STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH KLOCK,

Plaintiff-Appellee,

v

SANDRA K. VAUGHN,

Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 354778
Macomb Circuit Court
LC No. 2020-000332-AV

Before: M. J. KELLY, P.J., and STEPHENS and REDFORD, JJ.

PER CURIAM.

Defendant Sandra Vaughn appeals by leave granted[1] the circuit court order affirming the 38th District Court's grant of possession of the real property to plaintiff Joseph Klock in his land contract forfeiture action for possession. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties entered into a land contract on June 26, 2015, under which Vaughn agreed to purchase a residential property located in Eastpointe, Michigan for $70,000 to be fully paid within 10 years. The land contract required Vaughn to pay an initial $15,000 and pay monthly installments of $583 to pay off the $55,000 balance plus five-percent per annum interest. Among other things, the parties agreed that Klock would "satisfy all tax liens on the property prior to the end of this contract and convey the property free of any such lien." Further, under the land contract, the parties agreed that, if Vaughn failed to perform any part of the contract, after default, Klock could declare the land contract forfeited, retain what had been paid and all improvements, take possession of the land, and require Vaughn to move out.

[1] *Klock v Vaughn*, unpublished order of the Court of Appeals, entered November 30, 2020 (Docket No. 354778).

Vaughn resided at the property and made payments on the land contract until sometime in 2017 when she discovered an IRS tax lien on the property against a person named Mitchell Przybranowski,[2] so she ceased making payments under the land contract. That prompted Klock to file a land contract forfeiture action in the district court. Because of the IRS tax lien issue, Klock dismissed without prejudice that forfeiture action. Then, in 2018, Vaughn filed a complaint in Macomb Circuit Court alleging four claims against Klock: Count I-Fraud and Rescission; Count II-Fraud Damages and for Indemnification; Count III-Breach of Contract and Indemnification; and Count IV-Breach of Contract and for Indemnification. Vaughn did not seek specific performance of the land contract nor did she seek to quiet title to the land in herself. In response, Klock answered and stated affirmative defenses including that Vaughn's claims were barred and offset by her failure to pay taxes, insurance, and by using the property without paying monthly payments as required under the land contract.

Klock moved for summary disposition which the circuit court heard and took under advisement. The day after the hearing, the parties participated in case evaluation which resulted in the case evaluation panel awarding Vaughn $15,000. Within the time allotted by MCR 2.403 and just before the circuit court ruled on Klock's summary disposition motion, both parties accepted the case evaluation award. The circuit court granted Klock's summary disposition motion. Klock did not pay the case evaluation award within 28 days so Vaughn moved to enforce the case evaluation award and for entry of judgment. On December 18, 2019, the circuit court issued an opinion and order granting Vaughn's motion and entered a final judgment under MCR 2.403(M)(1) of $15,000 in favor of Vaughn and dismissed the case.

Meanwhile, Klock filed a land contract forfeiture action in the 38th District Court for possession of the property because Vaughn failed to make payments required under the land contract. Vaughn contested the claims and the district court held three hearings at which it heard the parties' opposing arguments. At the first hearing, Klock argued that he held title to the land and the right to possession since the land contract no longer existed because of the parties' acceptance of the case evaluation award and entry of the judgment in Vaughn's circuit court case. Vaughn countered that her circuit court case determined that the land contract had been paid in full because Klock asserted affirmative defenses that she contended were decided in her favor by the entry of judgment on the case evaluation award. She argued that res judicata precluded Klock from asserting any claims to the contrary in the district court action. Vaughn stated that the case evaluation award indicated that Klock had no entitlement to setoff because it determined that Klock owed Vaughn money over and above the land contract. Klock responded that Vaughn's complaint sought rescission and the case evaluation award and entry of judgment for her in that case essentially rescinded the land contract and provided her full recompence while extinguishing any interest she had in the land requiring the district court to grant him possession. Klock asserted that it made no sense for him to pay Vaughn $15,000 and not retain title and the right to possession. Klock contended that the judgment made Vaughn whole. Vaughn stated that she believed herself

[2] The record is silent regarding Przybranowski and the origin of the IRS lien and also whether Klock or Vaughn knew anything about that lien at the time of contracting. Coincident with the parties' pending dispute, sometime around May 2019, the IRS discharged the tax lien on the subject property.

entitled to a credit for payment in full of the land contract and that Klock had to provide her a deed to the land. Because of the parties' differing positions on the land contract's status and because the judgment entered by the circuit court did not indicate a ruling on the land contract or the issue of possession, the district court asked the parties to further brief the matters and adjourned the hearing.

