have presented the same “claim” in both the present litigation and the receivership action.

Res judicata serves as a bar not only as to the matters that were decided in the first action but also as to “matters that could have been litigated in the original suit.”

Colandrea v. Wilde Lake Cmty. Ass’n, Inc., 361 Md. 371, 392 (2000) (emphasis removed); *accord Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. at 111 (“[o]nce a set of facts has been litigated, res judicata generally prevents the application of a different legal theory to that same set of facts, assuming that ‘the second theory of liability existed when the first action was litigated[.]’”) (quoting *Gertz v. Anne Arundel Cty.*, 339 Md. 261, 270 (1995)); *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 696 (2015) (“a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit[.]”).

Maryland courts employ a “transactional approach” to determine whether claims are the same for the purposes of res judicata. *Bank of New York Mellon v. Georg*, 456 Md. 616, 669 (2017) (quoting *FWB Bank v. Richman*, 354 Md. at 493). Under this approach, a party ordinarily is precluded from bringing claims in a subsequent action if they arose out of a transaction involved in the prior litigation. *See Higgins v. Barnes*, 310 Md. 532, 549 (1987). A “claim” includes all rights of a party to remedies against the opposing party arising out of the transaction. *Boyd v. Bowen*, 145 Md. App. 635, 656 (2002). In defining the transaction, courts consider “whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” *Kent Cty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 498 (1987) (quoting Restatement (Second) of Judgments § 24 (1982)). This “‘pragmatic’ test ‘defies any

attempt of abstract definition which could be applied to all cases.’” *Id.* at 499 (quoting Ernst Schopflocher, *What Is a Single Cause of Action for the Purpose of the Doctrine of Res Judicata?*, 21 Or. L. Rev. 319, 324 (1942)).

The Trusts’ arguments in the present action are identical to their arguments that were overruled in the receivership action. Here, the Trusts claim that there was a “stark contrast” between how the City treated the Trusts and the neighboring property owners in their receivership proceedings and that “the City ha[d] used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to” the buyer. In the exceptions to the report of sale, the Trusts also claimed that the City treated them differently from the buyer in the receivership process and that “the City ha[d] used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to” the buyer. The district court, however, rejected that argument by overruling the exceptions. The claims in both actions are grounded on the same allegation: that the City unlawfully discriminated against the Trusts during the receivership process to benefit the owner of the neighboring properties. Because the arguments concern the same allegedly unlawful conduct, the claims in the inverse condemnation action arise from the same transaction as those in the receivership action.

The Trusts argue that they could not have contested the City’s conduct in the receivership action because, they say, they could not have known of the City’s discriminatory conduct until after the auction, in August 2018.¹⁰ The Trusts allege that

¹⁰ “[A]n action for inverse condemnation accrues when . . . ‘all of its elements have occurred’ *and* [when] ‘the plaintiff knows, or, through the exercise of due diligence,

the sale prompted them to investigate the City’s receivership action against the buyer for its neighboring vacant properties. Based on their investigation, the Trusts claim to have discovered that the City stayed the buyer’s receivership for more than two years without any rehabilitative improvements being made to its properties, while the City aggressively sought to dissolve the stay on the Trusts’ receivership, despite the Trusts’ alleged efforts to comply with the City’s requests.

The City points out, however, that the Trusts filed their inverse condemnation action four days before the receiver sold the property at auction. The City’s observation refutes the Trusts’ assertion that they could not have known of the City’s allegedly discriminatory conduct until after the auction had occurred. Not only did the Trusts know of the alleged misconduct before the auction occurred, but they used the alleged misconduct as the basis for this very action.

