

Circuit Court for Montgomery County
Case No. 484200V

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 19

September Term, 2022

MONTGOMERY MALL CONDO, LLC

v.

PEKING PALACE CORP., ET AL.

Berger,
Friedman,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: April 3, 2023

*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. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Peking Palace planned to build and operate a restaurant in the Westfield Mall in Bethesda. It entered into a lease agreement. Under the terms of the lease, Peking Palace would be responsible for constructing the restaurant premises. The rent was computed based on property taxes, utilities, and a percentage of the restaurant's sales. The parties agreed that Peking Palace would open the restaurant and begin paying rent on September 1, 2020. Peking Palace also agreed to pay as "additional rent" a late opening fee in the event it did not open the restaurant as promised. The parties signed the lease on January 28, 2020. Qin Liu, the President of Peking Palace, signed the lease on its behalf. Liu also signed a personal guaranty of Peking Palace's rental obligations. Pursuant to the terms of the guaranty, Liu agreed to pay the rent if Peking Palace failed to pay. The guaranty was capped at one year's rent plus the landlord's cost of enforcement.

Six weeks after the parties signed the lease agreement, the COVID-19 pandemic hit. By September 1, 2020, the date that the parties had agreed Peking Palace would open the restaurant, it had not even begun construction. In October 2020, the landlord sent a written demand for rent payment to both Peking Palace as tenant and Liu as guarantor. And on December 1, 2020, the landlord instituted suit in the Circuit Court for Montgomery County against Peking Palace for breach of lease (count 1) and against Liu for breach of guaranty (count 2). While the claims were still pending in the circuit court, the landlord filed an action against Peking Palace for summary ejectment in the district court. The district court found Peking Palace liable for eight months of rent, late fees, and attorneys' fees for a total judgment of \$159,640.00. Peking Palace did not appeal from the district court's judgment.

Back in circuit court, the landlord argued that the district court judgment against Peking Palace conclusively established both the fact of its breach of lease and the amount of the damages. Thus, the landlord argued, the only thing remaining for the circuit court to do was find Liu in breach of the guaranty and enter judgment against him in the same amount as the district court’s judgment against Peking Palace. The circuit court refused, however, because it found that the COVID-19 pandemic had caused a frustration of purpose and excused Liu’s obligation to pay on the guaranty except for the rent due “from November 17, 2020 until March 25, 2021.” The circuit court entered judgment against Liu for rent for that time period only, which it computed as \$60,131.24.

The landlord noted this timely appeal, challenging the circuit court’s finding of liability and the amount.

ANALYSIS

The Appellate Court of Maryland does not review judgments of the District Court of Maryland and we won’t here. We review the case’s history in that court only to understand the situation that confronted the circuit court in the subsequent trial.

In the district court, the sole cause of action was against Peking Palace for failure to pay rent. Peking Palace could have, but failed to, successfully defend this claim at the district court trial.¹ Most importantly, it could have raised the defense of commercial

¹ The parties did not provide a transcript of the district court proceedings. Liu stated in circuit court, however, that in the district court Peking Palace raised all of the issues raised in the circuit court, presumably including the defense of commercial frustration of purpose.

frustration of purpose. Of course, Liu, in his individual capacity, was not a defendant in the district court suit (he is, after all, not the tenant) and the guaranty was not at issue. The damages awarded in the case reimbursed the landlord for the unpaid rent (plus fees and expenses). Most critically, Peking Palace did not appeal from the district court judgment.

Thus, when the case came on for trial, there were three questions for the circuit court to decide: (1) whether and to what extent the district court's judgment precluded it from deciding count 1, the count against Peking Palace for breach of the lease; (2) whether and to what extent the district court's judgment bound it in deciding count 2, the complaint against Liu for breach of guaranty; and (3) after answering questions 1 and 2, whether Liu had any viable defenses to the breach of guaranty claim. We will review the circuit court's decisions in this order.

I. THE EFFECT OF THE DISTRICT COURT CASE ON COUNT 1 OF THE CIRCUIT COURT CASE

As noted above, the first question that confronted the circuit court was whether and to what extent the district court judgment bound the circuit court on count 1, the breach of lease count against Peking Palace. The formal term for this is *res judicata*, or claim preclusion. The doctrine of *res judicata* precludes the re-litigation of a suit if three elements are met: (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action. *Powell v. Breslin*, 430 Md. 52, 63-64 (2013). When these three elements are present,

“the first claim is merged into the judgment and bars the second claim.” *Boyd v. Bowen*, 145 Md. App. 635, 655 (2002).