During the pendency of the land contract forfeiture action, Klock moved in the circuit court for reconsideration of the court's December 18, 2019 opinion and order regarding Vaughn's motion for judgment. He argued that, as a precondition of his payment of the $15,000 case evaluation award, the judgment should require Vaughn to restore possession of the land to Klock. He argued that she unlawfully continued residing on the property requiring the circuit court to rule on possession. The circuit court analyzed the pleadings in Vaughn's case and found that possession of the property had not been a claim raised or an issue decided in the case. The court noted that Vaughn's complaint stated claims for fraud and rescission of the land contract, fraud damages, and breach of contract. The circuit court observed that Klock had not filed a counterclaim. The circuit court ruled that it lacked the ability to make any finding as to possession of the subject property and stated that it had not made any findings as to Vaughn's claims because the case closed as a result of the parties' acceptance of the case evaluation award. Because a claim for possession had not been raised in the action, it had not been an issue in Vaughn's case. Accordingly, the circuit court denied Klock's motion.

A couple weeks after the circuit court's denial of Klock's motion, the district court reconvened the hearing on the land contract forfeiture. The district court noted that the circuit court's decision indicated that possession of the land had not been raised or decided in Vaughn's circuit court case. The parties made opposing arguments that they each were entitled to possession of the land and that the circuit court judgment required the district court to hold that res judicata precluded the other party's claim for possession. Vaughn argued that Klock's acceptance of case evaluation constituted his consent to judgment, a judgment that meant that he had no claim of liability against her under the land contract and res judicata barred Klock's claim for possession. Vaughn contended that, because Klock asserted affirmative defenses that Vaughn had failed to make payments entitling him to setoffs, and by not raising the issues in a counterclaim, res judicata barred Klock from raising Vaughn's nonpayment in a later action. The district court disagreed and opined that it did not make sense for Klock to pay Vaughn $15,000 and not have the right to possession when Vaughn continued to owe a substantial amount on the land contract. Vaughn responded that res judicata barred Klock from asserting that she owed any money. The district court concluded that the circuit court's ruling on Klock's motion made clear that the possession issue had not been decided in Vaughn's case. The district court again adjourned the hearing to permit Vaughn to submit further briefing.

The district court reconvened the hearing a week later on March 2, 2020. Klock argued that Vaughn desired the property for free but the circuit court's opinion established that the possession issue had not been adjudicated in the circuit court case. Klock asserted that the district court had exclusive jurisdiction over the possession issue. Klock explained that Vaughn owed unpaid land contract payments, insurance, and taxes totaling $31,629.24 because she missed a payment due on July 1, 2015, plus she missed 32 payments from July 7, 2017 through March 1, 2020. Klock stated that Vaughn also owed $4,015.66 for insurance on the property that he paid when he discovered that she failed to do so as required under the land contract. Klock also asserted

that Vaughn owed $8,216.58 for unpaid property taxes that she had the obligation to pay under the land contract but failed to do so. Vaughn first argued that Klock did not accurately state the amount for the arrearage and sought to accelerate the balance of the ten-year land contract with five years left on the contract. Vaughn conceded that Klock could claim an arrearage of 33 months at $583 per month, but she denied that he could claim nonpayment of the entire balance of the contract amount and asked the district court to dismiss the action. Klock responded that he had submitted evidence showing the 33 missed payments, the unpaid property insurance, and the unpaid property taxes equaling approximately $31,400. Klock next testified regarding the property insurance that he paid because Vaughn had failed to do so for several years. During cross-examination Klock testified that Vaughn had not paid property taxes since the commencement of the land contract, had only recently paid the 2017 property taxes, but had not paid the 2018 or 2019 property taxes.

The district court stated that the evidence convinced it that Klock should be granted possession of the property. The district court, however, declined to include in the judgment the unpaid taxes because Klock had not paid them. The district court declined to offset the amount stated in its judgment of possession by the $15,000 judgment because that judgment did not relate to the matter at bar. The district court ruled in its judgment of possession that Vaughn owed Klock $23,412.42, that less than 50% of the land contract purchase price had been paid, and therefore, ordered Klock entitled to possession of the property. The judgment ordered that an eviction order could be issued upon the expiration of 90 days if Vaughn failed to pay the amount due under the land contract.

