[Cite as *Galloway v. Lichtig*, 2026-Ohio-4276.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MARK GALLOWAY, ET AL.,	:	
Plaintiffs-Appellants/ Cross-Appellees,	:	Nos. 115609 and 115972
v.	:	
HOWARD LICHTIG, ET AL.,	:	
Defendants-Appellees/ Cross-Appellants.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED
RELEASED AND JOURNALIZED: October 29, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-23-980058

Appearances:

Flowers & Grube, Louis E. Grube, Michael J. Factor, and Joseph Shell, *for appellants/cross-appellees*.

Baker & Hostetler LLP, Robert J. Tucker, and Brittany N. Lockyer; UB Greensfelder LLP and Michael N. Ungar, *for appellees/cross-appellants*.

DEENA R. CALABRESE, J.:

{¶ 1} Plaintiffs-appellants/cross-appellees Mark Galloway, Susan Galloway, and the Mark and Susan Galloway Trust (collectively "the Galloways") appeal the

trial court's order granting defendants-appellees/cross-appellants Howard Lichtig, David Browning, Michael Toth, and CBRE, Inc.'s (collectively "the CBRE parties") motion for attorneys' fees, costs, and expenses. For the reasons stated below, we vacate the trial court's order.

I. Relevant Facts and Procedural History

{¶ 2} Mark and Susan Galloway, as trustees of the Mark and Susan Galloway Trust, held title to a 65-acre property in Middleburg Heights, Ohio. In February 2015, the Galloways first listed the property for sale. In May 2016, the Galloways entered into an exclusive sales listing agreement ("the listing agreement") with CBRE, Inc. and Lichtig to relist the property. The listing agreement between the Galloways and the CBRE parties contained the following prevailing-party fee and cost-shifting provision:

> [I]f either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses.

{¶ 3} The Galloways sold the property in April 2017. In June 2020, the Galloways filed suit against the CBRE parties. *See Galloway v. Lichtig*, Cuyahoga C.P. No. CV-20-934104. The CBRE parties filed an answer that included a request that they "be awarded their costs, disbursements, expenses, and attorneys' fees[.]" The Galloways later dismissed the case. In May 2023, the Galloways refiled claims against the CBRE parties. The complaint in the refiled action included claims for breach of contract, negligence, negligent misrepresentation, and fraud. The trial

court later dismissed the negligent-misrepresentation claim. The CBRE parties filed an answer to the refiled case but did not assert counterclaims or otherwise request attorneys' fees, costs, or expenses pursuant to the listing agreement's prevailing-party provision.

{¶ 4} The case proceeded to a bench trial in May and June 2025. Both parties submitted proposed findings of fact and conclusions of law. On September 10, 2025, the trial court found in favor of the CBRE parties on all claims. On September 22, 2025, the Galloways filed a notice of appeal. On September 30, 2025, the trial court issued a journal entry that stated that the September 10, 2025 court order was a final order. The trial court's September 10 and 30 orders do not include any language stating that there was a retention of jurisdiction.

{¶ 5} On October 8, 2025, the CBRE parties filed a motion for attorneys' fees, costs, and expenses ("fee motion"). The motion contended that the CBRE parties are entitled to recover their attorneys' fees, costs, and expenses from the Galloways pursuant to the listing agreement's prevailing-party-fee-shifting provision. This court remanded the case for the trial court to resolve CBRE's pending fee motion.

{¶ 6} After a full hearing on CBRE's fee motion, the trial court awarded the CBRE parties $1,135,558.38 in attorneys' fees and $121,487.40 in costs and expenses ("fee award"). The parties filed an appeal and a cross-appeal challenging the trial court's fee award, and the cases have been consolidated for our review.

{¶ 7} The Galloways raise the following assignments of error for our review:

1. The trial court erred as a matter of law by granting a request for a contractual award of attorney fees and costs that was barred by res judicata.

