STATE OF MICHIGAN

COURT OF APPEALS

THE NATIONAL CREDIT UNION ADMINISTRATION (NCUA) BOARD,

Plaintiff/Counter-Defendant/Third-Party Defendant-Appellant,

v

RICHARD WOONTON,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

RBR GROUP, INC.,

Third-Party Plaintiff,

and

CHARLES SMITH, WANDA BLACK, JAMES M. PERNA, LISA REDICK, JOHN BECKER, BRENT MIKULSKI, RAY WARNER, and FIRST MORTGAGE CORPORATION,

Third-Party Defendants.

UNPUBLISHED
November 22, 2016

No. 328539
Macomb Circuit Court
LC No. 2014-004642-CK

Before: M. J. KELLY, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

Plaintiff, the National Credit Union Administration Board (NCUAB), appeals as of right an order dismissing its breach of contract claim against defendant, Richard Woonton. For the reasons stated herein, we reverse and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

This appeal arises out of a loan agreement between defendant and Health One Credit Union (HOCU), whereby HOCU loaned defendant $50,000. The loan went unpaid, requiring

HOCU to file a complaint against defendant for breach of contract, seeking repayment of the loan balance—totaling $48,682.32—plus interest and other costs. Following the filing of HOCU's complaint against defendant, the State of Michigan Department of Insurance and Financial Services (DIFS) placed HOCU into conservatorship due to its impending insolvency. DIFS appointed the NCUAB[1] as conservator of HOCU, and later, the NCUAB was appointed HOCU's liquidating agent under the Federal Credit Union Act (FCUA), 12 USC 1751, *et seq.*

Defendant then filed a countercomplaint against HOCU for breach of contract, fraud, misrepresentation, unjust enrichment, and innocent misrepresentation, arguing that HOCU was "vicariously responsible" for the acts of its agent, James Perna—a former officer and director of HOCU—who defendant asserted induced him into borrowing the $50,000, took the $50,000 from defendant's account, promised defendant that he would be repaid for the loan, but never repaid defendant. Defendant and his company, RBR Group, Inc., also interpleaded several former HOCU officers and directors as third-party defendants, asserting similar claims of fraud, misrepresentation, and unjust enrichment, repeating the allegations contained in his countercomplaint, and arguing that the named board members were negligent for failing to properly train and supervise Perna.

HOCU then filed a motion to amend the pleadings to reflect the NCUAB as plaintiff in the case, asserting that the NCUAB, as HOCU's liquidating agent, was the successor to HOCU. HOCU also filed a motion to dismiss the counter and third-party claims against it, asserting that because defendant failed to file his claims against HOCU before the NCUAB was appointed liquidating agent, federal law required defendant to file his claims directly with the NCUAB and limited review of the NCUAB's determination of defendant's claims to federal court. Third-party defendants also filed a motion to dismiss defendant's claims against them.

Following a hearing, the trial court granted HOCU's motion to amend the pleadings to reflect the NCUAB as plaintiff. Plaintiff then filed a motion to stay the proceedings, asserting that the FCUA requires courts to grant a stay when a liquidating agent, like plaintiff, requests one.

The trial court heard arguments regarding plaintiff's motion to stay the proceedings, plaintiff's motion to dismiss the counter and third-party claims, and third-party defendants' motion to dismiss the third-party claims, and issued a written opinion granting plaintiff's motion to dismiss the counter and third-party claims and granting third-party defendants' motion to dismiss the third-party claims. While none of the parties made a motion to dismiss plaintiff's breach of contract claim against defendant, the trial court's written opinion stated that it "resolve[d] the last pending issue and close[d] the case." The trial court also issued an order

[1] "The Federal Credit Union Act, 12 USC 1751, established the National Credit Union Administration (NCUA) and set out the NCUA's powers and duties. In short, the NCUA operates as both a regulator for operating credit unions and as a conservator (or liquidating agent) for defunct credit unions." *Holy Love Ministry v United States*, 612 Fed Appx 837, 838 (CA 6, 2015).

finding that because the claims had been dismissed, plaintiff's motion to stay the proceedings was moot, and confirming that "[t]his case remain[ed] closed."

Following the trial court's orders, plaintiff filed a motion for reconsideration, asking the trial court to reconsider the portion of its order stating that the case was closed and reconsider its order denying plaintiff's motion to stay the proceedings. In its motion, plaintiff asserted that the trial court erred in dismissing its claim, as no party had made a motion to dismiss its claim against defendant. Further, plaintiff argued that federal law required the trial court to stay the proceedings. Accordingly, plaintiff asserted that the trial court had "made a palpable, and likely inadvertent error" when it dismissed plaintiff's claim against defendant and denied its motion to stay the proceedings.

Without hearing arguments, the trial court entered an order denying plaintiff's motion for reconsideration because it found plaintiff's claim against defendant was "closely intertwined with [defendant's] claims in the pleadings that were dismissed because they must be pursued in accordance with federal procedures," and concluded that in order "[t]o avoid piecemeal litigation, the subject decision properly closed this case." Accordingly, the trial court determined that plaintiff failed to demonstrate a palpable error that would entitle it to relief pursuant to MCR 2.119(F). This appeal then ensued.

II. ANALYSIS

Plaintiff argues that the trial court erred when it dismissed its breach of contract claim against defendant. We agree.

