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Court of Appeals
Suzanne C. Johnson,
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6/21/2019 11:13 AM

SHIRLEY HIRSHAUER

V.

AQ HOLDINGS, LLC., et al

* IN THE
* COURT OF APPEALS
* COA-PET-0501-2018
* CSA-REG-2490-2016
* & CSA-REG-1221-
* 2017
* (No.14-C-16-010731,
* Circuit Court for
* Kent County)

ORDER

Upon consideration of the "Emergency Motion to Reconsider the Order Dated April 16, 2019" filed in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the above pleading be, and it is hereby, denied.

/s/ Mary Ellen Barbera
Chief Judge

DATE: June 21, 2019

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Clerk of Court
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SHIRLEY HIRSHAUER

* IN THE

* COURT OF APPEALS

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* COA-PET-0501-2018

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* CSA-REG-2490-2016

* & CSA-REG-1221-

* 2017

* (No.14-C-16-010731,

* Circuit Court for

* Kent County)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answers filed thereto, in the above entitled case, it is

Ordered, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge

DATE: April 19, 2019

Circuit Court for Kent County

Case No. 14-C-16-010731

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND
Consolidated Cases

No. 2490
September Term, 2016
SHIRLEY HIRSHAUER
v.
AQ HOLDINGS, LLC

No 1221
September Term, 2017
SHIRLEY HIRSHAUER
v.
AQ HOLDINGS, LLC et al

Leahy,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned)
JJ.

Apx 106

Opinion by Shaw Geter, J.

Filed December 2018

** 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

-Unreported Opinion-

The property dispute at the center of these cases began in 2006 and has generated several different state court actions in Maryland, as well as in U.S. Bankruptcy Courts in Maryland and Florida. Here, Appellant, Shirley Hirshauer, presents two separate appeals, which we have consolidated for judicial economy. First, she appeals the dismissal and grant of summary judgment by the Circuit Court for Queen Anne County of her counterclaim against Appellees, AQ Holdings, LLC ("AQ Holdings"); Brooke Schumm, Esq., attorney for AQ Holdings; and the Honorable Thomas G. Ross ("Judge Ross") in an action to sell or, in the alternative, partition property

purchased at a judicial sale. Second, Hirshauer appeals the court's final order directing a court-appointed trustee to sell jointly-owned property in lieu of partition. Hirshauer presents a number of questions for review, which we have condensed, renumbered, and rephrased for clarity:

Appeal No. 2490:¹

1. Was the court's judgment on the Counterclaim an abuse of discretion in light of Hirshauer's bankruptcy judgment?
2. Did the court err in dismissing or, in the alternative, granting summary judgment on the counterclaim?

¹ Appellant's original questions in Appeal No. 2490 were: 1. Whether the State Court has a right to grant relief from a Bankruptcy stay which is a matter committed exclusively to the Bankruptcy court. 2. Whether the Counter-claim is not barred by res judicata, collateral estoppel and the doctrine prohibiting collateral attack on judgment. 3. Whether the trial court erred in granting the motion to dismiss and motion for summary judgment.

Appeal No 1221:²

² Appellant's original questions in Appeal No. 1221 were: 1. Did Judge Sweeney err acting without jurisdiction. 2. Did Judge Sweeney err not acknowledging the writs and sale of the farm are void. 3. Did Judge Sweeney err not taking judicial notice that Judge Ross, of the QA, was disqualified, by law and Judicial Canons, and therefore all Ross' actions are void. 4. Did Judge Sweeney err holding the trial in March 2017 without jurisdiction, when Hirshauer's doctors not showed she was unable to proceed and the fact ordering a sale in lieu of partition of the farm when a sale would harm Hirshauer, Sweeney stated the farm can be partitioned. 6. Did Judge Sweeney err holding a trial when the plaintiff was not present, and then allowing the plaintiff's attorney to be the fact based witness. 7. Did Judge Sweeney err holding a trial and then not allowing Hirshauer to defend herself because her defense is under appeal, No. 2490-2016. 8. Did Judge Sweeney err by ignoring Hirshauer's motion to declare the ex parte writs of execution are void. 9. Did Judge Sweeney err ordering a sale of the farm, per MD Rules 14-107 and 12-401(b). 10. Did Judge Sweeney err in his memorandum claiming to be able to predict the future and what is in Hirshauer's mind. 11. Did Judge Sweeney err acting as though AQ and Hirshauer own the farm when there was no substantial evidence submitted to him to prove that the ex parte order of August 15, 2006 was valid and when Hirshauer presented facts from the QA record that the ex parte order is void by law. 12. Did Judge

3. Did the court have jurisdiction to hear these cases?
4. Did the court err in holding trial on the scheduled date?
5. Did the court err in finding sale in of lieu of partition of the Property was appropriate?