Vaughn appealed the district court's ruling to the circuit court, arguing that res judicata barred Klock from asserting any claim of liability against her because he had already alleged her liability in his affirmative defenses in the previous circuit court case and had agreed to the $15,000 case evaluation award instead of pursuing claims regarding Vaughn's alleged land contract liability. The circuit court issued a written opinion and order denying Vaughn's appeal, ruling that res judicata did not bar Klock from asserting liability against Vaughn to recover possession of the property. This appeal followed.

II. STANDARD OF REVIEW

We review de novo a circuit court's review of a district court's order. *Noll v Ritzer*, 317 Mich App 506, 510; 895 NW2d 192 (2016). We also review de novo a court's decision whether to apply the res judicata doctrine. *Garrett v Washington*, 314 Mich App 436, 440-441; 886 NW2d 762 (2016). Further, we review de novo a lower court's interpretation of both Michigan statutes and the Michigan Rules of Court. *State Farm Fire & Casualty Co v Corby Energy Servs, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). Legal questions are likewise reviewed de novo. *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006), citing *Roan v Murray*, 219 Mich App 562, 565; 556 NW2d 893 (1996).

III. ANALYSIS

Vaughn argues that the entry of the judgment on the case evaluation award barred Klock from asserting any land contract liability against her to obtain possession of the property after

forfeiture because he accepted the $15,000 case evaluation award which she contends cut off any liability she had under the land contract. We disagree.

A fee interest in real property consists of the legal and equitable title to the property. "A person having all possible rights incident to ownership of a parcel of property has the entire bundle of sticks or a fee simple title to the property." *Eastbrook Homes, Inc v Treasury Dept*, 296 Mich App 336, 348; 820 NW2d 242 (2012) (citation omitted). "Important rights flowing from property ownership include the right to exclusive possession, the right to personal use and enjoyment, the right to manage its use by others, and the right to income derived from the property." *Id*. (citation omitted). In *Graves v American Acceptance Mortg Corp*, 469 Mich 608, 616-617; 677 NW2d 829 (2004) (quotation marks and citations omitted), our Supreme Court considered the rights incident to legal and equitable ownership of land and explained that, in a land contract situation,

> the vendee purchases the property upon signing the land contract and acquiring an equitable interest therein. At that point, the vendee acquires "seisin" and a present interest in the property that may be sold, devised, or encumbered. That the vendee may ultimately default on the contract does not negate the fact that the vendee has, in a real sense, purchased the relevant property. That legal title remains in the vendor until full performance of all contractual obligations likewise does not negate the fact that the vendee has already purchased the property. The vendor's legal title, . . . is only a trust coupled with an interest by way of security for a debt[.] It represents but an ordinary money debt, secured by the contract.

In *Zurcher v Herveat*, 238 Mich App 267, 291; 605 NW2d 329 (1999) (quotation marks and citation omitted), this Court explained:

> The term land contract is commonly used in Michigan as particularly referring to agreements for the sale of an interest in real estate in which the purchase price is to be paid in installments (other than an earnest money deposit and a lump-sum payment at closing) and no promissory note or mortgage is involved between the seller and the buyer.

A land contract is a form of "executory contract in which legal title remains in the seller/vendor until the buyer/vendee performs all the obligations of the contract while equitable title passes to the buyer/vendee upon proper execution of the contract." *Id*. Under MCL 565.361(1), upon complete performance of a land contract vendee's contractual duties, i.e., complete payment of the purchase price and satisfaction of any other conditions, the land contract vendor is obligated to convey legal title to the vendee by an appropriate deed of conveyance.

To acquire full ownership and fee title to property purchased under a land contract, the terms of the land contract must be fulfilled. Failure to perform all terms of a land contract triggers a land contract vendor's right to declare the land contract forfeited and to retake possession of the land. MCL 600.5726 provides:

> A person entitled to any premises may recover possession thereof by a proceeding under this chapter after forfeiture of an executory contract for the purchase of the premises but only if the terms of the contract expressly provide for

> termination or forfeiture, or give the vendor the right to declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract. For purposes of this chapter, moneys required to be paid under the contract shall not include any accelerated indebtedness by reason of breach of the contract.