The trial court did not specify the authority pursuant to which it dismissed plaintiff's breach of contract claim against defendant. However, it seems the trial court dismissed plaintiff's claim pursuant to MCR 2.116(C)(4),[2] on the basis that it lacked jurisdiction over the claim because it needed to be litigated in federal court along with defendant's claims against plaintiff.

Summary disposition is appropriate under MCR 2.116(C)(4) when the trial court "lacks jurisdiction of the subject matter." Decisions regarding summary disposition pursuant to MCR 2.116(C)(4) are reviewed de novo. *Weishuhn v Catholic Diocese of Lansing*, 279 Mich App 150, 155; 756 NW2d 483 (2008). Similarly, "an issue of subject-matter jurisdiction that turns on an interpretation of statutory provisions is reviewed de novo." *Cairns v City of East Lansing*, 275 Mich App 102, 107; 738 NW2d 246 (2007).

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[2] See *Verna's Tavern, Inc v Heite*, 243 Mich App 578, 584-585; 624 NW2d 738 (2000) (holding that a trial court's failure to specify the particular subrule in regard to summary disposition does not preclude appellate review as long as the reviewing court has a sufficient record to rule); *Vill of Dimondale v Grable*, 240 Mich App 553, 564-565; 618 NW2d 23 (2000) (while the trial court failed to specify the subsection of the rule under which is granted summary disposition, this Court assumed that summary disposition had been granted under the subsection cited in the motion and found that the trial court erred in granting summary disposition).

Michigan circuit courts have original jurisdiction in " 'all matters not prohibited by law.' " *Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 52; 832 NW2d 728 (2013), quoting Const 1963, art 6, § 13. This includes jurisdiction over " 'all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.' " *Hillsdale Co Senior Servs, Inc*, 494 Mich at 52, quoting MCL 600.605. Thus, the circuit court would generally have jurisdiction over a breach of contract claim. See *Bd of Co Rd Comm'rs for Co of Eaton v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994) (concluding that the case was properly filed in circuit court where the claim was for breach of contract and the alleged damages exceeded $10,000, because "[t]he circuit court is the court of general jurisdiction in this state and its jurisdiction was not expressly preempted by the jurisdiction of another court.").

As best we can discern, the trial court concluded that NCUAB's breach of contract claim was so intertwined with defendant's counterclaims that it too should be dismissed for presentation in the federal administrative process. The problem with that position is that the NCUAB can bring its breach of contract claim in state or federal court, and claims brought by the board are not subject to the administrative process. Specifically, 12 USC 1789(a)(2) provides that the NCUAB may "sue and be sued, complain and defend, in any court of law or equity, State or Federal," allowing the board to file suit, as it did here, in Macomb circuit court. And, nothing within 12 USC 1787 requires a claim brought by the board to first go through an administrative process, as 12 USC 1787 governs claims *against* liquidated credit unions.[3]

Although the FCUA provides for federal jurisdiction in some cases where the NCUAB is a party,[4] the statute contains an exception to the grant of federal jurisdiction when the board, acting in a certain capacity, brings a state law claim against a member:

> [A]ny such suit to which the [NCUAB] is a party in its capacity as a liquidating agent of a State-chartered credit union and which involves only the rights or obligations of members, creditors, and such State credit union under State law shall not be deemed to arise under the laws of the United States.

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[3] This administrative process allows the NCUA to review claims against the liquidated credit union and determine whether they should be allowed or disallowed. 12 USC 1787(b)(3). If the claims are denied by NCUA, dissatisfied claimants may only pursue them by either "request[ing] administrative review of the claim," or "fil[ing] suit on such claim . . . in federal district court." 12 USC 1787(b)(6)(A)(*ii*). A prospective plaintiff's failure to follow these procedures deprives the district court of jurisdiction over the potential claim. See 12 USC 1787(b)(13)(D).

[4] "All suits of a civil nature at common law or in equity to which [NCUAB] shall be a party shall be deemed to arise under the laws to the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy. The [NCUAB] may . . . remove any such action, suit, or proceeding from a State court to the United States district court . . . ." 12 USC 1789(a)(2).

Thus, nothing within 12 USC 1789(a)(2) precluded NCUAB from filing in state court, and the "sue and be sued clause"[5] in 12 USC 1789(a)(2) gave NCUAB the right to proceed against defendant (a member of the credit union) on a claim arising under state law.

It was undisputed before the trial court that (1) the NCUAB is a party in its capacity as a liquidating agent of HOCU, which is a state-chartered credit union, (2) plaintiff's complaint alleges a cause of action under state law, and (3) "involves only the rights or obligations of members, creditors, and such State credit union." Thus, while 12 USC 1787 obligated the trial court to dismiss defendant's claims against plaintiff for lack of jurisdiction, 12 USC 1789(a)(2) did not deprive the trial court of jurisdiction over plaintiff's breach of contract claim against defendant. The trial court, therefore, erred in dismissing plaintiff's breach of contract claim against defendant for lack of jurisdiction.

Because we conclude that the trial court erred in dismissing plaintiff's claim against defendant, there is no need to address whether the sua sponte dismissal violated plaintiff's due process rights.

We reverse the order dismissing plaintiff's breach of contract claim against defendant and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs as having prevailed in full on appeal. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Stephen L. Borrello

[5] See *Bruns v National Credit Union Admin*, 122 F3d 1251, 1254 (CA 9, 1997) ("Section 1789(a)(2) contains the NCUA's 'sue and be sued' clause.").