

Third District Court of Appeal

State of Florida

Opinion filed October 3, 2018.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1664
Lower Tribunal No. 16-25037

WD 19790, LLC,
Appellant,

vs.

Dan Trust, et al.,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Stok Folk + Kon, and Robert A. Stok and Joshua R. Kon, for appellant.

Kluger, Kaplan, Silverman, Katzen & Levine, P.L., and Abbey L. Kaplan and Josh M. Rubens, for appellees.

Before EMAS, LOGUE, and LUCK, JJ.

ON MOTION TO DISMISS

LOGUE, J.

The order dismissing Count VI of Appellant's Second Amended Counterclaim is not an appealable order under Florida Rule of Appellate Procedure

9.110(k) as “a separate and distinct cause of action that is not interdependent with other pleaded claims” because Count VI alleges abuse of process on the basis that the Appellees’ Third Amended and Supplemental Complaint “is a sham and seeks de minimis, nominal and/or technical damages, if any, without a reasonable prospect of success.” This allegation is intertwined with the litigation still pending in the trial court concerning the legal and factual merits of that Complaint. See, e.g., Bardakjy v. Empire Inv. Holdings, LLC, 239 So. 3d 146, 147 (Fla. 3d DCA 2018). Accordingly, Appellees’ motion to dismiss is granted.

Appeal dismissed.