No. 24-CV-420

DISTRICT OF COLUMBIA COURT OF APPEALS

UCHENNA EGENTI,

Appellant,

v.

GATEWAY MARKET L/CAL LLC,

Appellee.

ON APPEAL FROM
THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA,
CIVIL DIVISION CASE NO. 2023-CAB-7206

BRIEF OF APPELLANT UCHENNA EGENTI

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RULE 28(a)(2)(A) STATEMENT

The parties to this case are Appellant Uchenna Egenti and Appellee Gateway Market L/Cal LLC. In the proceeding before the Superior Court, Ms. Egenti was unrepresented, and Matthew Moore of Shulman Rogers represented Gateway Market L/Cal LLC. On appeal, Ms. Egenti is represented by Jonathan H. Levy and Fran Swanson of Legal Aid DC, and Gateway Market L/Cal LLC is represented by Matthew Moore of Shulman Rogers and was previously also represented Erin McAuliffe of Greenstein Delorme & Luchs.

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases

Miscellaneous

* Authorities principally relied upon are marked with an asterisk.

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QUESTION PRESENTED

Whether the Superior Court erred in dismissing Ms. Egenti's contract damages claims as precluded by decisions in prior Housing Conditions Court proceedings which (1) were on the basis of lack of jurisdiction, (2) looked only to the existence of present and abatable violations of the Housing Code, and (3) could not have resulted in the award of damages.

STATEMENT OF THE CASE

This case involves issues between Uchenna Egenti and her landlord, Gateway Market L/Cal LLC, that have given rise to multiple judicial proceedings in which Ms. Egenti was unrepresented. This appeal involves Ms. Egenti's contract claims for damages based on lease violations. The Superior Court dismissed those claims as precluded by two prior Housing Conditions Court (HCC) cases.

Ms. Egenti first sought relief from her Landlord in the Superior Court's Housing Conditions Court, "a problem-solving court" whose "goal is to efficiently and quickly achieve compliance with the District of Columbia Housing Code Regulations." HCC CASE MANAGEMENT PLAN 1, available at https://www.dccourts.gov/sites/default/files/Housing-Conditions-Case-Management-Plan.pdf (last visited Sept. 10, 2024). By filing in the HCC, Ms. Egenti necessarily sought the only remedy available there, which is "abatement of violations." *Id.* at 4; *accord* HCC VERIFIED COMPLAINT TO ENFORCE HOUSING CODE REGULATIONS, available at https://www.dccourts.gov/sites/default/files/HCC_HousingCodeComplaint.pdf (last visited Sept. 10, 2024) (mandatory request for relief in all HCC complaints: "Therefore, Plaintiff/Tenant asks the Court for an order to repair all of the housing code violations in the unit within a time to be determined by the Court.").

The first HCC case (the August 2023 HCC Case) alleged that Ms. Egenti's unit had no hot water and was infested with fruit flies. The HCC dismissed on August 22, 2023, because it determined that, as of that date, "there's no current violations." JA 139. The HCC explained that, although a May 2023 inspection confirmed there was at least one Housing Code violation at that time, the violation had been abated by July 11, 2023. JA 137. The HCC emphasized that "for purposes of this case, this calendar focuses on violations that have been identified by the housing inspectors that have been partnered with the Court." JA 137. Ms. Egenti asked the HCC about video evidence she took of a fruit fly infestation on July 7, 2023, and sent to the inspector, and the HCC responded that video evidence of conditions before the second inspection was irrelevant to the HCC's inquiry into whether there were currently Housing Code violations that the HCC could order abated. JA 135. By contrast, the HCC explained to Ms. Egenti that "if you think that there's ongoing issues" and would like to know how to "go about pursuing your legal remedies," it would give Ms. Egenti appropriate resources for pursuing those claims outside of the HCC. JA 138.

