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

REPLY BRIEF OF APPELLANT UCHENNA EGENTI

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TABLE OF CONTENTS

Page(s):

TABLE OF AUTHORITIES

Page(s):

Cases

Statutes, Regulations and Rules

* Authorities principally relied upon are marked with an asterisk.

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SUMMARY OF THE ARGUMENT

Ms. Egenti sued her landlord for damages based on lease violations. The Superior Court dismissed those claims as precluded by judgments in two prior Housing Conditions Court (HCC) cases – the August 2023 HCC judgment (2023 CAB 1833) and the February 2024 HCC judgment (2023 CAB 5173). JA 156-59. The Landlord does not assert that the two HCC judgments can be preclusive. Rather, the Landlord argues only that the trial court relied, in addition to the August 2023 HCC judgment, on a judgment in a Civil Actions Branch case (2023 CAB 4157).

That is inaccurate. The judge discussed only the two HCC judgments and then incorrectly cited the Civil Actions Branch judgment. Moreover, it is irrelevant whether the trial court relied on that Civil Actions Branch judgment because that judgment was based on mootness and therefore has no preclusive effect.

The Landlord otherwise argues that this Court should affirm dismissal on the ground, not relied on by the trial court, that Ms. Egenti's complaint "does not indicate what contract exists" or "plead that Gateway has an obligation or duty related to the claims." Landlord Br. 6-7. This is ridiculous. The complaint names Gateway as the defendant landlord and lists the ways that it has violated the lease. JA 111. But the Court need not even resolve this issue because the trial court did not do so in the first instance. Finally, the Landlord's contention that remand would be futile is wrong as a matter of law because the trial court exercised its discretion to address the motion on the merits rather than treat it as conceded.

ARGUMENT

I. THERE IS NO VALID BASIS FOR PRECLUSION.

The Landlord has the burden of proving preclusion. *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). The trial court relied on the February 2024 HCC judgment and the August 2023 judgment to dismiss Ms. Egenti's claims as precluded. As explained on pages 7 to 18 of our opening brief, that reliance was error because those HCC judgments cannot preclude

Ms. Egenti's claims. The Landlord does not dispute the legal part of that argument. In other words, the Landlord did not respond at all to our assertion that the HCC judgments cannot be preclusive. That legal argument is therefore conceded.

What the Landlord says instead is that one of the two HCC judgments, in combination with a Civil Actions Branch judgment, is preclusive. That is not what the trial court said.[1] Regardless, relying on the Civil Actions Branch judgment for preclusion fares no better as a matter of law than relying on an HCC judgment. The basis for the Civil Actions Branch judgment was a dismissal for mootness. JA 29. "[D]ismissal for mootness is a dismissal for lack of jurisdiction." *Givens v. Bowser*, 111 F.4th 117, 122 (D.C. Cir. 2024). And a dismissal for lack of jurisdiction is not preclusive. *GAF Corp. v. United States*, 818 F.2d 901, 912 (D.C. Cir. 1987); *see also* D.C. Super. Ct. R. Civ. P. 41(b) (dismissal for lack of jurisdiction is not an adjudication on the merits). Indeed, the reality that judgments of dismissal on mootness grounds are not preclusive was addressed on pages 7 to 8 of Ms. Egenti's opening brief and not disputed in the Landlord's brief.

[1] The trial court explained, following colloquies about the HCC judgments, why it relied on the HCC judgments as preclusive. See JA 156-63. In summarizing, it then provided two case numbers, the correct number for one HCC judgment (the August 2023 HCC judgment) and the other, mistakenly, for the Civil Actions Branch judgment that the Landlord now relies on, rather than the second HCC judgment that the trial court analyzed. JA 163.

II. THE ARGUMENT THAT THE COMPLAINT IDENTIFIES NO CONTRACTUAL VIOLATION IS FRIVOLOUS.

The Landlord maintains that this Court should affirm dismissal on the basis, never mentioned by the trial court, that the complaint does not "plead that Gateway has an obligation or duty related to the claims" or "indicate what contract exists." Landlord Br. 6-7. This argument is baseless: Ms. Egenti's complaint identified Gateway as her landlord (which entails a contractual relationship, specifically a lease) and stated the multiple ways that, as landlord, Gateway had violated its lease agreement with her. The complaint named "Gateway Market L/CAL [L]LC dba The Edison," the building in which she lived, as the defendant in her "[b]reach of contract claim against landlord for violation of lease," and the complaint then listed the alleged violations by the Landlord. JA 111. Nothing more was required, and the trial court did not conclude that anything more was required.

To the extent this Court finds any lack of clarity in the claim stated by Ms. Egenti, it should remand for consideration in the first instance by the trial court. That court never addressed this issue, which it undoubtedly viewed as moot in light of its erroneous decision to dismiss on preclusion grounds. And this Court typically chooses "not to decide" an issue not addressed by the trial court "in the first instance, mindful that we are a court of review, not of first view." *Newell-Brinkley v. Walton*, 84 A.3d 53, 61 (D.C. 2014) (internal quotation marks, citation, and alterations omitted).

III. REMAND IS NOT FUTILE, AND THIS COURT SHOULD NOT ADDRESS AN ARGUMENT NOT ADDRESSED BELOW.

The Landlord further contends that this case should not be remanded because a remand would be futile in light of Ms. Egenti's failure to file an opposition to the motion to dismiss. Landlord Br. 7-8. This is wrong as a matter of law because whether to treat the absence of such an opposition as dispositive is a matter of discretion for the trial court, and here the trial court has already decided to exercise that discretion in favor of deciding the motion on its merits. The Landlord does not cite a single case from this or any other court refusing to remand on this basis and we are aware of none.

Where a decision is entrusted to the trial court's discretion, this Court has explained that "it would be inappropriate for us to exercise discretion." *Bolton v. Bernabei & Katz, PLLC*, 954 A.2d 953, 964 (D.C. 2008). The trial court exercised its discretion to decline to view the motion as conceded. *See* D.C. Super. Ct. R. Civ. P. 7; JA 164 ("the fact that the motion was filed and there's no response means I could treat it as conceded" but "I'm not going to do that"). The Landlord does not challenge that exercise of discretion. The trial court's decision to decline to view the motion as conceded means the motion was not conceded and that remand is therefore not futile, as the trial court will, on remand, consider the remaining aspects of the motion on their merits. This is consistent with the "strong judicial and societal

preference for determining cases on the merits." *Vizion One, Inc. v. D.C. Department of Health Care Finance*, 170 A.3d 781, 791 (D.C. 2017).

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 November 7, 2024, to:

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