Third District Court of Appeal

State of Florida

Opinion filed October 14, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-1698
Lower Tribunal No. 22-2219-CA-01

Pilac Management, Ltd., etc., et al.,
Appellants,

vs.

Parque Towers Developers, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, William Thomas, Judge.

Reiner & Reiner, P.A., and David P. Reiner, II, for appellants.

Law Offices of Robert Frankel, P.A., and Robert P. Frankel; Lauri Waldman Ross, P.A., and Lauri Walman Ross, for appellee.

Before LOGUE, LINDSEY, and GOODEN, JJ.

LOGUE, J.

The Appellants are various purchasers of pre-construction condominium units. Under their purchase and sale agreements, the developer, Parque Towers Developers, LLC, contracted to return deposits that exceeded 15% of the units' purchase price if the purchasers failed to close. In an earlier stage of Appellants' litigation with the developer, they obtained a judgment for the return of their entire deposits due to the developer's failure to timely complete the construction. On appeal, however, we reversed in part, finding the developer's delay in construction did not violate the purchase agreements. Parque Towers Devs., LLC v. Pilac Mgmt., Ltd., 395 So. 3d 189 (Fla. 3d DCA 2024) ("Parque I").

In the litigation now under review, the trial court refused the purchasers' claim for return of their deposits in excess of 15% provided by the purchase agreements even though the developer had sold the units at or above the contracted prices. The trial court reasoned that, although "unfair and inequitable," this result was mandated by res judicata. In doing so, the seasoned trial judge overlooked the line of authority that allows res judicata to be overridden when its mechanical application would work an injustice. Accordingly, we reverse and remand for further proceedings.

BACKGROUND

The underlying matter concerns a dispute over the pre-construction sale of five condominium units. The developer contracted to sell condominium units to five different sets of purchasers: (1) Pilac Management, Ltd.; (2) Rebecca Christina Vallias and Hugo Kawasaki; (3) Josh Kurzban and Michelle Kurzban; (4) Marcio Silveira Kogut; and (5) Francisco Alimari Netto and Nely Rachel Delicato Alimari.

All five sets of purchasers individually sued the developer and another defendant in five separate actions seeking rescission of their purchase agreements and the immediate return of their deposit money with interest. In their operative complaints, the purchasers alleged that the developer breached the purchase agreements by failing to substantially complete the units by the estimated completion date of December 31, 2017. The purchasers alleged that they had formally notified the developer of its default and that they were "rescinding and cancelling the [a]greement[s] and demanding the immediate return of the deposit money paid thereunder." The developer counterclaimed, alleging that the purchasers breached the purchase agreements by failing to close.

The cases were consolidated, and following a non-jury trial, the trial court entered a final judgment in each of the five cases. On the breach of

contract claims for failure to substantially complete the units, the trial court found in favor of the purchasers and determined that the purchasers were "entitled to the return of [their] deposits as damages[.]" The trial court also found in favor of the purchasers on the developer's counterclaim.

The developer appealed all five final judgments but challenged only the trial court's judgment in favor of the purchasers on their breach of contract claims. It did not appeal the trial court's finding in favor of the purchasers on its counterclaim. As to the breach of contract claims, the developer argued the trial court erred by interpreting the purchase agreement to require the units be completed by December 31, 2017. We consolidated these appeals and reversed in part. Parque I, 395 So. 3d at 190. In reversing, we held that "the agreements did not create an affirmative obligation for the developer to complete the units by a date certain or otherwise make time of the essence." Id. In so doing, we noted that "we t[ook] no position on any other remedy the Purchasers may have exercised had they desired to exit the contract prior to the notice of closing." Id. at 192 n.3.

On remand, the purchasers sought leave in the trial court to assert supplemental claims "for damages and statutory recission regarding the disputed deposit amounts." The trial court denied the motion, finding that it "only ha[d] jurisdiction to enforce the mandate." Pursuant to the mandate, the

trial court vacated the final judgment on the breach of contract claim and entered a final judgment in favor of the developer.