On November 27, 2023, to pursue the "legal remedies" referenced by the HCC, Ms. Egenti sued her Landlord in Superior Court's Civil Actions Branch for monetary damages for breach of contract. JA 111-12. Her complaint alleged multiple lease violations by the Landlord, some of which, like the failure to provide

hot water (from October 2022 to November 2023) and failure to mitigate a pest infestation (from 2021 to November 2023), also constituted Housing Code violations, while others, like the failure to address noise coming from two other units and "stalking incidents in the building," did not also constitute Housing Code violations. JA 111.

On February 27, 2024, a few months after Ms. Egenti filed her breach of contract action, the HCC dismissed a second case (the February 2024 HCC Case) on the basis that Ms. Egenti "no longer ha[d] standing to bring this particular case because [she was] not living in that unit." JA 148. The HCC explained that "the only power that this Court has is to order landlord to repair housing code violations existing at a unit that . . . the tenant is residing at." JA 147. It was quick to explain to Ms. Egenti that "the fact that you've moved from the unit . . . [is] not to say that you might not have some sort of cause of action against the landlord. . . . But for what the purpose of this case is . . . you no longer have standing." JA 148.

In a March 1, 2024 oral ruling, the Superior Court dismissed Ms. Egenti's Civil Actions Branch breach of contract claims. This dismissal was expressly based on preclusion, but it is unclear whether it (1) considered either or both the August 2023 and February 2024 HCC decisions preclusive and (2) relied on claim or issue preclusion or both. The confusion about which type of preclusion the Superior Court relied on is amplified by its inconsistent explanations; it stated both that the contract

claims *should have been raised* in the HCC cases and, conversely, *were decided* in those cases. *Compare* JA 163 (past lease violations were "clearly something that could've been brought in these other cases"), *with* JA 164 (past lease violations were "part of previous actions").

Ms. Egenti appealed the dismissal of her breach of contract claims. JA 49-54. This Court denied the parties' cross-motions for summary disposition. JA 14.

SUMMARY OF THE ARGUMENT

Ms. Egenti's experience as an unrepresented individual attempting to litigate her claims in Superior Court was bewildering. The judges handling her HCC matters explained to her that some of her lease violations could not be adjudicated in the HCC, either because they did not rise to the level of Housing Code violations or because they did constitute Housing Code violations but were abated before any judgment was issued. JA 138, 148. But when Ms. Egenti brought those claims in the Civil Actions Branch, she was told that those claims were precluded because they had been decided or should have been brought in the HCC. This was wrong.

As a matter of law, the February 2024 HCC judgment cannot have any preclusive effect. That judgment dismissed the HCC action for lack of jurisdiction on the basis that Ms. Egenti lost standing when she stopped living in the apartment. A dismissal for lack of jurisdiction is not preclusive.

Nor did the August 2023 HCC judgment decide the issues presented in Ms. Egenti's breach of contract case. Because the HCC's only goal is to secure the abatement of extant Housing Code violations, an HCC dismissal determines only whether any violations have been abated. That determination does not include a determination that no lease violation ever occurred. To the contrary, the first HCC case at issue here determined that the Landlord *had* violated the lease. JA 137. The HCC's later conclusion that the lease violation had been abated in no way undermines the prior conclusion that the lease violation existed and does not imply that additional lease violations did not also exist. Additionally, Ms. Egenti lacked the necessary full and fair opportunity to litigate the narrow issue that the HCC actually did decide (absence of Housing Code violations in August 2023) when she was denied the opportunities to (1) cross-examine the housing inspector (who was instead treated as the ultimate factfinder), (2) testify, and (3) submit evidence into the record. Issue preclusion therefore cannot justify dismissal.

Similarly, the August 2023 HCC decision cannot give rise to claim preclusion. Ms. Egenti's contract claims were not the same claims as her HCC claims. The contract claims sought monetary damages for breaches of the lease occurring over a two-year period, while the HCC claims simply sought abatement of extant Housing Code violations. Indeed, the HCC could not have heard the breach of contract claims, as the HCC cannot consider anything in the past or any lease violation that

does not also rise to the level of a Housing Code violation and cannot award monetary damages.

