NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

RHONDA TOUCHTON, Appellant, v. WOODSIDE CREDIT, LLC, a Foreign Limited Liability Company, EXOTIC MOTOR CARS, JUDSON LILLY, WASSIM NASR, and NASR'S AUTO SALES INC., Appellees.	)	Case No. 2D19-3499

Opinion filed April 7, 2021.

Appeal from the Circuit Court for Pinellas County; Amy Williams, Judge.

Susanne M. Suiter of Caglianone & Miller, P.A., Brooksville, for Appellant.

No appearance by Appellees.

ATKINSON, Judge.

Rhonda Touchton appeals an order granting the motion to dismiss filed by Woodside Credit, LLC. We conclude that the order is a final order. Because the

complaint stated a legally sufficient cause of action for a declaratory judgment, the lower court erred by granting the motion to dismiss. We therefore reverse.

Rhonda Touchton purchased a vehicle from Exotic Motorcars Dealership on July 22, 2018, by trading in another vehicle and paying the dealership cash for the balance of the purchase price. She left the dealership with the vehicle, which she registered with the Florida Department of Motor Vehicles. She subsequently learned that there was a lien on the vehicle held by Woodside Credit, LLC, and that the prior owner, Judson Lilly, had given the dealership possession of the vehicle on consignment.

Touchton sued Nasr's Auto Sales, Exotic Motorcars, and Wassim Nasr for negligent misrepresentation, negligence, breach of contract, unjust enrichment, and violations of the Florida Deceptive and Unfair Trade Practices Act. The last claim of her complaint was directed at Woodside and Lilly; she requested a declaratory judgment regarding the title to the vehicle. Lilly filed a letter with the court in which he contested her demand for clear title. Woodside filed a motion to dismiss the complaint for failure to state a cause of action "[b]ased upon Florida Statutes 319.27 and the fact that Woodside Credit LLC is the lien holder on a valid Florida Title."[1] Woodside attached to

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[1]Section 319.27(2), Florida Statutes (2018), governs the enforceability of motor vehicle liens and provides the following in pertinent part:

> No lien for purchase money or as security for a debt in the form of a security agreement, retain title contract, conditional bill of sale, chattel mortgage, or other similar instrument or any other nonpossessory lien, including a lien for child support, upon a motor vehicle or mobile home upon which a Florida certificate of title has been issued shall be enforceable in any of the courts of this state against creditors or subsequent purchasers for a valuable consideration and without notice, unless a sworn notice of such lien has been

its motion to dismiss a Lien and Title Information Report reflecting that Woodside had a lien on the vehicle with the same vehicle identification number as the one listed in Touchton's complaint.

The trial court entered an order granting the motion. The order states, in pertinent part, the following:

> 1. Defendant WOODSIDE CREDIT'S Motion to Dismiss the Complaint is hereby granted with PREJUDICE.
> 2. Defendant, WOODSIDE CREDIT LLC, has and had a Valid Lien on the Vehicle VIN # 137ZA843XYE185974.

Jurisdiction

Where an order merely grants a motion to dismiss, it is not a final order. See Bd. of Cnty. Comm'rs of Madison Cty. v. Grice, 438 So. 2d 392, 394 (Fla. 1983) ("An order on a motion to dismiss may not be final, but an order which actually dismisses the complaint is."); Hayward & Assocs. v. Hoffman, 793 So. 2d 89, 91 (Fla. 2d DCA 2001) ("[I]t is well-established that an order that merely grants a motion to dismiss, as contrasted with an order dismissing a complaint or an action, is not a final order."); GMI, LLC v. Asociacion del Futbol Argentino, 174 So. 3d 500, 501 (Fla. 3d DCA 2015) ("An order that merely grants a motion to dismiss is not a final order. This is true even if the order grants the motion 'with prejudice.' " (citation omitted)). The order on appeal provides that "Defendant WOODSIDE CREDIT'S Motion to Dismiss the Complaint is hereby granted with PREJUDICE." This language lacks finality.

> filed in the department and such lien has been noted upon the certificate of title of the motor vehicle or mobile home. Such notice shall be effective as constructive notice when filed.

(Emphasis added.)

However, the order on appeal also orders and adjudges that "Defendant, WOODSIDE CREDIT LLC, has and had a Valid Lien on the Vehicle VIN # 137ZA843XYE185974." "The traditional test for finality is whether the decree disposes of the cause on its merits leaving no questions open for judicial determination except for execution and enforcement of the decree if necessary." Hoffman v. Hall, 817 So. 2d 1057, 1058 (Fla. 1st DCA 2002). "While an order must contain 'unequivocal language of finality,' an order or judgment of a court does not need to contain any particular or 'magic' words to make it final." Holland v. Holland, 140 So. 3d 1155, 1156 (Fla. 1st DCA 2014) (quoting Hoffman, 817 So. 2d at 1058). For example, it is unnecessary for the order to "include traditional words of finality like 'go hence without day' or 'let execution lie.' " Timmons v. Lake City Golf, LLC, 293 So. 3d 596, 599 (Fla. 1st DCA 2020); see also Cardillo v. Qualsure Ins. Corp., 974 So. 2d 1174, 1176 (Fla. 4th DCA 2008).