STATEMENT OF FACTS

A. Events leading to the Counterclaim

In September 2004, Terry Brumwell, Alice Hall and Elizabeth O'Shea (collectively, the "Clemons"), along with other family members, filed a complaint against Shirley Hirshauer alleging wrongful death in the Circuit Court for Anne Arundel County (the "Wrongful Death Action"). The Clemons' grandmother, Geraldine Gray, died of compressional asphyxia after being pinned between her mattress and a be railing while living in a senior living home owned by Hirshauer. Approximately a week after the suit was filed, for no consideration, Hirshauer conveyed a forty-seven acre property,

Sweeney err by ignoring Judge Corrigan's final judgment on appeal which Schumm and his clients were appellants. 13. Did Judge Sweeney err by not acknowledging all actions in the recorded judgment cases, are void as there is not jurisdiction. 14. Did Church Road, Marydel, Maryland (the "Property")

Located in Queen Anne's County at 1211 Busic Church Road, Maryland (the "Property") to her three sons, James Gerben, Jr., Randy Gerben, and Jason Gerben (collectively, the "Gerbens"), as joint tenants. The Property's deed was recorded in December, 2004.

A default judgment was entered in the Wrongful Death Action in favor of the Clemons on July 14, 2006 in the amount of \$1.2 million. Wanda Clemons, as the representative of her mother's estate, was awarded \$400,000 and each of Ms. Gray's children, including the Clemons, were awarded \$100,000 individually. Two days later, the Clemons, represented by Schumm, filed a complaint

Judge Sweeney err by not acknowledging the located in Queen Anne's county at 1211 Busic actions in QA in December 2011 are void by the doctrine of res judicata and Hirshauer's bankruptcy discharge injunction. 15. Did Judge Sweeney err not acknowledging the levies were litigated to a final judgment in Hirshauer's bankruptcy. Adv Pro No 08-00036, 08-00178 and appealed, which were all ruled in Hirshauer's favor. We address many of the questions presented by appeal No. 1221 in Section II of this opinion because determination of such questions is essential to answering the section question presented in Appeal No 2490.

in the Circuit Court for Queen Anne's County alleging fraudulent conveyance of the Property, naming Hirshauer the Gerbens as defendants (the "Fraudulent conveyance Action"). The Clemons sought "to void and recover" Hirshauer's transfer to the Gerbens. The Clemons then recorded their respective judgment from the Wrongful Death Action in the Circuit Court for Queen Anne's County in early August 2006. Shortly thereafter, they filed requests for writs of execution seeking to immediately levy the Property to satisfy the judgment (the "Levy Actions"). The writs were issued on August 15, 2006 and January 8, 2007. However, upon receiving notice of the Fraudulent conveyance Action, the Circuit Court for Queen Anne's County stayed the writs and consolidated the cases.

A bench trial was held before Judge Ross on March 16, 2007, and the matter was held sub curia. Judge Ross issued a memorandum opinion and judgment on July 27, 2007, in which he concluded that "the evidence clearly established that the transfer was fraudulent." He then voided Hirshauer's transfer of the Property to the Gerbens (the

"Fraudulent Conveyance Judgment"). Judge Ross found Hirshauer "to be an astute business woman[,] whose testimony was far less than credible," who "intended to transfer [P]roperty with the intent to defraud, delay, and hinder the [Clemons], her judgment creditors in collection of the debt," and that "the conveyance occurred after Hirshauer had notice she was being sued in [the Wrongful Death Action].

