

Third District Court of Appeal

State of Florida

Opinion filed June 10, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2191
Lower Tribunal No. 18-3324

Giuliana Llanso,
Appellant,

vs.

WNF Law, P.L.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, John W. Thornton, Jr., Judge.

Khullar P.A., and Divya Khullar (Tamarac), for appellant.

WNF Law, P.L., and Daniel Foodman and Carlos Nunez-Vivas, for appellee.

Before HENDON, MILLER and LOBREE, JJ.

PER CURIAM.

Giuliana Llanso (“Llanso”) appeals a final order dismissing with prejudice her complaint alleging that WNF Law, P.L. (“WNF”) slandered title to her Key

Biscayne condominium apartment (the “apartment”), and imposing sanctions pursuant to section 57.105, Florida Statutes (2018). The trial court dismissed her amended complaint based on WNF’s argument that the suit was barred by the doctrine of res judicata. We agree with Llanso that the trial court erred in dismissing with prejudice at this stage of the proceedings.

WNF initiated arbitration proceedings against Llanso for unpaid legal fees, at the conclusion of which she executed an assignment to WNF of \$46,858.50 from the proceeds of the sale of the apartment and a confession of judgment statement providing for recovery of \$91,113.50 plus interest. Llanso failed to pay WNF, which sued to enforce the arbitration settlement agreement and recorded a notice of lis pendens on the apartment. Llanso answered and asserted several counterclaims, including breach of fiduciary duty by filing the notice of lis pendens in bad faith.

Shortly before the closing on Llanso’s apartment, she sought emergency injunctive relief to discharge the lis pendens. During the hearing on this motion, Llanso withdrew her motion and WNF agreed to release the lis pendens and file a joint stipulation of voluntary dismissal after Llanso paid them \$91,000 from the proceeds of the pending sale. Thereafter, Llanso paid WNF and WNF filed a joint stipulation of voluntary dismissal with prejudice and a notice of discharge of lis pendens. Llanso then filed the complaint at issue, alleging that she settled the prior case under duress and the filing of the lis pendens slandered title to the apartment.

WNF moved to dismiss, requesting that the trial court take judicial notice of the previous lawsuit along with pleadings and transcripts filed therein. WNF argued that Llanso's cause of action was barred by res judicata as Llanso had made the same slander of title allegation in a prior counterclaim and motion for injunctive relief in the prior action. WNF also moved for sanctions pursuant to section 57.105.

In response, Llanso argued that her complaint did not conclusively establish the defense of res judicata, which prevented WNF from raising this defense at the motion to dismiss stage. The trial court found that allegations regarding the prior action in the complaint "opened the door" for it to take judicial notice of the prior case and the documents filed therein. The trial court dismissed the complaint with prejudice, reasoning that res judicata barred Llanso's claim as her prior motion for injunctive relief mentioned slander of title and counterclaim alleged bad faith, and summarily granted WNF's motion for sanctions.

A trial court's ruling on a motion to dismiss is reviewed de novo, because a motion to dismiss examines the legal sufficiency of the complaint, not factual determinations. See Fla. Bar v. Greene, 926 So. 2d 1195, 1199 (Fla. 2006); Falkinburg v. Village of El Portal, 183 So. 3d 1189, 1191 (Fla. 3d DCA 2016). "Unlike a motion for summary judgment, when ruling on a motion to dismiss, '[a] court may not go beyond the four corners of the complaint in considering the legal sufficiency of the allegations.'" Chesnick v. Dezer Dev., LLC, 283 So. 3d 933 (Fla.

3d DCA 2019) (quoting Rolle v. Cold Stone Creamery, Inc., 212 So. 3d 1073, 1076 (Fla. 3d DCA 2017)). Affirmative defenses such as res judicata must typically be raised in an answer, not in a motion to dismiss, unless the allegations of the complaint demonstrate that the action is barred by res judicata. Thews v. Wal-Mart Stores E., LP, 210 So. 3d 723, 724 (Fla. 2d DCA 2017); May v. Salter, 139 So. 3d 375, 376 (Fla. 1st DCA 2014); U.S. Project Mgmt., Inc. v. Parc Royale E. Dev., Inc., 861 So. 2d 74, 76 (Fla. 4th DCA 2003).

In ruling on the motion to dismiss, the trial court considered matters that were outside the four corners of Llanso’s complaint. “Even though it appears that the trial court was attempting to expeditiously decide the issue on the merits, the trial court was not permitted to consider or take judicial notice of matters outside of the complaint and attachments to which the motion to dismiss was directed.” Migliazzo v. Wells Fargo Bank, N.A., 290 So. 3d 577, 579 (Fla. 2d DCA 2020). Thus, we reverse the order of dismissal with prejudice.¹

Moreover, WNF properly concedes that when a trial court grants a motion for sanctions based on section 57.105, it is required to make detailed, specific findings of bad faith, and should recite the facts on which it bases its conclusions. See Gonzalez v. Int’l Park Condo. I Ass’n, Inc., 217 So. 3d 1128, 1133 (Fla. 3d DCA 2017). Accordingly, we reverse and remand for further proceedings.

¹ We express no opinion on the merits of the res judicata claim.