Third District Court of Appeal

State of Florida

Opinion filed August 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2516
Lower Tribunal No. 17-7734

American Residential Equities LLC, et al.,
Appellants,

vs.

Saint Catherine Holdings Corporation, etc.,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Solnick Law P.A., and Peter J. Solnick, for appellants.

The Orlofsky Law Firm, P.L., and Alexander S. Orlofsky, for appellee.

Before FERNANDEZ, LINDSEY and GORDO, JJ.

GORDO, J.

American Residential Equities LVII, LLC and American Residential Equities LLC (collectively, "American Residential") appeal the trial court's final judgment in favor of Saint Catherine Holdings Corporation. We affirm in part, reverse in part and remand for entry of judgment consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND

On February 13, 2007, American Residential executed a promissory note to St. Catherine in the amount of $2,000,000.00. The collateral for the note was 100 percent of the membership interest in American Residential. The terms of the note provided that American Residential promised to repay St. Catherine the principal value of the note with interest. American Residential made payments on the note in the amount of approximately $400,000.00, but later defaulted. In 2017, St. Catherine filed suit for breach of the promissory note, money lent and foreclosure of its security interest in the collateral.

At trial, St. Catherine informed the court and American Residential, for the first time, that it was unable to locate the original note. Counsel for St. Catherine stated that the corporation was never in possession of the original note.[1] It was St. Catherine's position that American Residential had been in possession of the original

[1] St. Catherine's counsel stated: "[American Residential was] in possession of the original, Your Honor. This [copy] is the only one we've ever had." Later, counsel reiterated, "[M]y client's not in possession of the instrument. He never was. Signed it and send [sic] it back and that's what he'll testify to."

note ever since its execution, which American Residential denied. The underlying complaint did not contain any allegation that St. Catherine had lost the original instrument and did not otherwise put American Residential on notice of the fact that the note was not in St. Catherine's possession. St. Catherine did not move to amend its complaint to conform to the evidence, specifically, the fact that the original note was lost. The trial court admitted a copy of the note, over American Residential's objection.

The trial court entered final judgment in favor of St. Catherine on all three counts, conditioning execution of the final judgment on payment of the documentary stamps of the note at issue. This appeal followed.

LEGAL ANALYSIS

Judgment for Breach of Note and Foreclosure

The parties and the trial court are bound by the allegations in the pleadings. See, e.g., Carvell v. Kinsey, 87 So. 2d 577, 579 (Fla. 1956) ("Citation of authorities is unnecessary to sustain the rule that parties-litigant are bound by the allegations of their pleadings . . . ."). The pleadings frame the issues to be litigated and tried. See, e.g., Fratangelo v. Olsen, 271 So. 3d 1051, 1061 (Fla. 3d DCA 2018) (Rothenberg, C.J., dissenting) ("[I]t is error to allow a plaintiff to proceed on an unpled claim . . . ."); Guerrero v. Chase Home Fin., LLC, 83 So. 3d 970, 973 (Fla. 3d DCA 2012) ("[I]t is well established that a trial court lacks jurisdiction to adjudicate

matters outside the pleadings."). A trial court lacks jurisdiction over matters not raised in the parties' pleadings. See BAC Home Loans Servicing, Inc. v. Headley, 130 So. 3d 703, 705 (Fla. 3d DCA 2013) ("As the courts of this state have repeatedly held, a trial court lacks jurisdiction to hear and determine matters that were not the subject of proper pleadings and notice." (citations omitted)). Moreover, adjudicating those matters is a violation of the opposing party's due process rights. Carroll & Assocs., P.A. v. Galindo, 864 So. 2d 24, 29 (Fla. 3d DCA 2003) ("To allow a court to rule on a matter without proper pleadings and notice is violative of a party's due process rights." (citing Epic Metals Corp. v. Samari Lake East Condo. Ass'n, Inc., 547 So. 2d 198, 199 (Fla. 3d DCA 1989); Robinson v. Malik, 135 So. 2d 445 (Fla. 3d DCA 1961))); Brickell Station Towers, Inc. v. JDC (Am.) Corp., 549 So. 2d 203, 203 (Fla. 3d DCA 1989).

"A plaintiff seeking to foreclose a mortgage must tender the original promissory note to the trial court or seek to reestablish the lost note pursuant to section 673.3091, Florida Statutes." Boumarate v. HSBC Bank USA, N.A., 172 So. 3d 535, 536 (Fla. 5th DCA 2015); see also Nat'l Loan Inv'rs, L.P. v. Joymar Assocs., 767 So. 2d 549, 551 (Fla. 3d DCA 2000). Where a plaintiff seeks to enforce a lost instrument, the plaintiff must put the parties on notice of its intent to reestablish that instrument. Cf. Sanchez v. Marin, 138 So. 3d 1165, 1167 (Fla. 3d DCA 2014) ("It is axiomatic that a party defending against a claim is entitled to due process,

including the right to proper and adequate notice of the allegations which form the basis for the relief sought.").

St. Catherine's amended complaint stated claims for recovery under the note and made no mention of the fact that it was not in possession of the original instrument or that it intended to seek reestablishment of that instrument under section 673.3091, Florida Statutes. St. Catherine proceeded at trial under a theory that it was never in possession of the original note and that American Residential had it, which American Residential denied.