On June 19, 2007, after the bench trial, but before Judge Ross issued a memorandum opinion and judgment, the Clemons initiated involuntary bankruptcy proceedings against Hirshauer in the United States Bankruptcy Court of the Middle District of Florida (the "Bankruptcy Court"). After receiving a suggestion of the bankruptcy filing on September 19, 2004, the circuit court issued an order the following day, which stayed any writs of execution or collection proceedings related to the Property as to Hirshauer. The Bankruptcy Court subsequently found Hirshauer had not fraudulently conveyed the Property to the Gerbens.

Four years later, in October 2011, the Clemons filed a motion requesting an extension of time to sell

the Property or, alternatively, an order to instruct the Sheriff's immediately schedule a sale of the Property. They asserted that Hirshauer received a discharge in bankruptcy on July 6, 2011, which ended the automatic stay. The Clemons motion was granted on December 26, 2011 in an order (the "December 26, 2011 Order") where Judge Ross "conclude[ed] that the discharge in bankruptcy of [] Hirshauer neither discharge[d] her in rem liability nor, in any way, affect[ed] the personal liability of third parties." He further found "the judgment liens remain[ed] effective, and that the bankruptcy proceedings ha[d] no res judicata effect with respect to the liens." Judge Ross also ruled that the Fraudulent conveyance Judgment was not void due to res judicata because the judgment liens "were merely stayed, first by order of [the circuit court], and then by the bankruptcy proceedings[;]" therefore it was unnecessary to vacate any order emanating from

³ In Hirshauer's involuntary bankruptcy proceedings, the bankruptcy judge found Hirshauer had not fraudulently conveyed the Property to the Gerbens. Hirshauer argued this ruling required Judge Ross to find the Property was not fraudulently conveyed and, instead, was owned by the Gerbens.

Hirshauer's bankruptcy proceeding.³

On January 9, 2012, Hirshauer and the Gerbens filed a motion to reconsider the December 26, 2016 Order, which was denied. Hirshauer and the Gerbens then appealed the judgment to this Court (the "Appeal of the Fraudulent conveyance Action"). Pursuant to Maryland Rule 8-602(a)(3), this Court dismissed the appeal as untimely, except as to the circuit court's denial of the motion for reconsideration. We then affirmed the denial of the motion to reconsider.

James Gerben, Jr., on March 27, 2013, filed for Chapter 13 bankruptcy. Accordingly, Judge Ross stayed proceedings elated to his one third interest in the Property. However, on July 10, 2013, Judge Ross vacated the stay as to the respective interests of Randy Gerben and Jason Gerben. Thereafter, the Clemons, through Schumm as counsel, sought a sheriff's sale of Randy Gerben and Jason Gerben's interests in the Property. A sheriff's sale was held on October 29, 2013 and AQ Holdings purchased the Property.

Following the sheriff's sale, Hirshauer filed ten documents in the Fraudulent Conveyance Action

In opposition to the ratification of the sale of the
Property to AQ Holdings:

- a. Defendants [sic] Motion Requesting the
Honorable Judge Ross Recuse Himself from
these Cases;
- b. Defendants [sic] Opposition to Queen Anne
County's Circuit Court Approval of the
Sheriff's Sale of [the property] Held on
10/29/13;
- c. Line to Honorable Judge Ross Concerning
120 day Levies Expired;
- d. Defendants [sic] Response to Plaintiff's
Response Motion to Various Papers Filed by
[] Hirshauer and James Gerben Relating to
Sheriff's Sale;
- e. Defendants [sic] Response to Plaintiff's Late
Filing for Notification and the Court's
Approval of Notice without Notice to
Defendants;
- f. Defendant's Line Requesting this Honorable
Court not to Ratify the Sale of [the Property]
as the Sale was not Performed per MD Rules
14-202(b)(1) and 14-205(c);

- g. Defendant's Request that this Honorable Court Invite the Attorney General of Maryland to Intervene Pursuant to 28 U.S.C. ss2403(b) as to the Question of the Constitutionality of MD's Prejudgment Attachment Procedures and to Void the Writs of Execution Due to Lack of Jurisdiction of a Florida Resident and All the Issues in this Motion Including Exhibit A and Void the Reissuing of the Notice of Ratification;
- h. Line Requesting the Honorable Court to Recognize Plaintiff's Conceded Maryland Judgment Remains Viable as to Gerben[s] Only if [] Hirshauer was Not a Necessary Party;
- i. Motion not to Ratify the Sale of [the Property];
- j. Interlocutory Appeal Due to Constitutional Issues - 5th and 14th Amendments and Lack of Jurisdiction of This Honorable Court and Time to Ratify has Passed by Maryland law.