2. The trial court erred and abused its discretion by entering an unexplained award for recovery of all attorney fees and costs incurred by the defendants.

3. The trial court erred by including Susan Galloway, in her personal capacity, on the judgment for attorney fees and costs even though she was not personally a party to the agreement providing for such an award.

{¶ 8} The CBRE parties raise the following cross-assignment of error for our review:

The trial court erred in failing to include the Mark and Susan Galloway Family Trust, dated June 28, 2013, in its December 23, 2025 judgment entry.

II. Law and Analysis

{¶ 9} We find the Galloways' first assignment of error dispositive of the appeal. In their first assignment of error, the Galloways contend that the trial court erred by granting the CBRE parties' request for contractual attorneys' fees, costs, and expenses because the request was barred by res judicata.

{¶ 10} The application of res judicata is reviewed under a de novo standard of review, meaning without deference to the lower court's decision. *Lycan v. Cleveland*, 2022-Ohio-4676, ¶ 21, citing *Rossow v. Ravenna*, 2002-Ohio-1476, ¶ 7 (11th Dist.).

{¶ 11} "Ohio courts generally follow the 'American rule' with respect to attorney fees: each party is responsible for its own attorney fees." *Phoenix Lighting*

Group, L.L.C. v. Genlyte Thomas Group, L.L.C., 2020-Ohio-1056, ¶ 9, quoting *Wilborn v. Bank One Corp.*, 2009-Ohio-306, ¶ 7. "[T]here are three well-established exceptions to the American rule: (1) when a statute creates a duty to pay attorney fees, (2) when the losing party acted in bad faith, and (3) when the parties contracted to shift the fees." *Cruz v. English Nanny & Governess School*, 2022-Ohio-3586, ¶ 36, citing *Wilborn* at ¶ 7.

{¶ 12} There is no dispute that the listing agreement between the parties in this case contained a prevailing-party fee and cost-shifting provision and that the CBRE parties were ultimately the prevailing parties.[1]

{¶ 13} Our determination begins with an overview of Civ.R. 13(A). Civ.R. 13(A) "requires all existing claims between opposing parties that arise out of the same transaction or occurrence to be litigated in a single lawsuit, regardless of which party initiates the lawsuit." *Rettig Ents. v. Koehler*, 68 Ohio St.3d 274, 278 (1994). Civ.R. 13(A) specifically states:

> A pleading shall state *as a counterclaim* any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

(Emphasis added.)

{¶ 14} Courts use a two-pronged test when applying Civ.R. 13(A), asking "'(1) does the claim exist at the time of serving the pleading * * *; and (2) does the

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[1] "A 'prevailing party' is one in whose favor the decision or verdict is rendered and judgment entered." *Keal v. Day*, 2005-Ohio-5551, ¶ 8 (1st Dist.).

claim arise out of the transaction or occurrence that is the subject matter of the opposing claim.'" *Rettig Ents.* at 277, quoting *Geauga Truck & Implement Co. v. Juskiewicz*, 9 Ohio St.3d 12, 14 (1984). "[M]ultiple claims are compulsory counterclaims where they 'involve many of the same factual issues, or the same factual and legal issues, or where they are offshoots of the same basic controversy between the parties.'" *Rettig Ents.* at 279, quoting *Great Lakes Rubber Corp. v. Herbert Cooper Co.*, 286 F.2d 631, 634 (3d Cir. 1961).

{¶ 15} Res judicata bars a claim when the following four elements are met:

> (1) there is a final, valid decision on the merits by a court of competent jurisdiction; (2) the second action involves the same parties or their privies as the first; (3) the second action raises claims that were or could have been litigated in the first action; and (4) the second action arises out of the transaction or occurrence that was the subject matter of the previous action.