STANDARD OF REVIEW AND BURDEN OF PROOF

This Court reviews dismissal on the basis of preclusion *de novo*. *Wang v. 1624 U St., Inc.*, 252 A.3d 891, 896 (D.C. 2021). Because this case was decided on a motion to dismiss, "all factual allegations in the complaint [are taken] as true." *Papageorge v. Zucker*, 169 A.3d 861, 863 (D.C. 2017). The Landlord, as the party asserting preclusion, bears the burden of proof. *See Amos v. Shelton*, 497 A.2d 1082, 1084 (D.C. 1985) (claim preclusion); *Major v. Inner City Property Management*, 653 A.2d 379, 382 (D.C. 1995) (issue preclusion).

ARGUMENT

I. THE DISMISSAL OF THE FEBRUARY 2024 HCC CASE FOR LACK OF STANDING IS NOT PRECLUSIVE.

The February 2024 HCC decision cannot be the basis of either claim or issue preclusion because it was a dismissal for lack of jurisdiction. More specifically, the HCC explained that "the only power that this Court [HCC] has is to order landlord to repair housing code violations existing at a unit that – or a property that the tenant is residing at," and therefore opted to "dismiss this matter without prejudice . . . on the basis that Ms. Egenti is not residing in the unit anymore" and so "no longer ha[d] standing." JA 147, 149. A dismissal for lack of standing is a dismissal for lack of jurisdiction, *see Animal Legal Defense Fund v. Hormel Foods Corp.*, 258 A.3d 174,

191 (D.C. 2021), and "a judgment dismissing an action for lack of jurisdiction will have no preclusive effect on the cause of action originally raised," *GAF Corp. v. United States*, 818 F.2d 901, 912 (D.C. Cir. 1987). Therefore, the Superior Court erred in giving the dismissal of the February 2024 HCC Case for want of standing preclusive effect.

II. THE AUGUST 2023 HCC CASE IS NOT ISSUE PRECLUSIVE.

Issue preclusion (also known as collateral estoppel) "may bar relitigation of the issues determined in a prior action." *Wang*, 252 A.3d at 900. Issue preclusion applies only when (1) the issue is actually litigated, (2) determined by a valid, final judgment on the merits, (3) after a full and fair opportunity for litigation by the parties or their privies, and (4) under circumstances where the determination was essential to the judgment. *Id.* The August 2023 HCC decision does not meet these criteria.

A. The Issues Decided in the August 2023 HCC Proceeding Differ from the Issues Raised in the Breach of Contract Action.

The August 2023 HCC decision has no issue preclusive effect in the breach of contract action because the issue in the former was whether a Housing Code violation existed at the time of judgment (August 2023), while the issue in the latter

was whether the Landlord had breached the lease at any time from 2021 through 2023.

There are thus two categories of differences between the HCC issues and the breach of contract issues: (1) substantive differences and (2) temporal differences. Substantively, while the HCC case was (by rule as well as in fact) limited to Housing Code violations, the breach of contract claims also encompassed lease violations that did not constitute Housing Code violations, including the claims that the Landlord had permitted stalking in the building and failed to address noise coming from other units. JA 111.

Temporally, the HCC case was (again by rule) limited to determining the existence of present, unabated Housing Code violations. In this way, all HCC cases involve a moving target; *past* violations are irrelevant, and HCC claims are dismissed at any point in time when no violations exist, regardless of whether the court believes that there were past violations. So, if Ms. Egenti had absolute proof that her unit had no hot water in January 2023, she would have a meritorious breach of contract claim even if her HCC claim was properly dismissed because her hot water had been restored by August 2023. This is why the HCC judgment, which, by its own terms, decided only that "there are no current identified violations by the housing inspector" as of August 2023, JA 140, cannot preclude the breach of contract action, *see Welsh v. McNeil*, 162 A.3d 135, 157 (D.C. 2017) ("A claim for damages

is not mooted by the lack of an ongoing violation or the unavailability of prospective relief.").