Under MCL 600.5704, district courts, municipal courts and the common pleas court of Detroit have jurisdiction over summary proceedings to recover possession of premises pursuant to the provisions of MCL 600.5701 *et seq*. MCL 600.5741 authorizes district courts to enter judgments of possession if the plaintiff proves entitlement to possession of land because of nonpayment of moneys under an executory contract for purchase of the premises. MCR 4.201 authorizes district courts to conduct summary proceedings in cases involving the forfeiture of land contracts. MCR 4.201 further authorizes district courts to determine the rights of parties to possess properties subject to land contracts and sets forth the requirements for judgments entered pursuant to such summary proceedings.

In this case, Klock filed a land contract forfeiture action for possession of the property subject to the land contract. The record reflects that, in the district court proceedings, Klock presented evidence of the terms of the land contract and evidence that established that Vaughn failed to perform those terms by missing 33 monthly installment payments, by failing to pay for property insurance covering the subject property, and by failing to pay the property taxes. At the third hearing on the matter, Vaughn conceded that she failed to make 33 monthly installment payments. She did not dispute the evidence that she failed to maintain property insurance on the subject property. She also did not dispute that she had not paid the property taxes on the subject property for the 2018 and 2019 tax years. The unrebutted evidence of Vaughn's defaults under the terms of the land contract entitled Klock to declare the land contract forfeited as permitted under the terms of the land contract and to seek possession pursuant to MCL 600.5726. The record reflects that the district court properly analyzed the evidence and found that Klock met his burden of establishing his right to land contract forfeiture and possession. Based on the evidence, the district court correctly set forth in its judgment of possession the arrearage amount that Vaughn could pay to retain possession of the property and properly specified that should she fail to do so within 90 days, an eviction order could be entered.

On appeal to the circuit court, Vaughn argued that the district court erred because Klock's acceptance of the case evaluation award and the ensuing entry of judgment on the award precluded Klock from asserting any liability against her for possession of the property. She claimed that the res judicata doctrine barred any such claims since Klock had asserted affirmative defenses of similar liability in her case. In essence, Vaughn contended that, despite the unrebutted evidence that established that she failed to make 33 monthly land contract installments, failed to properly insure the property, and failed to pay the property taxes when due, all required under the land

contract, and had not paid the land contract in full, the entry of judgment on the case evaluation award granted Vaughn right to full ownership and possession of the subject property.[3]

The circuit court analyzed whether res judicata applied under the circumstances by reviewing Vaughn's claims in her lawsuit, Klock's affirmative defenses in that action, the case evaluation award and entry of judgment. The circuit court held that the doctrine did not bar Klock from pursuing land contract forfeiture and possession of the property. On appeal to this Court, Vaughn challenges the circuit court's decision by making the same argument that res judicata barred Klock from asserting any land contract liability as a basis for land contract forfeiture and summary proceedings for possession. She argues that "he chose entry of a $15,000 consent judgment against himself" "over and above any purported land contract liability" of Vaughn as asserted in his affirmative defenses. Accordingly, we must determine whether the res judicata doctrine applied in this case because of the entry of judgment on the case evaluation award.

Res judicata serves "an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims." *William Beaumont Hosp v Wass*, 315 Mich App 392, 398; 899 NW2d 745 (2016) (quotation marks and citation omitted). Res judicata is also known as claim preclusion. *Bennett v Mackinac Bridge Auth*, 289 Mich App 616, 629; 808 NW2d 471 (2010).[4] "The doctrine of res judicata is intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 715; 848 NW2d 482 (2014). In *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004) (citations omitted), our Supreme Court explained:

---

[3] Klock argued to the circuit court in Vaughn's appeal from the district court ruling that res judicata barred Vaughn's claim of right to title and possession of the property because she failed to assert a claim to quiet title in her original circuit court case. The circuit court did not decide the appeal on this ground.

[4] This Court explained the related doctrine of issue preclusion in *Allen Park Retirees Assoc, Inc v City of Allen Park*, 329 Mich App 430, 444-445; 942 NW2d 618 (2019) (quotation marks and citations omitted):

> Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. Unlike res judicata, which precludes relitigation of claims, collateral estoppel prevents relitigation of issues, which presumes the existence of an issue in the second proceeding that was present in the first proceeding. Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel.

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.

The second factor is satisfied in this case because Vaughn's lawsuit and Klock's land contract forfeiture and possession summary proceeding involved the same parties. Determination of the first and third factors, however, are not as clear-cut.