Thereafter, the purchasers commenced five separate new actions against the developer, alleging two causes of action: (1) breach of contract for failure to return deposits as required by Section 13 of the purchase agreement; and (2) rescission for failure to comply with sections 718.202(1)(a) and (5), Florida Statutes.[1]

Pertinent to this appeal, Section 13 of the purchase agreements provided, in relevant part, as follows:

> Upon Purchaser's default (and the expiration of any cure period, if applicable), all Purchaser's rights under this Agreement will terminate and Seller can resell the Unit without any accounting to Purchaser. . . . **If Purchaser defaults or breaches this Agreement after Purchaser has paid fifteen percent (15%) of the purchase price of the Unit**, excluding any interest owed under this Agreement, **the Seller shall refund to the Purchaser any amount which remains in excess of (a) fifteen percent (15%) of the purchase price of the Unit, excluding any interest owed under the Agreement, or (b) the amount of damages incurred by the Seller as a result of such breach,**

[1] These statutes provide: "If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned." § 718.202(1)(a), Fla. Stat. "The failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located." § 718.202(5), Fla. Stat.

> **whichever is greater**, from the amount paid by Purchaser with respect to the purchase price of the Unit. . . . The amount of the deposit and any interest earned on it which remains after subtracting the amount of the refund to which Purchaser is entitled as provided above in this paragraph, shall be paid to Seller.

(emphasis added).

The operative complaints referenced the prior consolidated actions, alleging that "[t]he parties' competing claims for breach of contract have both been denied; however, [the developer] nevertheless sold the [u]nit[s] to . . . third part[ies]." On the breach of contract claim, the purchasers sought return of the excess deposit amounts under Section 13 of the purchase agreements, alleging: (1) during trial in the prior actions, the developer's representative testified that its damages were still ongoing and continuing; (2) the developer sold the units to a third parties; (3) as a result of this Court's opinion in Parque I, the developer's damages became ascertainable and calculable; and (4) the developer "failed or refused to calculate its damages and to refund the excess deposit amounts pursuant to Section 13 of the Purchase Agreement[s]." Of note, the purchasers cited to the portion of Section 13 concerning the buyer's breach, not the seller's breach. On the recission claim, the purchasers sought return of the deposits with interest, alleging that "[p]ursuant to the Third DCA Opinion, [the developer's] course of conduct in selling the [u]nit[s] to a third part[ies], and the denial of [the

developer's] counterclaim for breach of contract, the Purchase Agreement[s] ha[ve] been properly terminated" and that the developer has failed to return the funds as required by sections 718.202(1)(a) and (5). For our purposes here, section 718.202(1)(a) concerns the return of funds after a buyer's termination of the contract, not the seller's.

The developer moved to dismiss the new actions based on res judicata. The cases were then consolidated, and the purchasers filed their consolidated response to the developer's motions to dismiss. The purchasers argued res judicata did not bar their claims because there was a subsequent breach of the purchase agreements. They also argued the doctrine of res judicata was inapplicable where it worked an inequity. The purchasers alleged that during the pendency of the prior actions, the developer sold the five units for a total of $6,440,000, more than the original total contract price of $6,265,000, and that the developer had also retained the purchasers' deposits, which totaled $3,144,500, resulting in a windfall to the developer.

The trial court thereafter entered the order on appeal, which dismissed the purchasers' consolidated actions with prejudice. The order found that while "it would appear unfair and inequitable for [the developer] to be able to keep all of the deposits paid by [the purchasers] when the contract between

the parties appears to express otherwise," "Plaintiffs' consolidated actions are barred by res judicata," as the trial court was bound by this Court's decision in Parque I. The instant appeal followed.