Even if the HCC's narrow finding – that there were no extant Housing Code violations on a particular day in August 2023 – were preclusive, it would not justify dismissing the breach of contract claims: Ms. Egenti can prevail in her breach of contract claims even if there were no Housing Code violations in her unit on that particular day in August 2023 because she could still prove contract violations on any of the other dates over the two-year period referenced in her complaint.

B. The August 2023 HCC Proceeding Did Not Afford Ms. Egenti a Full and Fair Opportunity to Litigate.

"The party against whom collateral estoppel is invoked must have had a 'full and fair opportunity' to litigate the issue." *Illinois Farmers Insurance Co. v. Hagenberg*, 167 A.3d 1218, 1225 (D.C. 2017). "[A] party is considered to have had a full and fair opportunity to litigate an issue if, in the context of the prior case, the party . . . was given an opportunity to present witnesses, introduce exhibits, challenge contrary evidence, make statements, and receive a determination of the facts and the law." *Brewer v. District of Columbia*, 105 F. Supp. 3d 74, 89-90 (D.D.C. 2015) (citing *Davis v. Davis*, 663 A.2d 499, 502 (D.C. 1995)).

The HCC denied that opportunity to Ms. Egenti in her August 2023 proceeding when, in line with its common practice, it treated the unsworn statements of the housing inspector as dispositive without allowing Ms. Egenti to cross-examine

those statements, testify, or admit evidence of her own. JA 135, 137. Ms. Egenti, disagreeing with the housing inspector's findings that prior violations had been abated and that other violations did not exist asked, "[h]ow and when can I make available to the Court the evidence that I have, again, provided [to the housing inspectors]?" JA 137. The HCC responded that, "[i]t's important for you to understand that, for purposes of this case, this calendar focuses on violations that have been identified by the housing inspectors that have been partnered with the Court." JA 137. That refusal to allow Ms. Egenti to present her side of the story was legal error, denying her a "full and fair opportunity" to litigate the presence of Housing Code violations in her unit, as this Court recently held in *Demuth v. Petra Property Management*, 2024 D.C. App. LEXIS 304, *9 (D.C. Aug. 25, 2024) ("[W]hen a factual issue arises that raises a credibility contest, a party should not lose the opportunity to raise such a contest – even in a problem-solving setting like the HCC."). In the August 2023 HCC Case, just as in *Demuth*, it was error for the HCC to rely on the housing inspector as the "ultimate factfinder" rather than "holding an evidentiary hearing and allowing for cross-examination." *Id.* at *10.

It necessarily follows from *Demuth* and *Brewer* that the August 2023 HCC proceeding did not constitute a full and fair opportunity to litigate, and the resulting decision cannot have preclusive effect. Even the failure to properly admit a single piece of arguably minor evidence can deprive a party of its right to a full and fair

opportunity to litigate, rendering preclusion improper. *See Jack Faucett Associates v. American Telephone & Telegraph Co.*, 744 F.2d 118, 126-29 (D.C. Cir. 1984). All the more so when, as here, there is a wholesale failure to allow either the presentation of evidence/witnesses or the cross-examination of a witness presented by the other side. *See*, *e.g.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 330-31 & n.15 (1979) (noting preclusion may be improper where party could not call witnesses); *Golino v. City of New Haven*, 950 F.2d 864, 869-70 (2d Cir. 1991) (denying preclusion because litigant had no right to call witnesses or introduce evidence); *Bailey v. Andrews*, 811 F.2d 366, 370 (7th Cir. 1987) (denying preclusion because litigant was barred from cross-examining witness).

III. THE AUGUST 2023 HCC CASE IS NOT CLAIM PRECLUSIVE.

Claim preclusion bars relitigation of (1) "the same claim between the same parties," and (2) claims "arising out of the same transaction which could have been raised" in the prior proceeding between the parties. *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010). Neither condition is satisfied here.

A. Ms. Egenti's Breach of Contract Claims for Damages Are Not the Same as Her HCC Claims for Abatement of Extant Housing Code Violations.