Beavers v. PNC Bank, N.A., 2013-Ohio-5318, ¶ 15 (8th Dist.), citing *Lenard v. Miller*, 2013-Ohio-4703, ¶ 27 (8th Dist.), citing *Portage Cty. Bd. of Commrs. v. Akron*, 2006-Ohio-954, ¶ 84. This court has previously held that "[a] party who fails to assert a compulsory counterclaim at the proper time is barred" by res judicata "from litigating that claim in a subsequent lawsuit." *Ferrara v. Vicchiarelli Funeral Servs.*, 2016-Ohio-5144, ¶ 11 (8th Dist.), citing *Lewis v. Harding*, 2009-Ohio-3071, ¶ 12 (8th Dist.). *See Natl. Amusements v. Springdale*, 53 Ohio St.3d 60, 62 (1990) ("The doctrine of res judicata requires a plaintiff to present every ground for relief in the first action, or be forever barred from asserting it."). (Citation omitted.)

{¶ 16} Ohio courts have consistently held that a request for attorney fees pursuant to a contract is a compulsory counterclaim and thus barred by res judicata when raised in a later case. *See L.M. Lignos Ents. v. Beacon Ins. Co. of Am.*, 1997 Ohio App. LEXIS 496, *4 (8th Dist. Feb. 13, 1997) ("We find that appellants' counterclaim for the reimbursement of attorney's fees is a claim which arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and is therefore a compulsory counterclaim."); *Ashtabula Cty. Airport Auth. v. Rich*, 2017-Ohio-9263, ¶ 40 (11th Dist.) (finding that the claim for attorney fees was a compulsory counterclaim and there "was no question at the time the proceedings began that the attorney's fees issue was intertwined with the underlying issues relating to the lease and the breach of the lease"); *Rome Hilliard Self Storage v. Conkey*, 2003-Ohio-5038, ¶ 12 (10th Dist.) (A counterclaim for attorney fees pursuant to a contract is compulsory and therefore barred by res judicata.). It follows that demands for fees and expenses pursuant to a contract are also compulsory counterclaims.

{¶ 17} There is no doubt that the application of res judicata bars a claim for contractual attorney fees pled in a subsequent action. However, in this case, the CBRE parties filed their fee motion in the same case after final judgment was entered, not in a subsequent case. Therefore, our review shifts to determining whether the CBRE parties were barred from recovering attorneys' fees, costs, and expenses when their claim was asserted for the first time in the same case, but after the trial court entered a final judgment. We find that they were.

{¶ 18} This court has recently reaffirmed that "a trial court loses jurisdiction over a case after entering final judgment." *Miles v. Cleveland Clinic Health Sys.-E. Region*, 2026-Ohio-190, ¶ 8 (8th Dist.), citing *State ex rel. Mather v. Oda*, 2023-Ohio-3907, ¶ 1. *See Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, 2024-Ohio-5729, ¶ 20 ("A trial court's jurisdiction over a matter is limited once proceedings are complete."). Further, "[a] dismissal with prejudice operates as an adjudication on the merits and is a final judgment." *Miles* at *id.*, citing *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St.3d 67, 69 (1990). "The termination of jurisdiction principle is that when a case is dismissed or reaches final judgment, the trial court loses authority to proceed with any aspect of the case." *Minnillo v. Friedland*, 2014-Ohio-33, ¶ 8 (8th Dist.). "'A party is bound then to present his entire cause and he is foreclosed from later attempting to reopen the cause as to issues which were or could have been presented.'" *McGinnis v. Donatelli*, 36 Ohio App.3d 120, 121-122 (8th Dist. 1987), quoting *Anderson v. Richards*, 173 Ohio St. 50, 53 (1962).