Judge Ross ratified the sheriff's sale of the Property to AQ Holdings on February 20, 2014 (the "Ratification"),

overruling Hirshauer's opposition. Randy and Jason Gerben's two third interest in the Property was conveyed by sheriff's deed to AQ Holdings. Hirshauer and the Gerbens appealed the Ratification to this Court. Their appeal was dismissed pursuant to Maryland Rule 8-602(a)(1).^④

AQ Holdings filed the present action in the Circuit Court for Queen Anne's County on February 3, 2016, seeking a sale or, in the alternative, a partition of the Property held in common by AQ Holdings and Hirshauer. The case was transferred to the Circuit Court for Kent County.

Hirshauer filed a counterclaim (the "Counterclaim") naming as defendants Judge Ross, Schumm and AQ Holdings. The Counterclaim alleged the Gerbens were the rightful owners of the Property; civil conspiracy involving Schumm and Judge Ross to deny Hirshauer and the Gerbens due

^④ Md. Rule 8-602(a)(1) provides that this Court may dismiss an appeal on a motion or by our own initiative in a variety of circumstances, such as a party's failure to properly appeal the case or file an adequate brief or record, or if the case has become moot. See *Hirshauer v. Hall*, No. 2657, September Term 2013.

process and recognition of the ruling of the Bankruptcy Court; the Gerbens' deed could not be avoided due to the final ruling of the Bankruptcy Court that found Hirshauer had not fraudulently conveyed the Property to the Gerbens; the writs issued to the Clemons were void because the circuit court lacked jurisdiction in the Fraudulent Conveyance Action; and Judge Ross, Schumm, and this Court violated the automatic stay imposed by the bankruptcy filing of Hirshauer and the Gerbens. In response, Judge Ross, Schumm and AQ Holdings each filed a motion to dismiss or, in the alternative, for summary judgment.

A hearing on the dispositive motions was held on January 19, 2017, wherein Hirshauer contended that neither partition nor sale was appropriate. She argued the writs could not legally be used to levy the Property as the Fraudulent Conveyance Judgment was "void because Judge Ross [was] acting...without jurisdiction;" the Fraudulent Conveyance Judgment violated the doctrine of res

judicata;^⑤ Judge Ross, Schumm, and this Court violated the automatic stay imposed by the Bankruptcy Court;^⑥ and the writs were in the name of Hirshauer and those writs could not levy property owned by the Gerbens.^⑦

At the conclusion of the hearing, the court dismissed the Counterclaim, finding the Counterclaim "fail[ed] to state a viable claim on which relief can be granted." The court further ruled the Counterclaim "is barred...as to all Defendants by

^⑤ Hirshauer stated, "The reason I'm bringing this action is because Judge Ross is continuing to say I'm a fraud when I have a final judgment from [the Bankruptcy Court] saying I'm not a fraud."

^⑥ Hirshauer claimed that Schumm and Judge Ross violated the automatic stay during the Fraudulent Conveyance Action imposed by Hirshauer's bankruptcy filing. She further claimed that this Court violated the automatic stay imposed by James Gerben, Jr.'s bankruptcy filing when we decided the Appeal of the Fraudulent Conveyance Action.

^⑦ Hirshauer's position was "joint tenan[cy] was never broken" because, in order to do so "[one] ha[d] to give an order saying it's[] Hirshauer's property. Then [one] ha[d] to draw up a new deed with [] Hirshauer's name on it...then [one] can levy...on [Hirshauer's] property' using the writ in Hirshauer's name.

res judicata, collateral estoppel and the law of collateral [attacks] on judgments" because "[Hirshauer] has either litigated the issues raised or had the opportunity to do so.