Here, the order disposed of the issue for which Touchton sought a declaration—to declare the title-holder and lienholder of the vehicle at issue. The trial court essentially nestled a declaratory judgment within an order granting a motion to dismiss. As such, this court has jurisdiction over a final, appealable order. Cf. Ribaya v. Bd. of Trs. of City Pension Fund for Firefighters & Police Officers in City of Tampa, 162 So. 3d 348, 354 (Fla. 2d DCA 2015) (explaining the applicable standard of review where "the trial court enter[ed] an order of dismissal in the alleged exercise of its discretion under its gatekeeping function, but in fact ma[de] a legal declaration as to the dispute in its order"); Cardillo, 974 So. 2d at 1175 (concluding that the order did not merely grant or deny a motion but "disposed of" the "declaratory issues," which the trial court had determined were "no longer outcome determinative of the declaratory decree

action" before "direct[ing] the trial of all remaining issues in the underlying suit, set[ting] trial a month later, lift[ing] the stay, and direct[ing] counsel to prepare for trial"); Legion Ins. Co. v. Moore, 846 So. 2d 1183, 1185, 87 (Fla. 4th DCA 2003) (finding an order striking a declaratory judgment claim reviewable as a final order because the trial court effectively "terminated the [cause of] action as to all parties" based on its "determination that a declaratory judgment action would not serve any useful purpose under the circumstances of th[e] case and might impair or defeat rights of the parties").

Analysis

The trial court's granting of declaratory relief in the guise of a dismissal is also why we must reverse. "A motion to dismiss a complaint for declaratory judgment is not a motion on the merits." Royal Selections, Inc. v. Fla. Dep't of Revenue, 687 So. 2d 893, 894 (Fla. 4th DCA 1997). "Rather, it is a motion only to determine whether the plaintiff is entitled to a declaration of its rights, not to whether it is entitled to a declaration in its favor." Id. (citing Rosenhouse v.1950 Spring Term Grand Jury, 56 So. 2d 445, 448 (Fla. 1952)). And when ruling on a motion to dismiss for failure to state a cause of action a trial court must limit its review to the allegations contained within the four corners of the complaint and "accept the material allegations as true." Murphy v. Bay Colony Prop. Owners Ass'n, 12 So. 3d 924, 926 (Fla. 2d DCA 2009); see also Meadows Cmty. Ass'n v. Russell-Tutty, 928 So. 2d 1276, 1278 (Fla. 2d DCA 2006) ("Because the question of whether a complaint states a cause of action is one of law, the standard of review is de novo." (quoting Lutz Lake Fern Rd. Neighborhood Grps., Inc. v. Hillsborough County, 779 So. 2d 380, 383 (Fla. 2d DCA 2000))).

To state a cause of action for a declaratory judgment, Touchton was required to allege that

> (1) there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration.

Ribaya, 162 So. 3d at 352. Touchton's allegation that there was an actual dispute between the parties over the extent and priority of Woodside's lien were sufficient to withstand a motion to dismiss for failure to state a cause of action.

Instead of confining its review to Touchton's allegations and assessing whether she had sufficiently pled entitlement to a declaration, the trial court extended its review beyond the four corners of her complaint and reached a substantive resolution of the issue upon which she was seeking the declaration. The trial court improperly considered the attachments to Woodside's motion to dismiss in determining whether to grant it. See Consuegra v. Lloyd's Underwriters at London, 801 So. 2d 111, 112 (Fla. 2d DCA 2001) ("[A] motion to dismiss for failure to state a cause of action is not a substitute for a motion for summary judgment, and in ruling on such a motion, the trial court is confined to a consideration of the allegations found within the four corners of the complaint." (citing Cyn-co, Inc. v. Lancto, 677 So. 2d 78, 79 (Fla. 2d DCA 1996))). And in determining that Woodside had a valid lien on the vehicle, the trial court erroneously "decided the very question . . . that was the subject of the declaratory action." Express Damage Restoration, LLC v. First Cmty. Ins. Co., 45 Fla. L. Weekly D2750 (Fla. 3d DCA Dec. 9, 2020) (concluding the trial court had "procedurally erred in failing to deny"

a motion to dismiss a declaratory judgment action (citing Royal, 687 So. 2d at 894)); see also Royal, 687 So. 2d at 894 (concluding the trial court could not dispose of a declaratory judgment action "on a motion to dismiss" where to do so "the trial court actually construed the various ordinances and administrative rules" and resolved the "very question sought to be answered in the declaratory action").

Reversed and remanded.

NORTHCUTT and SLEET, JJ., Concur.