Here, all three elements are satisfied. *First*, the parties in each action are identical. Peking Palace was the defendant in the district court and is the sole defendant in count 1 in the circuit court. *Second*, the claim in the current action is identical to the one determined in the prior adjudication, i.e., the breach of the obligation to pay rent.² *Third*, there was a final judgment on the merits in the district court action. The effect of the district court judgment on count 1 of the circuit court case, therefore, was to extinguish the claim and to preclude the circuit court from deciding count 1.

II. THE EFFECT OF THE DISTRICT COURT CASE ON COUNT 2 OF THE CIRCUIT COURT CASE

The second question that confronted the circuit court was whether and to what extent the district court’s judgment bound it in deciding count 2, the count against Liu for breach of guaranty. To succeed on its breach of guaranty claim, like a breach of contract claim,

² We have reviewed landlord’s complaint in the district court to assure ourselves that this is true. Although Montgomery Mall alleged \$46,000 in general damages in count 1 of its circuit court complaint, its calculation of these damages was based solely on additional rent to be paid in the event that Peking Palace failed to open the restaurant by the agreed-upon date, at a rate of \$500.00 per day multiplied by 92 days. For commercial leases, the parties’ intention determines what constitutes “rent,” provided that the charges are definitely ascertainable, paid by the tenant, and go to the tenant’s use, possession, and enjoyment. *Shum v. Gaudreau*, 317 Md. 49, 62 (1989). Because this was a commercial lease and not a residential lease, we are satisfied that the parties intended that “rent” should include, in the event Peking Palace failed to open on time, and thus in lieu of a percentage of Peking Palace’s restaurant sales, the definitely ascertainable sum of \$500.00 per day. Therefore, the substance of Montgomery Mall’s count 1 alleged only damages from failure to pay rent. Consequently, count 1 in the circuit court was identical to the claim raised in the district court.

landlord would have to prove that (1) Liu owed a contractual obligation under the guaranty, and (2) that Liu breached that obligation. *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 265 (2018).

A guaranty is a secondary contract, supported by separate consideration, in which a guarantor promises that if the principal defaults, the guarantor will pay the obligations of the principal. *Gen. Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 260-61 (1985). Here, the principal contract was the lease, and the guaranty provided that Liu was obligated to perform on the condition that Peking Palace defaulted on the lease.³ To prove the first element of its breach of guaranty claim, therefore, Montgomery Mall had to prove that Peking Palace defaulted on the lease and triggered Liu's obligation under the guaranty.⁴

The landlord therefore sought to use the district court judgment to prove, by collateral estoppel, (1) that Peking Palace defaulted on the lease and (2) that the amount of Liu's liability as guarantor for Peking Palace's default was conclusively established. We hold that Montgomery Mall proved both facts by virtue of the district court judgment by collateral estoppel, as we explain below.

³ Unlike in a suretyship, Liu's obligation to perform under the guaranty was secondary to Peking Palace's obligation to perform under the lease. *GMAC v. Daniels*, 303 Md. at 259-60.

⁴ The question of whether Liu owed an obligation under the guaranty also implicates the question of whether the guaranty, as a separate agreement from the lease, was valid in the first place. That is, whether the guaranty was validly formed by offer, acceptance, and consideration. *See Braude v. Robb*, 255 Md. App. 383, 397 (2022). Because Liu has not challenged its validity, however, we see no reason to question whether the guaranty is valid. Therefore, the only remaining question for the circuit court to determine was whether Peking Palace had defaulted on the lease.

Under the doctrine of collateral estoppel, or issue preclusion, “when an issue of fact or law is actually litigated and determined by a valid and final judgment,” that determination is conclusive between the parties going forward. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016) (cleaned up). Because collateral estoppel is concerned not with the legal consequences of the earlier judgment but with the specific legal and factual findings supporting that judgment, the preclusive effect applies even if a different claim is being asserted. *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 391-92 (2000). The Supreme Court of Maryland (formerly the Court of Appeals of Maryland)⁵ has established a four-part test:

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?

Garrity, 447 Md. at 369.