B. Trial on the issue of partition of the Property.

On March 16, 2017, trial was held regarding AQ Holdings' action to partition or sell the Property. At the outset, Hirshauer, appearing pro se, requested a continuance on either of two grounds. First, she indicated that her defense to partition action was on appeal, i.e. the claims made within the Counterclaim, and the court should continue trial until this court decided the appeal.

Second, Hirshauer informed the court that she was under the effects of Tramadol, a narcotic prescribed for pain. Hirshauer requested the court reschedule the trial because she "[couldn't] think. [She][couldn't] remember things. [She was] foggy. [She didn't] want to get out of bed like somebody took [her] batteries out. So [she was] not mentally capable of...defending [her]self or presenting to [the court] intelligently." Hirshauer presented an unsigned doctor's note, which stated:

Shirley Hirshauer is a patient in our office. She is currently under medical treatment. She is to be evaluated in 4 to 6 weeks. I advise that the patient does not go to court at this time until patient is back to her baseline of health. She is currently not feeling well and needs to rest and take medications as prescribed. Please excuse her from court on Thursday, March 16th. Thank you for understanding.

Hirshauer told the court she was supposed to have had medical shots administered to her by her doctor that day in Florida and added she was to continue to receive those shots for a period of four to six weeks. AQ Holdings objected to the continuance, in part, because AQ Holdings had scheduled a witness to appear for trial that day. The court denied Hirshauer's continuance request.

AQ Holdings called as one of its witnesses a land surveyor, William Nuttle, who identified a survey of the Property showing its landscape to be agricultural, wetlands, and forestation. The survey was subsequently admitted into evidence as well as land records from the State Department of Assessments and Taxation ("SDAT") showing the

record owner, acreage calculation, real estate account number, and map of the Property. According to the SDAT records, the owners of the Property were AQ Holdings and James Gerben, which prompted the court to inquire whether Hirshauer in fact owned the Property. The parties then stipulated that Hirshauer owned the property for purposes of the partition action and the court agreed to subsequently address the issue.

Hirshauer testified in the proceeding and contended partition, rather than sale of the Property, was a more appropriate resolution. According to her, the cremated ashes of her father and brother had been spread upon a portion of the Property^⑧ and the Gerbens continued to use the Property for social gatherings.

Following the presentation of the evidence, the court gave a conditional ruling in favor of partition of the Property by sale. The court requested Schumm file a statement of proposed findings of fact for the court's consideration regarding how Hirshauer

⑧ However, just prior to this statement, Hirshauer stated, "my dad I buried."

came to own the Property. Hirshauer was instructed to respond to the statement within thirty days. On March 31, 2017, Schumm filed with the court an affidavit as instructed. Hirshauer did not respond to the contents of the affidavit.^⑨

The court filed its memorandum opinion ruling in favor of AQ Holdings on August 9, 2017, and concluded that “[a] sale of the [P]roperty and a division of the proceeds on balance would...lead to less loss and injury to all parties than pursuing the difficult road of partition under the unique circumstances of this case.” The court found the Property to be “irregular[,] full of wetlands and subject to flooding’ and ‘could with difficulty be Partitioned on a one-third/two-third basis.” However, the court explained, “given the continued obstruction that Hirshauer has engaged in where AQ Holdings['] interests are concerned one can predict

^⑨ Instead of responding to the contents of the affidavit, Hirshauer twice moved to dismiss the case with prejudice due to Schumm’s purported failure to file the affidavit timely.

That the partition process...would be onerous, expensive, and lead to years of continued litigation before any finality is obtained."¹⁰ The court found AQ Holdings would likely suffer "loss or injury" due to Hirshauer's probable court of action, i.e. the process outlined in Maryland Rule 12-401(c), ¹¹ "since the costs of the partitioning

¹⁰ The court explained:

Given that Hirshauer would likely not agree to a less arduous partition process the process set out in Rule 12-401 for the appointment of commissioners would be required. It can be expected from the actions taken so far that the selection process itself would lead to disputes about who is appointed and one could expect that the ultimate written report would be contested by Hirshauer at every turn and using any vehicle available to her.