{¶ 19} There are exceptions to the termination-of-jurisdiction principle. Relevant here, this court recently found that after a dismissal "'a court may still consider collateral issues not related to the merits of the action.'" *Miles* at ¶ 9, quoting *ABN AMRO Mtge. Group, Inc. v. Evans*, 2011-Ohio-5654, ¶ 6 (8th Dist.). *See State ex rel. Linetsky v. Friedman*, 2013-Ohio-3257, ¶ 5 (8th Dist.), citing *State ex rel. Benbow v. Runyan*, 2003-Ohio-4127, and *State ex rel. Richard v. Cuyahoga Cty. Bd. of Commrs.*, 100 Ohio App.3d 592 (8th Dist. 1995) ("[W]hen a case has

otherwise been fully resolved, the court retains jurisdiction to consider collateral issues, such as contempt and sanctions."); *Linetsky v. DeJohn*, 2012-Ohio-6140, ¶ 10 (8th Dist.) (Attorney fees awarded as "sanctions for frivolous conduct are considered collateral issues that can be considered after a dismissal of the case."); *Chilli Assocs. Ltd. Partnership v. Denti Restaurants Inc.*, 2022-Ohio-848, ¶ 23 (4th Dist.) (A request for attorney fees raised in a motion for sanctions is a collateral issue.).

{¶ 20} In *Miles*, the trial court granted the appellees' motion to compel payment of expert witness deposition fees after a jury verdict because the fees were a collateral matter. The *Miles* Court clarified that "'collateral issues not related to the merits of the action' include things such as sanctions, attorney fees, court costs and reasonable expenses." *Id.* at ¶ 10.

{¶ 21} In this case, the CBRE parties' fee motion is not a collateral matter because it is not a contempt or a sanction. "Contempt is defined as a disregard of, or disobedience to, an order or command of judicial authority." *Kapadia v. Kapadia*, 2012-Ohio-808, ¶ 26 (8th Dist.), citing *State v. Flinn*, 7 Ohio App.3d 294, 295 (9th Dist. 1982). "Sanction" is defined as "'[a] penalty or coercive measure that results from failure to comply with a law, rule, or order.'" *Siemientkowski v. State Auto Mut. Ins. Co.*, 2006-Ohio-4122, ¶ 6 (8th Dist.), quoting *Black's Law Dictionary* (7th Ed. 1999).

{¶ 22} As noted above, because the claim for attorney fees arises from the contract, it is related to the merits of the action. As with any other claim that is made

pursuant to the terms of the contract between the parties, it is recoverable by filing a claim or by asserting a request for attorney fees as damages for breach of the contract. *See Chilli Assoc. Ltd. Partnership*, 2022-Ohio-848, at ¶ 25 (4th Dist.). Therefore, the CBRE parties' request for contractual attorneys' fees is not a collateral issue.

{¶ 23} The CBRE parties contend that they could not raise the attorneys' fees issue until they prevailed in the litigation. This contention is without merit. Any claim raised by either party for contractual attorneys' fees, costs, and expenses could have been heard after the trial court issued a verdict on other claims raised by the parties. *See IBEW, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 2007-Ohio-6439, ¶ 17 ("[W]hen attorney fees are requested in the original pleadings, a party may wait until after entry of a judgment on the other claims in the case to file its motion for attorney fees."); *Stockmeister Ents. v. Lancaster*, 2019-Ohio-1338, ¶ 39 (5th Dist.) (The appellee's counterclaim to recover attorney fees "'was not ripe for determination'" until the appellee successfully defended appellants' claims and was successful on its other counterclaims against appellants.).

{¶ 24} Next, the CBRE parties contend that they properly requested attorneys' fees, costs, and expenses pursuant to Civ.R. 59(B). Civ.R. 59(B) states as follows:

> **Time for certain post-trial motions, responsive briefs, and replies.** Except as otherwise provided by statute, a motion for a new trial, remittitur, additur, prejudgment interest, or attorney fees must be served within twenty-eight days of the entry of judgment or, if the clerk has not completed service of the notice of judgment within the

> three-day period described in Civ.R. 58(B), within twenty-eight days of the date when the clerk actually completes service. Unless otherwise provided by local rule or by order of the court, briefs in response to the motion shall be served within fourteen days of service of the motion, and a movant's reply may be served within seven days of service of the response to the motion.