Furthermore, after the auction, the Trusts took the opportunity to contest the City’s actions in the receivership process, because the district court still had to consider the Trusts’ exceptions and decide whether to ratify the sale. The Trusts used this opportunity to claim in their exceptions that the City had treated the Trusts unfairly in the receivership process and that “the City ha[d] used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to” the buyer. It would

should have known that they have occurred.” *Litz v. Maryland Dep’t of Env’t*, 434 Md. 623, 652 (2013) (quoting *Millison v. Wilzack*, 77 Md. App. 676, 685 (1989)).

appear, therefore, that the rejection of the claims in the receivership action precludes the Trusts from reasserting those claims in this action.¹¹

The Trusts argue that because the Maryland counterclaim rule, Md. Rule 2-331,¹² is permissive and does not require a defendant to assert a counterclaim in an action, they were not obligated to bring the inverse condemnation claim in the receivership proceedings. The Trusts cite *McKlveen v. Monika Courts Condominium*, 208 Md. App. 369 (2012), in support of their argument.

In *McKlveen*, this Court held that res judicata would not preclude a condominium unit owner from filing a separate action instead of a counterclaim for unlawful debt collection against a condominium after the condominium had filed a complaint against the unit owner for unpaid assessments. *McKlveen v. Monika Courts Condo.*, 208 Md. App. at 382. Because the unit owner “did not use her [claims] to [challenge] the existence of the debt,” but rather the manner in which the condominium collected the debt, a “court decision about the existence of the debt would not preclude a later circuit

¹¹ When the circuit court dismissed the complaint in this case, the court had not yet ruled on the Trusts’ appeal from the district court decision that rejected their exceptions to the auction sale. “[T]he pendency of an appeal,” however, does “not suspend the operation of a judgment for purposes of res judicata,” for “to strip a judgment of its preclusive effect merely because an appeal is pending . . . undermines the very purpose of the doctrine.” *Campbell v. Lake Hallowell Homeowners Ass’n*, 157 Md. App. 504, 524 (2004).

¹² Md. Rule 2-331(a) states, in part: “A party *may* assert as a counterclaim any claim that party has against any opposing party, whether or not arising out of the transaction or occurrence that is the subject matter of the opposing party’s claim.” (Emphasis added.)

court challenge by [the unit owner] over the methods [the condominium] used to collect the debt.” *Id.* at 382-83.

The Trusts are correct that counterclaims in Maryland are generally not compulsory. *Rowland v. Harrison*, 320 Md. 223, 233 (1990). Nonetheless, Maryland’s “broad definition of res judicata will, in many cases, have” the effect of precluding a party from asserting a previously unasserted claim in a new civil action. *See id.* (quoting *Higgins v. Barnes*, 310 Md. at 549).

In *Rowland v. Harrison*, 320 Md. at 232-35, the Court of Appeals endorsed the view taken in section 22 of the Restatement (Second) of Judgments (1982). In general, under subsection (1) and subsection (2)(a) of section 22, if a party may assert a permissive counterclaim, but fails to do so, he or she is not precluded from asserting the claim in a separate action. Under section 22(2)(b), however, a party who failed to interpose a permissive counterclaim is barred from raising the claim in a subsequent action if “[t]he relationship between the counterclaim and the plaintiff’s claim is such that successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action.”

“[G]iven the permissive nature of [Maryland’s] counterclaim rule and the position taken by the Restatement,” the *Rowland* Court held that “where the same facts may be asserted as either a defense or a counterclaim, and the issue raised by the defense is not litigated and determined so as to be precluded by collateral estoppel, the defendant in the previous action is not barred by res judicata from subsequently maintaining an action on the counterclaim[,]” unless a successful prosecution of the second action “would nullify

the initial judgment or would impair rights established in the initial judgment.” *Rowland v. Harrison*, 320 Md. at 235-36 (footnotes and quotation marks omitted); *see also McKlveen v. Monica Courts Condo.*, 208 Md. App. at 382 n.17 (stating that a counterclaim “must be filed in response to a complaint” if the counterclaim is “so interrelated with the claim that successful prosecution of a second action would nullify a first action”).