Whether Ms. Egenti's breach of contract claims are the same as her Housing Code claims before the HCC is governed by *Cowan v. Youssef*, 687 A.2d 594 (D.C. 1996). The tenant in *Cowan* brought four claims against her landlord, only two of

which survived after trial: one for "breach of contract" and another for "breach of implied warranty of habitability," which requires "compliance with the housing code." *Id.* at 596, 605. The jury found in favor of the tenant on the breach of contract claim but in favor of the landlord on the implied warranty of habitability claim. *Id.* at 596. This Court affirmed in the face of cross-appeals, specifically noting that there was sufficient evidence both of breach of contract, *id.* at 599, and that the landlord did *not* violate the implied warranty of habitability, *id.* at 605. By affirming, this Court implicitly held that the breach of contract claim and the breach of implied warranty of habitability claim were *not* the same, as it is impossible for the same party to both win and lose the same claim.

The holding in *Cowan* is not only binding – it makes sense. Both claims related to the landlord's failure to provide and properly install individual heating and cooling units. That failure violated the lease provision requiring their provision and proper installation. That same failure could, but did not *necessarily*, also violate the Housing Code. *See id.* at 605 (despite breaches of contract, no or only *de minimis* violations of Housing Code). The same logic applies here. Ms. Egenti's breach of contract claims alleged breaches of her lease – including allowing noise, stalking, substandard water heating, and fruit flies – that could constitute lease violations regardless of whether they also rose to the level of Housing Code violations. Relatedly, the claims are different because – as was made clear in the dismissal of

the February 2024 HCC case, HCC claims evaporate the moment a tenant ceases to be a tenant, but a former tenant's breach of contract claims survive the end of the tenancy. *See Oliver v. Mustafa*, 929 A.2d 873, 876-78 (D.C. 2007) (affirming judgment for plaintiff in breach of contract claim brought after tenancy).

Moreover, in *Cowan*, the two claims were different even though the remedy sought (and available) for each was the same – damages. Here, because the Housing Code claims were brought in the HCC, monetary damages were not available, and Ms. Egenti could only seek abatement. HCC Case Management Plan 4; HCC Form Complaint 1. This is an independent reason for concluding that the HCC claims are not the same as the breach of contract claims. *See, e.g.*, *Wang v. 1624 U St., Inc.*, 252 A.3d 891, 897 (D.C. 2021) ("An administrative protest to the issuance of a license – even if grounded in a noise complaint – is not the same claim as a civil action for private nuisance or negligence for many reasons, *not the least of which is that monetary damages are available in the civil suit alone*.") (emphasis added). Indeed, even when the remedies from two causes of action appear to be the same, the claims may be different because they are based on different legal theories. *See, e.g.*, *Molla v. Sanders*, 981 A.2d 1197, 1202 (D.C. 2009) ("[A]n action for ejectment is not the same as a complaint for possession under the Rental Housing Act.").

B. Ms. Egenti's Breach of Contract Claims for Damages Could Not Have Been Raised in the HCC.

Ms. Egenti could not have raised her claims for contract damages in the HCC. The claims are therefore not precluded because, "[i]f the court rendering judgment lacked subject-matter jurisdiction over a claim or if the procedural rules of the court made it impossible to raise a claim . . . it is not precluded." *Hegna v. Islamic Revolutionary Guard Corps*, 908 F. Supp. 2d 116, 134 (D.D.C. 2012) (quoting *Browning v. Navarro*, 887 F.2d 553, 558 (5th Cir. 1989)).

Every HCC plaintiff is required to verify that they are a tenant whose unit *currently* contains a Housing Code violation. HCC Form Complaint 1; *see also* HCC Case Management Plan 1 (requiring use of the verified complaint form). Ms. Egenti thus could not raise before the HCC (1) any claim after she ceased to be a tenant, (2) any claim for lease violations that were not also Housing Code violations, or (3) any claim for lease violations that were subsequently abated by any means. But breach of contract claims can be made in all of these circumstances.

