

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

WILLIAM WILSON, JR., INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF MURIEL B. WILSON
AND JOHN WILSON, AS SUCCESSOR
TRUSTEE OF THE MURIEL B. WILSON
REVOCABLE TRUST,

Appellants,

v.

Case No. 5D20-218

CLARENCE H. HOUSTON, JR., AS
CURATOR OF THE ESTATE OF
THOMAS M. BOYETTE, SR.,

Appellee.

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Opinion filed June 18, 2021

Appeal from the Circuit Court
for St. Johns County,
R. Lee Smith, Judge.

Bryan S. Gowdy, of Creed & Gowdy, P.A.,
Jacksonville, for Appellants.

Michael J. Korn, of Korn & Zehmer, P.A.,
Jacksonville, and Joshua A. Woolsey and
Nicholas W. Morcom, of Woolsey Morcom, PLLC,
Ponte Vedra, for Appellee.

WALLIS, J.

Appellants appeal the Amended Final Judgment entered in favor of Appellee, which found that they were liable to Appellee for damages that arose out of the sale of property in St. Johns County. We agree with Appellants that the trial court abused its discretion when it denied their request for leave to amend their pleadings to add a setoff defense. See S. Devs. & Earthmoving, Inc. v. Caterpillar Fin. Servs. Corp., 56 So. 3d 56, 62–63 (Fla. 2d DCA 2011) (holding that the trial court abused its discretion by denying appellant's motion for leave to amend its answer to add a counterclaim where appellant did not abuse the privilege to amend, the proposed amendment would not have been futile, and appellee would not have been prejudiced by the amendment). Therefore, we reverse the portion of the Amended Final Judgment awarding Appellee damages and remand for the trial court to consider Appellants' claims related to the setoff defense. In all other respects we affirm.

AFFIRMED in Part, REVERSED in Part, and REMANDED.

EISNAUGLE and WOZNIAK, JJ., concur.