The *Rowland* Court went on to explain:

Comment *f* addresses § 22(2)(b) and explains that despite the permissive nature of the general rule “[t]here are occasions when allowance of a subsequent action would so plainly operate to undermine the initial judgment that the principle of finality requires preclusion of such an action.” The Comment warns, however, that for Subsection (2)(b) to apply “it is not sufficient that the counterclaim grow out of the same transaction or occurrence as the plaintiff’s claim, nor is it sufficient that the facts constituting a defense also form the basis of the counterclaim. The counterclaim must be such that its successful prosecution would nullify the judgment[.]”

Rowland v. Harrison, 320 Md. at 236 (quoting Restatement (Second) of Judgments, *supra*, § 22 cmt. f).

The Court added that “Comment *f* gives examples of subsequent judgments which would nullify previous judgments such as ‘allowing the defendant to enjoin enforcement of the [previous] judgment, or to recover on a restitution theory the amount paid pursuant to the judgment (see Illustration 9), or by depriving the plaintiff in the first action of property rights vested in him under the first judgment (see Illustration 10).’” *Rowland v. Harrison*, 320 Md. at 237.

In this case, if the Trusts were to prevail on an inverse condemnation claim (and on their related claim to quiet title in their own names), it would nullify the earlier judgment, in which the district court approved the sale of the Trusts' property to a third party. Here, the purported discriminatory treatment of the Trusts in the receivership process, which is the factual basis of the Trusts' inverse condemnation claim, was already litigated in the receivership action. In the receivership action, the Trusts argued that "the City has used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to" the buyer, but the district court rejected that argument by overruling the exceptions. In the present action, if the circuit court agreed with the Trusts that "the City ha[d] used the [process] in an unlawful and unconstitutional manner to force the sale of the subject property to" the buyer, the ruling would "nullify" the court's conclusion in the prior action that "the sale was fairly and properly made" and the decision to overrule the Trusts' exceptions. It would also impair the rights established in the final judgment that vested title to the Trusts' property in the buyer's name. The doctrine of res judicata, therefore, bars the Trusts' inverse condemnation claim.¹³

Although the circuit court correctly dismissed the inverse condemnation claim, the court erred in dismissing the Trusts' declaratory judgment claims and not declaring the parties' rights. "[D]ismissal is rarely appropriate in a declaratory judgment action." *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 17 (2017) (quoting *Christ by Christ v. Md. Dep't of Nat. Res.*, 335 Md. 427, 435 (1994)). If an action for declaratory judgment is

¹³ The Trusts do not argue that the district court did not or could not evaluate their claims of discriminatory treatment in deciding their exceptions to the sale.

appropriately brought, the court must enter a judgment “defining the rights and obligations of the parties or the status of the thing in controversy” in a separate writing, “even if the action is not decided in favor of the party seeking the declaratory judgment.” *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009).

A court may dismiss a declaratory judgment claim only if the parties seeking judgment have no right to a declaration of their rights. *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 556 (1999). For example, a court may dismiss a request for declaratory relief if no justiciable controversy exists (*Broadwater v. State*, 303 Md. 461, 467 (1985)), the plaintiffs have failed to join a necessary party (*id.* at 469), or the plaintiffs lack standing (*Christ by Christ v. Md. Dep’t of Nat. Res.*, 335 Md. at 435). A court is not allowed to dismiss a declaratory judgment claim because the action is barred by res judicata.

The failure to enter a declaratory judgment, however, is not a jurisdictional error and does not hinder our ability to reach the merits of this case. *Bowen v. City of Annapolis*, 402 Md. 587, 609 (2007). Therefore, while we affirm the circuit court’s ruling that the Trusts’ complaint was barred by res judicata, we shall remand the case for the entry of a declaratory judgment consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED IN
PART AND VACATED IN PART. CASE
REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE CITY FOR THE
PURPOSE OF ENTERING A
DECLARATORY JUDGMENT
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLANTS.**