The first res judicata factor requires that we consider whether case evaluation constituted a decision on the merits of claims made in Vaughn's action and what the entry of judgment in that action decided with finality. The record indicates that Vaughn raised two fraud-based causes of action seeking rescission of the land contract and damages,[5] and two breach of contract causes of action against Klock seeking damages. Her claims arose from the discovery of the IRS tax lien and Klock's failure to satisfy that tax lien as required under the land contract. Notably, Vaughn did not state in her complaint a claim for quiet title to the subject land, a claim for specific performance of the land contract, or a claim for possession. The record indicates that Klock denied Vaughn's allegations of liability under each claim. In his affirmative defenses he asserted that her claims were barred and offset by her failure to pay property insurance, property taxes, and monthly

---

[5] In *Bazzi v Sentinel Ins Co*, 502 Mich 390; 919 NW2d 20 (2018), our Supreme Court explained:

> Rescission abrogates a contract and restores the parties to the relative positions they would have occupied if the contract had never been made. Because a claim to rescind a transaction is equitable in nature, it is not strictly a matter of right but is granted only in the sound discretion of the court.
>
> When a plaintiff is seeking rescission, the trial court must balance the equities to determine whether the plaintiff is entitled to the relief he or she seeks. Accordingly, courts are not required to grant rescission in all cases. For example, rescission should not be granted in cases where the result thus obtained would be unjust and inequitable, or where the circumstances of the challenged transaction make rescission infeasible[.] [*Id*. at 409-410 (quotation marks and citations omitted).]
>
> Unlike an action for rescission, a suit for damages in an action at law, and actions at law are founded on a party's absolute right, rather than on an appeal left to the discretion of the court. A plaintiff, however, is not required to elect between the remedies of rescission and damages. Furthermore, when a contract is not rescinded, the defrauded [party] may still recover damages on the basis of fraud. [*Id*. at 410 n 11 (citations omitted).]

installments. Klock did not assert any counterclaim nor did he assert that he had a right to possession of the subject property at that time.

Direct comparison of the causes of action asserted in Vaughn's case and the claim made in Klock's summary proceeding for possession permits the conclusion that the suits between the same parties did not involve relitigating the same causes of action. The parties asserted distinctly different claims.

Vaughn's case went to case evaluation after which the case evaluation panel entered its award of $15,000 in favor of Vaughn.[6] The record reflects no explanation for why the case evaluation panel determined that Klock should pay Vaughn money or how it determined the $15,000 amount. There is no explanation in the record below regarding the calculus used to determine that amount. Based upon the record before the district court, the circuit court, and now this Court, we cannot surmise how the case evaluation panel derived the case evaluation award. Because the record provides no indication how the case evaluation panel determined what Klock should pay Vaughn or why, one can only speculate as to how the award reflected a calculation of damages in relation to Vaughn's claims. Further, there is no way to determine whether or to what extent, if any, the case evaluation panel considered or factored in Klock's affirmative defenses. Moreover, no evidence in the record indicates that Klock's affirmative defenses were relied upon to defeat Vaughn's claims or served as any basis for the case evaluation award or mitigation of the alleged damages. Consideration of the purpose and effect of case evaluation lends some insight in deciphering this conundrum.

Case evaluations are governed by MCR 2.403. This Court has explained that the general purpose behind case evaluation under MCR 2.403 is to expedite and simplify the final settlement of cases to avoid trial. *Magdich & Assoc, PC v Novi Dev Assoc LLC*, 305 Mich App 272, 276; 851 NW2d 585 (2014). In *Mercantile Bank Mortgage Co LLC v NGPCP/BRYS Centre LLC*, 305 Mich App 215, 225; 852 NW2d 210 (2014), this Court provided a concise explanation as to how the case evaluation process works:

> Case evaluation is a mediation proceeding. During case evaluation, the parties submit and argue a concise summary of their factual and legal positions to a panel of three independent evaluators. The case evaluators must "include a separate award as to each plaintiff's claim against each defendant and as to each cross-claim, counterclaim, or third-party claim that has been filed in the action." "[A]ll . . . claims filed by any one party against any other party shall be treated as a single claim."

After the case evaluation panel sets forth its decision, the parties are permitted to accept the decision or reject it and hazard submitting the case to trial and potentially face liability for the accepting party's costs. See MCR 2.403(L), (N), and (O).

[6] Under MCR 2.403(K)(3), their evaluation could "not include a separate award on any claim for equitable relief, but the panel [could] consider such claims in determining the amount of an award."

