IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY FLORIDA

NANTUCKET ENTERPRISES, INC.,
A Florida corporation,

Appellants,

v.

PALM BEACH FLORIDA HOTEL
AND OFFICE BUILDING LIMITED
PARTNERSHIP, A Delaware Limited
partnership, and ASHFORD TRS LESSEE II,
LLC, a Delware limited liability company,
REMINGTON LODGING & HOSPITALITY,
LLC, a Delaware limited liability company,
And REMINGTON LODGING & HOSPITALITY, LP,
A Delaware limited partnership,

Appellees.
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APPELLATE DIVISION (CIVIL): 'AY'
CASE NO.: 502010AP000003XXXXMB

Opinion filed: JUN 28 2013

Appeal from the County Court in and for Palm Beach County

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PER CURIAM.

This is an appeal from the County Court in and for Palm Beach County ("County Court"). The case involves a commercial landlord-tenant dispute between tenant Nantucket Enterprises, Inc. ("Nantucket"), landlords Palm Beach Florida Hotel and Office Building Limited Partnership and Ashford TRS Lessee II, LLC (collectively, "Landlords"), and property manager Remington Lodging & Hospitality, LLC and Remington Lodging & Hospitality, LP

(collectively, "Remington"). For the reasons set forth below, the Court finds that the County Court erred in dismissing Nantucket's claims against the Landlords.

I. Procedural History

On February 12, 2009, Nantucket initiated a lawsuit in the County Court with case number 502009CC002126XXXXMB ("County Court Action."). Nantucket's complaint alleged that, on November 12, 2008, the Landlords unlawfully and forcibly ousted Nantucket from possession of the leased premises. The complaint sought to regain possession of the leased premises, bringing claims for unlawful entry and detention pursuant to Chapter 82 of the Florida Statutes.

On February 23, 2009, the Landlords filed a motion to dismiss Nantucket's complaint, alleging that the claims brought therein should have been brought as compulsory counterclaims in a separate action then pending between the parties. This separate action was originally filed in the County Court but had been transferred to the Fifteenth Judicial Circuit Court and given case number 502008CA039646XXXXMB ("Circuit Court Action").[1]

On March 12, 2009, the County Court held a hearing on the Landlords' motion to dismiss. A review of the hearing transcript reveals that the County Court received no evidence regarding the claims in the Circuit Court Action and did not take judicial notice of the file in the Circuit Court action.[2] On March 19, 2009, the County Court dismissed the claims against the Landlords, finding that they were "compulsory counterclaims in the [Circuit Court] [A]ction . . .

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[1] Pursuant to the Landlords' request, this Court hereby takes judicial notice of the court records in the Circuit Court Action. *See* § 90.202(6), Fla. Stat. (2012) (providing that "[a] court may take judicial notice of . . . [r]ecords of any court of this state"); *Falls v. Nat'l Env't Prods.*, 665 So. 2d 320, 321 (Fla. 4th DCA 1995) (holding that "it is fitting and proper that a court should take judicial notice of other actions filed which bear a relationship to the case at bar" because "many times that is the only way that a court can determine whether to apply the doctrine of estoppel by judgment or 'issue preclusion' in a given case").

[2] It appears that the parties assumed that Judge Laura Johnson had adequate knowledge of the claims in the Circuit Court Action because, at the time, she was presiding over both the County Court Action and the Circuit Court Action pursuant to Administrative Order 3.104-06/09.

as they involve the same issues of law and fact, and substantially the same evidence." On the date the County Court issued this order of dismissal, the Circuit Court Action remained pending and had not yet proceeded to judgment.[3]

II. The County Court erred in dismissing Nantucket's claims against the Landlords as compulsory counterclaims.

A counterclaim is compulsory if it "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fla. R. Civ. P. 1.170(a). "[C]ourts have defined transaction or occurrence with a broad realistic interpretation in order to avoid numerous lawsuits from the same facts." *Londono v. Turkey Creek, Inc.*, 609 So. 2d 14, 19 (Fla. 1992) (internal quotations omitted). In determining whether a counterclaim arises from the same transaction or occurrence, the main focus is whether the counterclaim has a "logical relationship" to the main claim and "arises out of the same aggregate of operate facts as the original claim." *Id.* at 20.

Although failure to raise a compulsory counterclaim in the first suit will result in a waiver of that claim once the first suit has proceeded to judgment, it is only after the first action proceeds to judgment that any compulsory counterclaim will be barred. *Cheezem Dev. Corp. v. Maddox Roof Serv., Inc.*, 362 So. 2d 99, 100 (Fla. 2d DCA 1978). A compulsory counterclaim may be brought as an independent suit while the first suit remains pending. *Id.*; *Zikofksy v. Mktg. 10, Inc.*, 904 So. 2d 520, 525 (Fla. 4th DCA 2005). *See also Branscomb v. Ploof Truck Lines, Inc.*, 454 So. 2d 59, 60 (Fla. 1st DCA 1984) (noting that, because "the first judgment entered may bar the remaining action," bringing a counterclaim as a separate suit "has the undesirable

[3] As alleged by the Landlords and Remington in several motions filed in this Court, Nantucket thereafter filed claims for unlawful entry and detention as counterclaims in the Circuit Court Action, and summary judgment was entered against Nantucket on these counterclaims on April 5, 2013. The Court finds that this summary judgment does not moot this appeal, contrary to the Landlords' and Remington's arguments, because the Circuit Judge struck Nantucket's affirmative defenses as a sanction and did not address their respective merits. Whether or not the summary judgment serves as *res judicata* barring Nantucket from raising these claims in the County Court Action, as the Landlords and Remington further argue, is an issue more properly raised before the County Court on remand.

effect of committing the litigants to a 'race to judgment'").

The Court concludes that the claims brought by Nantucket in the County Court Action were compulsory counterclaims to the Circuit Court Action. The "aggregate core of facts" at issue in both lawsuits is the events of November 2008 that led to Nantucket's effective eviction from the leased premises. *See Londono*, 609 So. 2d at 20. Nantucket contends this was an illegal eviction by the Landlords; the Landlords and Remington contend that the terms of the parties' lease allowed them to enter and retake possession of the premises.

Despite this conclusion, the County Court's dismissal of Nantucket's claims was improper because, at the time of the dismissal, the Circuit Court Action had not yet proceeded to judgment. *Cheezem*, 362 So. 2d at 100 (holding that compulsory counterclaims should not have been dismissed so long as the earlier suit was still pending). Thus, at the time, Nantucket was allowed to bring its compulsory counterclaims as a separate action, and Nantucket's claims should not have been dismissed.[4] Accordingly, the County Court's March 19, 2009 order of dismissal is hereby vacated, and the case is remanded to the County Court for further proceedings consistent with this opinion.

KASTRENAKES, COX, J. KEYSER, J.J., concurring.

[4] Because the Court finds merit in this argument, the Court finds it unnecessary to resolve the other issues Nantucket raises on appeal. However, the Court notes that, in light of this decision vacating the order of dismissal, the attorney's fee award must similarly be vacated.