As a result of St. Catherine's failure to state in its pleadings that the original note was lost and it intended to reestablish that note pursuant to section 673.3091, as well as its subsequent failure to move to amend its complaint at trial to include any such claim, the issue of the lost note was not properly before the trial court for determination. See Guerrero, 83 So. 3d at 973; Larosa v. Barbmar, Inc., 475 So. 2d 1345, 1345 (Fla. 3d DCA 1985) (citing Tamiami Trail Tours v. Cotton, 463 So. 2d 1126 (Fla. 1985); Cortina v. Cortina, 98 So. 2d 334 (Fla. 1957); Robinson, 135 So. 2d 445). Where a trial court grants relief that "was neither requested by appropriate

pleadings, nor tried by consent,"[2] the trial court violates due process rights.[3] Brickell Station Towers, 549 So. 2d at 203.

St. Catherine knew at the time it filed suit that it did not have the original note but failed to put American Residential on notice or properly prove its case at trial. Under the circumstances, the proper remedy is reversal with instructions that judgment be entered in favor of American Residential on the counts for breach of note and foreclosure. See City of Miami v. Kho, 290 So. 3d 942, 946 (Fla. 3d DCA 2019) (citing Correa v. U.S. Bank N.A., 118 So. 3d 952, 956 (Fla. 2d DCA 2013) ("[A]ppellate courts do not generally provide parties with an opportunity to retry their case upon a failure of proof." (quoting Morton's of Chi., Inc. v. Lira, 48 So. 3d 76, 80 (Fla. 1st DCA 2010)))).

Judgment for Money Lent

"A plaintiff making a claim for money lent must show 'money was delivered to the defendant, the money was intended as a loan, and the loan has not been

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[2] The trial court's adjudication on the issue of the lost note was not tried by consent because American Residential explicitly and repeatedly objected to the introduction of the copy of the note. See Bldg. B1, LLC v. Component Repair Servs., Inc., 224 So. 3d 785, 790 (Fla. 3d DCA 2017) ("An issue is tried by consent where the parties fail to object to the introduction of evidence on the issue." (citing Fla. R. Civ. P. 1.190(b); Dep't of Revenue of State of Fla. v. Vanjaria Enters., Inc., 675 So. 2d 252 (Fla. 5th DCA 1996); Rosenberg v. Guardian Life Ins. Co., 510 So. 2d 610 (Fla. 3d DCA 1987))).

[3] Given our rulings regarding the unpleaded and unnoticed issue of the lost note, we decline to address the evidentiary issue created by the trial court's admission in evidence of the duplicate note.

repaid.'" Cimaglia v. Moore, 724 F. App'x 695, 699 (11th Cir. 2018) (quoting 42 C.J.S. Implied Contracts § 2 (2010)); see also Sun Bank/Miami, N.A. v. Saewitz, 579 So. 2d 255, 255 (Fla. 3d DCA 1991). A trial court's findings of fact are reviewed for competent, substantial evidence. Verneret v. Foreclosure Advisors, LLC, 45 So. 3d 889, 891 (Fla. 3d DCA 2010). St. Catherine's investor testified that St. Catherine lent money to American Residential, American Residential agreed to repay that loan, and American Residential failed to repay that loan. The representative for American Residential did not deny any of these points. The trial court found the testimony credible and made factual findings based on it. Given this unrefuted testimony, there was competent, substantial evidence in the record and the inadmissible copy of the note was not necessary to determine that St. Catherine was entitled to judgment in

its favor on the count for money lent.[4] As such, we affirm the entry of judgment for St. Catherine on the money lent count.[5]

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part and remand with instructions that judgment be entered for American Residential on the breach of note and foreclosure counts.

Affirmed in part, reversed in part and remanded.

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[4] American Residential contends that St. Catherine is not permitted to recover judgment for money lent because the underlying action was time barred by the four-year statute of limitations set forth in section 95.11(3)(k), Florida Statutes. The action, however, was filed within the statute of limitations based on American Residential's renewed promises to pay in 2013 and subsequent years. Following the expiration of the statute of limitations on the written instrument, American Residential acknowledged, in email communications with St. Catherine, that it owed money to St. Catherine and that it intended to repay that money. Because these subsequent promises to repay the loan were in writing and signed by American Residential's representative, as evidenced by his name affixed as the sender of the correspondences, each of these written, signed promises renewed the statute of limitations. § 95.04, Fla. Stat. (2019); Wassil v. Gilmour, 465 So. 2d 566, 568 (Fla. 3d DCA 1985) (citing Jacksonville Am. Publ'g Co. v. Jacksonville Paper Co., 197 So. 672 (1940); Kitchens v. Kitchens, 142 So. 2d 343 (Fla. 2d DCA 1962)).

[5] American Residential also argues on appeal that the trial court erred in failing to dismiss or abate the underlying action upon notification that the documentary stamps on the note had not been paid. We note that because no execution of the judgment occurred until after payment of the stamps was made, the judgment was valid in this regard. See Klein v. Royale Grp., Ltd., 578 So. 2d 394, 395 (Fla. 3d DCA 1991). Given our holdings regarding the issue of the lost note and entry of judgment for money lent, however, we need not analyze the issue further.