STANDARD OF REVIEW

"We review orders granting a motion to dismiss under a *de novo* standard of review." Williams Island Ventures, LLC v. de la Mora, 246 So. 3d 471, 475 (Fla. 3d DCA 2018). "The de novo standard of review further applies to a trial court's ruling that relief is barred on the grounds of res judicata or collateral estoppel." Fernandez v. Cruz, 341 So. 3d 410, 412 (Fla. 3d DCA 2022).

ANALYSIS

The issue before this Court is whether the purchasers' underlying actions were barred by res judicata. "The doctrine of res judicata prevents the re-litigation of a claim that was brought or could have been brought in prior litigation." Claims Holding Grp., LLC v. AT&T Mobility, LLC, 347 So. 3d 412, 414 (Fla. 3d DCA 2022). See also Mabson v. Christ, 140 So. 671, 671-72 (Fla. 1932) ("The general rule is that a judgment on the merits, rendered in a former suit between the same parties or their privies, on the same cause of action, by a court of competent jurisdiction, operates as an estoppel, not only as to every matter which was offered and received to sustain or defeat

the claim, but as to every other matter which might with propriety have been litigated and determined in that action."). The doctrine "is founded upon the sound proposition that there should be an end to litigation and that in the interest of the State every justiciable controversy should be settled in one action in order that the courts and the parties will not be pothered for the same cause by interminable litigation." Gordon v. Gordon, 59 So. 2d 40, 44 (Fla. 1952). "For res judicata to apply, four identities must exist between the former suit and the suit in which res judicata is to be applied: '(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; and (4) identity of the quality or capacity of the persons for or against whom the claim is made.'" Claims Holding Grp., 347 So. 3d at 414 (quoting Pearce v. Sandler, 219 So. 3d 961, 966 (Fla. 3d DCA 2017)).

There exists some cloud on the record concerning whether all the necessary identities exist for res judicata because the trial court ruled against the developer's counterclaim in the prior proceeding and that ruling was never appealed. In any event, however, the Florida Supreme Court "has long recognized that res judicata will not be invoked where it would defeat the ends of justice." State v. McBride, 848 So. 2d 287, 291 (Fla. 2003) (citing Universal Constr. Co. v. City of Fort Lauderdale, 68 So. 2d, 366, 369 (Fla.

1953) (en banc)). In Universal Construction Co., the Court explained that "when a choice must be made[,] we apprehend that the State, as well as the courts, is more interested in the fair and proper administration of justice than in rigidly applying a fiction of the law designed to terminate litigation." 68 So. 2d at 369. Further, when it comes to purchase agreements, this Court has stated that "[t]he interests of justice . . . are necessarily implicated . . . where a party argued all terms of a purchase agreement are enforceable, but now seeks to evade the impact of some provisions and obtain a windfall." Hess v. PMG-S2 Sunny Isles, LLC, 349 So. 3d 547, 550 n.4 (Fla. 3d DCA 2022).

Here, the purchasers argue that equitable considerations bar application of res judicata because the purchasers would be forced to forfeit their deposits, which totaled $3,144,500, when the developer then sold the five units to third parties for a total of $6,440,000, which is more than the original $6,265,000 contract price for the units. Thus, the purchasers argue the developer would obtain a windfall. The record reflects that the trial court considered this issue and although it found res judicata applied, it determined "that it would appear unfair and inequitable for [the developer] to be able to keep all of the deposits paid by [the purchasers] when the contract between the parties appears to express otherwise."

"The enforceability of contracts is a bedrock principle of our society." U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc., 861 So. 2d 74, 77 (Fla. 4th DCA 2003). We agree with the trial court's recognition of the unfairness and inequity that results from the denial of the purchasers' claim to enforce the purchase agreement. Under the facts and circumstances of this case, we hold the application of res judicata would unjustly frustrate the express bargain reached by the purchasers and developer when they entered into the purchase agreements. See deCancino v. E. Airlines, Inc., 283 So. 2d 97, 98 (Fla. 1973) (noting the various exceptions to res judicata, including that "the doctrine will not be invoked where it will work an injustice"). For these reasons, we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.