MCR 2.403(M)(1) provides:

> If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest . . . .

In *CAM Const v Lake Edgewood Condo Assn*, 465 Mich 549, 554-555; 640 NW2d 256 (2002), explained the meaning of MCR 2.403(M)(1):

> The plain meaning of the words at issue is as follows:
>
> > A "claim" is defined as:
> >
> > 1. The aggregate of operative facts giving rise to a right enforceable by a court . . . . 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional . . . . 3. A demand for money or property to which one asserts a right . . . . [Black's Law Dictionary (7th ed).]
> >
> > An "action" is defined as:
> >
> > 1. The process of doing something; conduct or behavior. 2. A thing done . . . 3. A civil or criminal judicial proceeding. [*Id*.]
>
> Thus, according to the plain meaning of these words, a claim consists of facts giving rise to a right asserted in a judicial proceeding, which is an action. In other words, the action encompasses the claims asserted.
>
> The language of MCR 2.403(M)(1) could not be more clear that accepting a case evaluation means that all claims in the action, even those summarily disposed, are dismissed.

The Court concluded that "[i]f all parties accept the panel's evaluation, the case is over." *Id*. at 557. In *Magdich*, 305 Mich App at 279, this Court explained that the purpose of MCR 2.403 is to avoid trial by expediting and simplifying final settlement of an action, and case evaluation under MCR 2.403 is considered to be binding and is comparable to a consent judgment or a settlement agreement.

In this case, the only claims before the case evaluation panel were those made by Vaughn in her complaint. Klock did not assert any counterclaims. The extent to which the acceptance of the case evaluation award functioned as comparable to a consent judgment or a settlement agreement must be understood as limited to the actual claims made in Vaughn's lawsuit.

Vaughn argues that our Supreme Court's opinion in *Ternes Steel Co v Ladney*, 364 Mich 614; 111 NW2d 859 (1961), requires this Court to rule that Klock's assertion of affirmative defenses in Vaugh's lawsuit were equivalent to claims, and acceptance of the case evaluation

award subjected him to claim preclusion and barred him from seeking possession of the subject property. In essence, she contends that her numerous defaults under the land contract and her failure to fulfill the terms of the land contract were wiped away by Klock's acceptance of the case evaluation award. In *Ternes*, the Court stated:

> [W]hen a litigant's right to affirmative relief is independent of a cause of action asserted against him and it is relied upon only as a defense to that action, he is barred from seeking affirmative relief thereon in a subsequent proceeding. But if he does not rely upon his claim as a defense to the first action, or as a counterclaim thereto, he is not barred from subsequently maintaining his action for affirmative relief in an independent suit. [*Id*. at 619.]

While this Court is "bound by the rule of stare decisis to follow the decisions of our Supreme Court[,]" *Duncan v Michigan*, 300 Mich App 176, 193; 832 NW2d 761 (2013) (quotation marks and citation omitted), *Ternes*, which was decided in 1961, predated MCR 2.203. We conclude that *Ternes*'s pre-court rule treatment of affirmative defenses in the manner of compulsory counterclaims is not dispositive because MCR 2.203 and the caselaw interpreting it clarify that Michigan is not a compulsory counterclaim jurisdiction. MCR 2.203(A) provides:

> In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

This Court's recent decision in *Geico Indemnity v Dabaja*, unpublished per curiam opinion of the Court of Appeals issued March 24, 2020 (Docket No. 346911) (emphasis added), 3-4, lv den 506 Mich 942 (2020), is instructive because it explained that MCR 2.203:

> requires a party filing a pleading against an opposing party to join every claim that the pleader has against the opposing party arising out of the transaction or occurrence in question. *However, MCR 2.203(A) does not compel a party to raise a counterclaim or cross-claim.* As discussed in 2 Longhofer, Michigan Court Rules Practice, Text (7th ed.) § 2203.2:
>
> > By referring to "pleadings" rather than "complaints," MCR 2.203(A) has much broader application than did earlier rules. To the extent that it actually acts as a compulsory joinder rule, it does so on the claims of all parties—counterclaims, cross-claims, and the like. This is not the same, however, as a compulsory counterclaim rule (which Michigan does not have), for MCR 2.203(A) does not require that any counterclaim be raised. It merely says that, if a counterclaim is raised, the counterclaimant must raise all other counterclaims arising out of the "transaction or occurrence that is the subject matter of the action." The same applies to third-party claims, cross-claims, and the like. [footnote omitted.]