¹¹ Md. Rule 12-401(c) states:

(1) Appointment of commissioners. When the court orders a partition unless all parties expressly waive the appointment of commissioners, the court

shall appoint not less than three nor more than five disinterested persons to serve as commissioners for the purpose of valuing and dividing the property. On request of the court, each party shall suggest disinterested persons willing to serve as commissioners. The order appointing the commissioners shall set the date on or before which the commissioners' report shall be filed. The commissioners shall make oath before a person authorized to administer an oath that they will faithfully perform the duties of their commission. If the appointment of commissioners is waived by the parties, the court shall value and divide the property.

(2) Report of commissioners. Within the time prescribed by the order of appointment, the commissioners shall file a written report. At the time the report is filed the commissioners shall serve on each party pursuant to Rule 1-321 a copy of the report together with a notice of the times within which exceptions to the report may be filed.

(3) Exceptions to Report. Within ten days after filing of the report, a party may file exceptions with the

Process will be substantial and eat into any ultimate value that may be found for this [P]property."¹²

clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in exceptions is waived unless the court finds that justice requires otherwise. The court may decide the exceptions without a hearing, unless a request for a hearing is filed with exceptions or by an opposing party within five days after service of the exceptions.

¹² The court noted that it had the power under Md. Rule 12-401(c) to allocate the costs of the partitioning process among the parties. However, the court found "it can be expected that it may indeed be difficult to alleviate the damage done by [] Hirshauer's likely actions," compounded with the "fact that [] Hirshauer's permanent residence is in Florida makes allocation and collection of costs even more problematic.

In its determination, the court "factored in [] Hirshauer's claims" that partition was more appropriate. The court considered the "sentimental value to [Hirshauer] of maintaining the [P]roperty as a piece of land that has been in her family...as well as very vague suggestion that ashes may have been scattered on the [P]roperty." However, the court concluded that these claims were "pretextual and conjured to prevent ultimate resolution of the contentious litigation," noting that, "according to the testimony[, the Property] has laid vacant except it has been used on occasion by [] Hirshauer's relatives for sporadic gatherings of a social nature."

DISCUSSION

1. Whether the court's judgment on the Counterclaim was an abuse of discretion in light of Hirshauer's bankruptcy judgment.

Hirshauer contends the circuit court abused its discretion and failed to apply "long standing bankruptcy law" by dismissing the Counterclaim in violation of the stay imposed by her bankruptcy. According to her, the court did not have the right to grant relief. She further alleges the bankruptcy court had previously determined there was no fraudulent

conveyance and thus, the circuit court lacked jurisdiction to decide how the property should be partitioned.

It is well established that the filing of a petition of bankruptcy triggers automatic stay to all legal proceedings "to recover a claim against the debtor that arose before the commencement of the [bankruptcy case]." 11 U.S.C. ss 362(a)(1). The purpose of the automatic stay is

To give the debtor a "breathing spell" from his/her creditors, to allow time to formulate a repayment or reorganization plan, and to prevent a chaotic and uncontrolled scramble for the debtor's assets in a multitude of uncoordinated proceedings in different courts, by ensuring that all claims against the debtor, other than those exempted from the stay, will be brought in single forum.

Klass v Klass, 377 Md. 13, 22 (2003). The stay, however, terminates when the case is closed. 11 U.S.C. ss 362(c)(1).

Hirshauer's involuntary bankruptcy proceedings were initiated in June, 2007 and ended on July 6, 2011. The action to sell or partition the Property began in 2016 and the court's dismissal of

the Counterclaim and grant of summary judgment occurred on September 12, 2017. As such, the court's actions did not violate the bankruptcy stay.

Hirshauer's argument that the court was without jurisdiction to hear the partition case because the Bankruptcy Court had previously held there was no fraudulent conveyance of the Property is without merit. She contends the matter was exclusively within the Bankruptcy Court's purview. We disagree and hold this issue was previously determined in the Appeal of the Fraudulent Conveyance. There, we held "[t]he circuit court properly denied Ms. Hirshauer and the Gerbens' motion to reconsider" because the judgment liens obtained by the Clemons before the initiation of Hirshauer's involuntary bankruptcy proceedings "were merely stayed, first by order of [the] court, and then by the bankruptcy proceedings." "[T]he discharge of [] Hirshauer in bankruptcy neither discharge[d] her in rem liability nor, in any way, affect[ed] the personal or in rem liability of third parties" and "the judgment liens remain[ed] effective...the bankruptcy proceedings ha[d] no res

judicata effect with respect to the liens." Here, Hirshauer attempts to disguise her former arguments by framing them within the context of the partition action. We hold the court's action in determining whether partition or sale was appropriate was fully within its jurisdictional powers as previously determined by this Court.