(Emphasis in original.) Civ.R. 59(B) does not confer a right on a party to file a motion for attorney fees. Instead, it is intended to set forth a time limit for motions for fees that are filed pursuant to one of the exceptions to the "American rule." Further, compliance with Civ.R. 59(B) does not remedy a party's failure to request contractual attorney fees prior to final judgment in a case. In addition, the rule does not allow for postjudgment requests for costs and expenses.

{¶ 25} Next, the CBRE parties contend that their request for attorneys' fees, costs, and expenses is a contractual remedy and not a claim. We find this contention to be equally without merit. The CBRE parties' fee demand was a request for an award of damages even though they did not have any claims pending at any point during the pendency of the case. As stated above, Ohio courts have consistently found that a contractual fee demand is a compulsory counterclaim.

{¶ 26} Lastly, the CBRE parties assert that the trial court had jurisdiction to grant the fee motion because of this court's remand. We do not agree. This court's remand to the trial court for resolution of the fee motion was mandated by App.R. 4(B)(2). App.R. 4(B)(2) states, in relevant part:

> If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon suggestion of any of the parties, *shall* remand the matter to the trial court to resolve the post-

> judgment filings in question and shall stay appellate proceedings until the trial court has done so.

(Emphasis added.) A motion for attorney fees is a filing that mandates remand. *See* App.R. 4(B)(2)(e). Therefore, this court was mandated to remand the matter to the trial court for resolution of the fee motion.

{¶ 27} Further, the issue of whether the trial court had jurisdiction to determine the request for attorneys' fees was not properly before this court at the time the case was remanded. This court has recently reaffirmed that "'[q]uestions not addressed by the trial court generally will not be ruled on by the appellate court.'" (Citations omitted.) *In re Z.C.*, 2026-Ohio-3643, ¶ 19 (8th Dist.), quoting *You v. N.E. Ohio Med. Univ.*, 2020-Ohio-4661, ¶ 30 (10th Dist.). A trial court determines its own jurisdiction. *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 2008-Ohio-3917, ¶ 11. *See also Friedman*, 2013-Ohio-3257, at ¶ 8 (8th Dist.). "A party challenging the court's jurisdiction has an adequate remedy at law via an appeal from the court's holding that it has jurisdiction." *Friedman* at ¶ 4, citing *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas*, 78 Ohio St.3d 489, 491 (1997).

{¶ 28} In this case, the CBRE parties never asserted a claim for attorneys' fees, costs, and expenses during the pendency of the case. In fact, a review of the CBRE parties' answer, proposed findings of fact, and every pleading filed in between, reveals no mention of a claim or request for attorneys' fees, costs, and expenses. The trial court issued a final judgment disposing of all claims between the

parties after a bench trial. The CBRE parties then asserted, for the first time in the case, a claim for attorneys' fees, costs, and expenses. As stated above, a claim for attorney fees, costs, and expenses pursuant to a contract is a compulsory counterclaim and there is no exception to the termination-of-jurisdiction principle that allowed the trial court to hear a new claim in the case after final judgment was entered. Therefore, the CBRE parties' claim for attorneys' fees, costs, and expenses was barred by the termination-of-jurisdiction principle and res judicata.

{¶ 29} Thus, the Galloways' first assignment of error is sustained. Our finding on the Galloways' first assignment of error renders the Galloways' remaining assignments of error and the CBRE parties' cross-assignment of error moot, and they are therefore overruled.

{¶ 30} For the reasons stated above, we vacate the trial court's order granting the CBRE parties' motion for attorneys' fees, costs, and expenses.

It is ordered that appellants recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

DEENA R. CALABRESE, JUDGE

MICHAEL JOHN RYAN, P.J., and
TIMOTHY W. CLARY, J., CONCUR