* * *

> In other words, MCR 2.203(A) does not require that a counterclaim or a cross-claim be raised, but rather provides that if a counterclaim is raised, the counterclaimant must raise all other counterclaims arising out of the transaction or occurrence that is the subject matter of the action. Thus, MCR 2.203(A) provides that a party must join every claim it has against an opposing party if the party files a pleading stating a claim against that opposing party, but does not require a defendant to initiate his or her own claims arising from that same transaction or occurrence by filing a counter claim or cross-claim; rather, a defendant may bring his or her claim in a separate action. *Salem Indus, Inc v Mooney Process Equip Co*, 175 Mich App 213, 215-216; 437 NW2d 641 (1988).

This Court has consistently ruled that a "defendant generally has the election of either pleading a counterclaim or cross-claim or preserving it for a future independent suit." *Eyde v Charter Twp of Meridian*, 118 Mich App 43, 52-53; 324 NW2d 775 (1982). In *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994), this Court clarified that "[c]auses of action and defenses are not interchangeable." Under MCR 2.203, a party may bring a counterclaim and "claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party," MCR 2.203(C), and if the party files a pleading against another, the party must join all claims against the other party arising from a single transaction or occurrence. MCR 2.203(A). However, this does not mean that the defendant in a suit is limited to that opportunity to initiate his or her own claims arising from that same transaction or occurrence. MCR 2.203(E) "is permissive, as opposed to compulsory," and thus "allows a party . . . to maintain its counterclaim in a separate independent action." *Salem Indus*, 175 Mich App at 216.

In this case, Klock chose not to assert a counterclaim against Vaughn for forfeiture of the land contract and possession. He elected, as permitted under MCR 2.203, to assert that claim in the district court. Having chosen not to assert the claim, although available, res judicata did not bar the claim. Moreover, Klock's action for land contract forfeiture and possession, required Klock to prove that the land contract gave him the right by its terms to "declare a forfeiture, in consequence of the nonpayment of any moneys required to be paid under the contract or any other material breach of the contract." MCL 600.5726. Vaughn's claims in her lawsuit required her to prove that Klock committed fraud and caused her damages[7] and that Klock breached the land

[7] The elements of fraud include:

> (1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that [s]he thereby suffered injury. [*Kuebler v Equitable Life Assur Soc of the US*, 219 Mich App 1, 6; 555 NW2d 496 (1996) (citation omitted).]

contract.[8] Proof of the elements of Vaughn's claims against Klock required distinctly different evidence than proof of Klock's claim. The land contract specified very different obligations for each party. Klock could not breach the land contract in the same manner as Vaughn. Accordingly, proofs of Vaughn's claims in her action would not necessarily disprove Klock's claim in his action. Further, the rights of either party to possession of the property was not a claim raised by either party nor an issue raised or decided in Vaughn's lawsuit. Accordingly, because Klock did not bring a counterclaim and Vaughn's lawsuit did not raise or adjudicate the land contract forfeiture and possession claim, res judicata did not bar Klock from raising that claim in a later action after the circuit court's entry of judgment on the case evaluation award. The judgment entered in Vaughn's case did not serve as a judgment on the merits of Klock's later claim. Because of the substantive differences between Vaughn's claims and Klock's claim, and the necessarily different evidence required to prove such claims, the facts essential to Vaughn's claims, even if deemed to have been actually litigated and determined by a valid and final judgment, did not and could not be deemed to have determined Klock's claim. Further, Klock did not raise his claim in that action but elected to pursue it in a separate action as permitted under MCR 2.203. The circuit court, therefore, did not err by ruling that res judicata did not bar Klock from asserting his claim to recover possession of the property after Vaughn forfeited it by failing to fulfill the terms of the land contract. Moreover, the circuit court adeptly discerned that Vaughn was not entitled to the proverbial "having her cake and eating it too" when the evidence indisputably established that she had not fulfilled the terms of the land contract. Accordingly, the circuit court did not err by affirming the district court's judgment of possession in favor of Klock.

Affirmed.

/s/ Michael J. Kelly
/s/ Cynthia Diane Stephens
/s/ James Robert Redford

[8] To prevail on a claim for breach of contract, a plaintiff must establish by a preponderance of the evidence that "(1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to the party claiming breach." *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 100; 878 NW2d 816 (2016).