II. **Whether the court erred in dismissing or, in the alternative, granting summary judgment against the Counterclaim**

1. The court did not err in dismissing the Counterclaim as it related to Judge Ross
When reviewing a trial court's decision to dismiss "[w]e examine whether the complaint, assuming all well-pleaded facts and reasonable inferences drawn therefrom in a light most favorable to the pleader, states a legally sufficient cause of action." **Reichs Ford Road Joint Venture v State Road Com'n of the State Highway Admin.**, 388 Md. 500, 509 (2005). We will affirm a dismissal "only if the alleged facts and permissible inference...would, if proven, nonetheless fail to afford relief to the plaintiff." **Ricketts v Ricketts** 393 Md. 479, 492 (2006). We review

de novo a court's granting of a motion to dismiss.

Advance Telecom Process LLC v DSFederal, Inc., 224 Md. App. 164, 173 (2015).

In the case at bar, the Counterclaim alleged Judge Ross' actions while presiding over the Fraudulent conveyance Action aggrieved Hirshauer. She claimed Judge Ross acted without jurisdiction in the Fraudulent Conveyance Action; committed a civil conspiracy in ordering the issuance of the writs; wrongly consulted with an attorney regarding whether writs of execution should be issued; illegally stayed the enforcement of the writs of execution issued in the Levy Actions; violated the automatic stay and discharge imposed by Hirshauer's bankruptcy; failed to follow service of process requirements under Maryland law; "convicted Hirshauer of her fraud charge with out [sic] due process"; and wrongly ordered and held a sheriff's sale to sell Property.

Normally acts performed by a judge within the course of his or her judicial duties are entitled to judicial immunity "regardless of the nature of the tort and even where the suit against the judge alleged that he acted in bad faith, maliciously, or corruptly."

Parker v State, 337 Md. 271, 284-85 (1995). As the United States Supreme Court stated in **Bradley v fisher**, judicial immunity applies to judicial acts "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." 13 Wall. 335, 347 (1872). Such immunity is necessary for the proper functioning of our judicial system because "absolute immunity is needed to forestall endless collateral attacks on judgments through civil actions against the judges themselves." **Parker**, 337 at 287 (citing **Bradley**, 13 Wall. At 348).

The determination of "[w]hether a function qualifies for absolute immunity is made objectively and not subjectively." *D'Aoust v Diamond*, 424 Md. 549, 599 (2012). Where the act "is a function normally performed by a judge" and the parties "dealt with the judge in his judicial capacity," judicial immunity will apply. *Id.* (citing *Parker*, 337 Md. At 290).

In the case at bar, Judge Ross' actions- deciding motions, issuing stay orders, rendering judgment, and ordering and holding a judicial sale

of property - are clearly judicial functions and thus are entitled to immunity.

Hirshauer nevertheless argues that judicial immunity does not apply because she had not been served process and, thus, the circuit court had not jurisdiction. While it is true a judge will lose "absolute judicial immunity when he or she knowingly acts in the clear absence of all jurisdiction over the matter," *Id.*, "the circuit courts...[e]ach ha[ve] full common-law and equity powers and jurisdiction in all civil and criminal cases with its county[.]" Md. Code, Courts & Jud. Pro., ss1-501. Thus, even had Hirshauer not been sufficiently served as to allow the circuit court to exercise proper jurisdiction over her, Judge Ross did not act in "clear absence of all jurisdiction" equivalent to a probate court trying a criminal trial. See *Bradley*, 80 U.S. at 352 (stating, as an example, a "clear absence of all jurisdiction" is present if a probate court were to try a criminal trial).

Moreover, in Hirshauer's previous appeal to this Court, we affirmed the circuit court's decision in which it found Hirshauer was properly served. Again, she reframes an issue previously decided.