Applied to this case, the factors from *Garrity* show that Montgomery Mall proved by collateral estoppel that Liu owed an obligation under the guaranty and the amount of his liability for Peking Palace’s default. The elements of collateral estoppel are similar but not identical to the elements of *res judicata* discussed above. *First*, the issue decided in the

⁵ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, MD. R. 1-101.1(a).

prior adjudication—Peking Palace’s nonpayment of rent—is identical with that presented in the current action. Liu guaranteed full payment and performance by Peking Palace of all of its obligations under the lease, of which failure to pay rent was the sole basis for Montgomery Mall’s claims against Peking Palace in both actions.⁶

Second, there is privity between Peking Palace and Liu. “For purposes of collateral estoppel, an analysis of privity ‘focuses on whether the interests of the party against whom estoppel is sought were fully represented, with the same incentives, by another party in the prior matter.’” *Bank of New York Mellon v. Georg*, 456 Md. 616, 658 (2017). Here, Liu, as guarantor, had his interests fully represented, with the same incentives, in the district court matter as in the circuit court matter. Liu is both president of Peking Palace and guarantor for Peking Palace. The same attorney who represented Peking Palace and Liu in the circuit court action represented Peking Palace in the district court action. In both instances, Peking Palace had the same incentives to defend against Montgomery Mall’s claims. Thus, we hold that there is privity between Peking Palace and Liu.

Third and fourth, there was a final judgment on the merits as to nonpayment of rent in which Liu was given a fair opportunity to be heard. The district court ruled that Peking Palace was liable to Montgomery Mall for \$159,640.00. Peking Palace could have, but did not, appeal this judgment. According to Liu’s counsel, the district court “was made aware of this pending case, and the issues raised in this case, all of them.” If Liu, as Peking Palace’s president, took issue with the disposition of the district court case, he could have

⁶ See *supra* note 2.

appealed. Because Peking Palace had the opportunity both to raise all defenses and to appeal the district court judgment, Liu therefore had a fair opportunity to be heard as to Peking Palace's nonpayment of rent. Moreover, because Peking Palace did not appeal, there was a final judgment on the merits.

In light of the above, we hold that the district court judgment conclusively established both that Liu had an obligation due under the guaranty and the amount of Liu's personal liability for Peking Palace's default under the guaranty. The circuit court, therefore, was bound by collateral estoppel in deciding count 2.

III. DEFENSES TO THE GUARANTY CLAIM

The third question that confronted the circuit court, having established that Liu owed a contractual obligation under the guaranty, was whether Liu had any viable defenses to the breach of guaranty claim. "Generally, a breach of contract is defined as a failure, without legal excuse, to perform any promise that forms the whole or part of a contract." *Kunda v. Morse*, 229 Md. App. 295, 304 (2016) (cleaned up). Here, Liu put on evidence to support his defense that the COVID-19 pandemic had frustrated the purpose of the guaranty. The circuit court accepted that defense and, on that basis, reduced the amount of the guaranty. This was error as a matter of law.

We hold that the commercial frustration of purpose doctrine does not apply as a defense to a breach of guaranty action. The purpose of the guaranty was to induce the landlord to enter the lease with Peking Palace, not to open a restaurant. The commercial frustration of purpose doctrine applies "where the purpose of a contract is completely frustrated and rendered impossible of performance by a supervening event or

circumstance.” *Critzos v. Marquis*, 256 Md. App. 684, 692 (2023) (cleaned up). The COVID-19 pandemic did not render Liu’s performance under the guaranty impossible and thus did not frustrate the purpose of the guaranty. While we are sympathetic to the adverse effects of the pandemic on this business (and business generally), the commercial frustration of purpose defense did not apply to Liu in the circuit court.

CONCLUSION

We hold that, as to count 1, the circuit court was bound by res judicata and correctly declined to disturb the district court judgment against Peking Palace for breach of lease. Furthermore, we hold that, as to count 2, the circuit court was bound by the district court judgment by collateral estoppel to find that Liu’s liability under the guaranty for Peking Palace’s default was equal to the amount determined in the district court judgment. We therefore reverse the circuit court judgment as to count 2 and remand with instructions to enter judgment on Liu’s liability under the guaranty equal to the amount of Peking Palace’s liability determined in the district court judgment, and to determine Montgomery Mall’s costs to enforce the guaranty.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY IS
REVERSED IN PART AND REMANDED
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID BY APPELLEE.**