Furthermore, a claim could not have been raised in a prior proceeding if the relief sought could not have been pursued in that proceeding. In *Wang*, this court held that negligence and private nuisance claims for civil damages were not precluded by an earlier administrative proceeding because the adjudicatory body, like the HCC here, could not, by rule, hear civil actions for damages or award

damages. 252 A.3d at 899 ("[W]hile both [the negligence and private nuisance claims] seemingly relate to Wang's initial noise complaint submitted to the Board . . . Wang could not have brought them before the Board [because] . . . [b]oth claims are civil actions for monetary damages that a private party is not permitted to raise before the Board," so "[i]t is thus wrong to say Wang was afforded the opportunity to litigate these claims before the Board and simply chose not to."); *Hurd v. District of Columbia*, 864 F.3d 671, 679-80 (D.C. Cir. 2017) (no preclusion of damages claim where no damages available in first action); *see also Karamoko v. New York City Housing Authority*, 170 F.2d 372, 377 (S.D.N.Y. 2001) ("Res judicata thus does not bar claims for damages where a plaintiff has previously brought a related [administrative] proceeding alleging a violation of his constitutional rights, and subsequently . . . seeks monetary damages for the violation of those rights" where the administrative body is "unable to award monetary damages.") (internal citations and quotation marks omitted).

As discussed above, Ms. Egenti's contract claims go beyond breaches of the implied warranty of habitability. But even with respect to breaches of the implied warranty of habitability, the HCC cannot award monetary damages, *see* HCC Case Management Plan 4 (specifically excluding "monetary relief for the condition of the property"); *Hailemariam v. Zewdie*, 291 A.3d 213, 217 n.4 (D.C. 2023) (noting that "damages" is a form of relief that cannot be sought "in a case on the Housing

Conditions Calendar"), while other judicial fora can, *see, e.g.*, *Brown v. Hamilton*, 601 A.2d 1074, 1078-79 (D.C. 1992) ("leases of urban dwelling units should be construed like any other contract" such that "normal contractual principles of . . . contract damages would control") (internal quotation marks omitted). That is presumably why the HCC, in the August 2023 action, explained that, if Ms. Egenti thought there were "ongoing issues," it would direct her to resources that would allow her to "pursu[e] [he]r *legal remedies*" outside of the HCC. JA 138 (emphasis added).

This principle is further illustrated in the federal bankruptcy context. Bankruptcy courts have "two different forms of process: 'contested matters' and 'adversary proceedings.'" *Davenport v. Djourabchi*, 316 F. Supp. 3d 58, 65 (D.D.C. 2018). "'Contested matters' are designed to adjudicate simple issues on an expedited basis," and, by rule, cannot include "claims for damages." *Id.* at 65, 66. By contrast, adversary proceedings can result in the award of damages. *Id.* at 65. Because a party cannot bring a damages claim in a contested matter, a judgment in a contested matter has no preclusive effect on a subsequent action seeking damages based on the same underlying facts. *Id.* at 68. Moreover, it is irrelevant that the party to the contested matter could also bring an adversary proceeding that could adjudicate the damages claim; all that matters is that the damages claim could not be adjudicated in the contested matter that the party chose to file. *Id.* at 67-68.

The situation here is analogous. The Superior Court allows multiple forms of process, one of which is an action in the HCC. HCC actions, just like contested matters, are designed to adjudicate simple issues on an expedited basis and, by rule, cannot include claims for damages. *See* HCC Case Management Plan 4. It necessarily follows that, just as a judgment in a contested matter has no claim preclusive effect in a later action for damages, judgment in an HCC action has no claim preclusive effect in a later action for damages. The HCC's goal of summarily and expeditiously stopping Housing Code violations would be eviscerated if anyone wanting to end a violation had to, simultaneously, waive or adjudicate their right to damages as well.

CONCLUSION

For the foregoing reasons, this Court should reverse the dismissal of Ms. Egenti's complaint and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing Brief of Appellant to be delivered electronically, through this Court's e-filing system on September 18, 2024, to:

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/s/ Fran Swanson
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