2. The court did not err in granting summary judgment on the Counterclaim as it related to AQ Holdings and Schumm.

We analyze a court's granting of a motion for summary judgment de novo. **Dasheill v Meeks**, 396 Md. 149, 163 (2006). "[W]e independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law." **United States Auto. Ass'n v Riley**, 393 Md. 55, 67 (2006). Factual disputes are resolved in favor of the non-moving party. **Dashiell**, 396 Md. At 163. "Only when there is an absence of a genuine dispute of material fact will [we] determine whether the court was correct as a matter of law." *Id.*

The doctrine of res judicata "precludes the same parties from relitigating a lawsuit based upon the same cause of action because the second lawsuit involves a judgment that 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." **Bank of New York Mellon v Georg**, 456 Md. 616, 625 (2017).

Relitigation is precluded if:

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.

Id. At 626

"A final judgment is any judgment or order which is so far final as to determine and conclude the rights involved in the action, or to deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceedings."

Grimberg v Marth, 338 Md. 546, 551 (1995).

We have held that, under Maryland law, "[t]he ratification of a sale is res judicata as to the validity of the sale...hence its regularity cannot be attacked in a collateral proceeding." **Chaires v. Chevy Chase Bank, F.S.B.**, 131 Md. App 64, 77 (2000). Successors to an estate or interest will be held to be in privity to a

person to a prior judgment where the succession occurred subsequent to the bringing of the suit in which the judgment was rendered. See **Walzl v King**, 113 Md. 550 (1910).

In the present case, AQ Holdings is in privity with the Clemons as it relates to the Ratification because it was deeded the Property after the ratification of the sale. Accordingly, Hirshauer's appeal of the Ratification and our dismissal of that appeal rendered the Ratification a final judgment.

The Counterclaim at issue in this appeal sought to attack the validity of the Ratification. Hirshauer alleges deficiencies of service in the initial attachment of the Property. She also asserts the collection efforts including the sheriff's sale of the Property to AQ Holdings, were a violation of the discharge of her debts in bankruptcy pursuant to 11 U.S.C. ss524 because the Bankruptcy Court's ruling necessitated the finding that the Gerbens owned the Property and, therefore, her conveyance of the Property to the Gerbens was valid. Further, she contends the Clemons illegitimately obtained writs in the Levy Actions and that there was no pre-

bankruptcy judgment from the Circuit Court for Queen Anne's county voiding the conveyance of the Property from herself to the Gerbens, no valid order to the clerk to issue any writs, nor notice to the Sheriff to levy the Property.

However, Hirshauer brought or could have brought these claims as defenses to the Ratification in the prior lawsuit. Hirshauer is now barred from bringing these claims as her appeal of the Ratification was dismissed. As such, the court did not err in dismissing the Counterclaim because it is barred by the doctrine of res judicata.

The validity of a sale may be attacked in cases of fraud or illegality pursuant to Maryland Rule 2-535, **Chaires v Chevy Chase Bankr, F.S.B.**, 131 Md. App. 64, 77 (2000). Hirshauer next argues Maryland Rule 2-535 allows her to collaterally attack the Fraudulent Conveyance Judgment in separate litigation "with no time limit" on the basis of fraud, mistake, or irregularity. She cites Maryland rule 2-535(b), which states, "[o]n a motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularly." Hirshauer, however, didn't file a motion

with the court pursuant to Maryland rule 2-535(b).

Further, "[j]udgments of a legally organized judicial tribunal, proceeding within the scope of its powers, and possessing the requisite jurisdiction over the subject matter of the suit and the parties thereto, whether correct or erroneous, cannot be called in question by the parties or privies in any collateral action or proceeding." **Klein v Whitehead**, 40 Md. ,20 (1978). A collateral attack on a judgment "is an attempt to impeach the judgment by matters dehors the record, before a court other than the one in which it was rendered, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceedings not provided by law for the express purpose of attacking it." *Id.*

In **Sheppard v Nabb**, we considered whether the application of the doctrine of collateral attacks was appropriate where claims were brought against parties who were not parties to the prior proceeding, 84 Md. App. 687, 693-94 (1990). In that case, the defendants previously sued the plaintiff, a trustee, for wrongdoing relating to a trust's administration. *Id.* At