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

LITTLE BROWNIE PROPERTIES, INC.,

Appellant,

v.

Case No. 5D20-2409
LT Case No. 2008-CA-003909

PETER WOOD, JOHN PAUL BROWN, BANC OF AMERICA LEASING & CAPITAL, LLC, FOODCRAFTERS DISTRIBUTING COMPANY, ROBERT ROCHE, MARY J. BROWN, MASTERLINE USA, INC., AND JAMES CHAPLIN AND PETER WOOD, ET AL.,

Appellees.

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Opinion filed October 1, 2021

Appeal from the Circuit Court for Orange County, Chad K. Alvaro, Judge.

Eric S. Mashburn, of Law Office of Eric S. Mashburn, P.A., Winter Garden, for Appellant.

Heather A. Trombly, of Heather A. Trombly, P.A., Winter Garden and Matthew L. Cersine, of Matthew L.

Cersine, P.L., Orlando, for Appellee, John P. Brown.

Fausto A. Rosales, of Law Office of Fausto A. Rosales, P.A., Coral Gables, for Appellee, Peter Wood.

No Appearance for other Appellees.

EVANDER, J.

Little Brownie Properties, Inc. ("LBP") appeals an order dissolving two post-judgment writs of garnishment. We affirm. The trial court properly dissolved the writs where LBP failed to timely comply with the notice provisions set forth in section 77.041, Florida Statutes (2020).

LBP received an assignment of a final judgment for monetary damages against appellees, John P. Brown and Peter Wood ("Appellees"). LBP sought to collect on the judgment by filing two separate amended motions for writ of garnishment against the estate of John E. Brown. One motion was directed toward James Chaplin and the other was directed to Wood, as they were co-personal representatives of the estate. Appellees were alleged to be beneficiaries of the estate. Writs of garnishment were issued on June 12, 2020, and were served on Chaplin and Wood on June 16, 2020. However, although section 77.041(2) required LBP to serve a "Notice to Defendant" on Appellees "within 5 business days after the writ is issued or 3 business days

after the writ is served on the garnishee, whichever is later," LBP did not do so until June 24, 2020.

Appellees subsequently filed motions to dissolve the writs of garnishment, correctly asserting that notices of the writ had been served five days late. LBP opposed the motions, arguing that although the notices admittedly were not served in a timely fashion, dissolution of the writs was not required because Appellees had not been prejudiced. The trial court granted Appellees' motions, concluding that because garnishments statutes are to be strictly construed, it was compelled to dissolve the writs. We agree.

"Statutory interpretation is a question of law subject to *de novo* review." *Bellsouth Telecomm., Inc. v. Meeks*, 863 So. 2d 287, 289 (Fla. 2003). "A court's determination of the meaning of a statute begins with the language of the statute." *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 (Fla. 2019). "If that language is clear, the statute is given its plain meaning, and the court does not 'look behind the statute's plain language for legislative intent or resort to rules of statutory construction.'" *Id*. (quoting *City of Parker v. State*, 992 So. 2d 171, 176 (Fla. 2008)).

Garnishment statutes are in derogation of common law. *Paz v. Hernandez*, 654 So. 2d 1243, 1244 (Fla. 3d DCA 1995). As a result, the provisions of Chapter 77, Florida Statutes, are to be strictly construed. *See,*

e.g., *Suntrust Bank v. Arrow Energy, Inc.*, 199 So. 3d 1026, 1028 (Fla. 4th DCA 2016) ("Because garnishment is a proceeding in derogation of common law, the relevant statutes must be strictly construed."); *Zivitz v. Zivitz*, 16 So. 3d 841, 847 (Fla. 2d DCA 2009) ("Garnishment proceedings are statutory in nature and require strict adherence to the provisions of the statute.").

Upon the application for a writ of garnishment by a plaintiff, if the defendant is an individual, the clerk of the court is required to attach a "Notice to Defendant" to the copy of the writ that is served on the defendant. That notice advises an individual defendant of certain rights that the defendant has to contest the garnishment. The precise wording of the lengthy notice is set forth in section 77.041(1). Section 77.041(2) sets forth the method and time period in which the plaintiff is to provide the notice to the individual defendant. That section provides, in pertinent part:

> The plaintiff *must* mail, by first class, a copy of the writ of garnishment, a copy of the motion for writ of garnishment, and, if the defendant is an individual, the "Notice to Defendant" to the defendant's last known address within 5 business days after the writ is issued or 3 business days after the writ is served on the garnishee, whichever is later.

§ 77.041(2), Fla. Stat. (2020) (emphasis added). The word "must" typically suggests a command or requirement. *Zivitz*, 16 So. 3d at 847. Read in conjunction with section 77.041(1), this provision reflects a clear intent to

ensure that an individual defendant receives prompt notice of his or her rights to oppose a garnishment action.

The Florida Supreme Court's decision in *Stresscon v. Madiedo*, 581 So. 2d 158 (Fla. 1991), supports our conclusion. There, the court addressed the issue of whether the failure to notarize an otherwise timely and accurate statement of account under section 713.16(2), Florida Statutes (1987), could be cured after the fact—so long as there was no prejudice to the opposing party. Florida's mechanics' lien law required notarization of a contractor's statement of account. The court observed that because contractor' mechanics' liens were purely statutory creatures, Florida's mechanics' lien laws were to be strictly construed. *Id*. at 159–60. In determining that the failure to notarize an otherwise timely and accurate statement of account could not be cured by verification after the fact, the court wrote that "[t]he fact that no prejudice has been nor can be shown is not the determining factor in this case; nor is it significant that Stresscon substantially complied with the mechanics' lien law." *Id.* at 160. Importantly, the court noted that the statutory section at issue did not contain any language permitting either substantial compliance or lack of prejudice to be considered in determining the validity of a lien. *Id.*

Similarly, in the instant case, section 77.041(2) contains no language permitting either substantial compliance or lack of prejudice to be considered in determining whether a plaintiff has complied with the statute. We recognize that in *Regions Bank v. Hyman*, 91 F. Supp. 3d 1234, 1241 (M.D. Fla. 2015), *aff'd sub nom. Regions Bank v. G3 Tampa LLC*, F. Appx 772 (11th Cir. 2019), a federal judge reached a different result. However, like the trial court below, we are unable to reconcile the mandate of strict construction from Florida courts with the decision of the learned judge in that case.[1]

AFFIRM.

HARRIS and TRAVER, JJ., concur.

[1] We would observe that the statute did not preclude LBP from filing a new writ of garnishment and thereafter timely serving the defendants with a copy of the new writ of garnishment, a copy of the motion for writ of garnishment, and the "Notice to Defendant" in compliance with section 77.041(2).