

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Mary Djurasevic, etc., et al. v. Ronald Thompson, et al.

No. 3D22-902 (Fla. 3d DCA Aug. 9, 2023) · No. No. 3D22-902 · Decided August 9, 2023

SUMMARY

The Florida Third District Court of Appeal affirmed the denial of Mary Djurasevic’s motion to join claims brought in her individual, trustee, and executor capacities in a mortgage foreclosure action. The court held that causes of action asserted in individual and representative capacities are separate rights that cannot be joined in a single suit, and that the trial court was not required to allow Djurasevic to elect a capacity after she had initially sued only as trustee.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Logue, C.J.; Hendon, J.; Gordo, J.
JURISDICTION	Florida
DECIDED	August 9, 2023
DOCKET	No. 3D22-902
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the circuit court denying Djurasevic's motion to join additional capacities in a mortgage-foreclosure action.
STANDARD OF REVIEW	Not expressly stated; review concerned the trial court's ruling on the propriety of joinder and denial of the motion to amend.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion
PARTIES	Mary Djurasevic, etc., et al. v. Ronald Thompson, et al.

TOPICS

- joinder
- motion to amend
- foreclosure
- trusts
- civil procedure

PRACTICE AREAS

- civil procedure
- real estate
- trusts
- probate

QUESTIONS PRESENTED

1. Whether a plaintiff may join claims asserted in individual and representative capacities when the claims arise from the same transaction or occurrence but accrue in different legal rights.
2. Whether the trial court was required to allow Djurasevic to elect the capacity in which she would proceed after denying her motion to join additional capacities.

HOLDINGS

1. A cause of action accruing to a plaintiff individually may not be joined with a cause of action accruing to the plaintiff in a representative capacity merely because both arise from the same transaction or occurrence, because the claims are not brought in the same right.
2. The trial court was not required to afford Djurasevic a choice of the capacity in which to sue because the circumstances did not fall within the holding of *Department of Insurance of the State of Florida v. Coopers & Lybrand*.

KEY QUOTATIONS

“a cause of action accruing to a plaintiff individually cannot be joined with one accruing to the plaintiff in a representative capacity although they rise out of the same occurrence because the respective causes of action are not in the same right.” (2)

“These recoveries are in different rights for distinct injuries, and the damages are determined upon evidence of a different nature; therefore two separate actions are provided for.” (2)

FACTUAL BACKGROUND

Mary Djurasevic, as surviving trustee of Stanley Walker's revocable trust, sued Ronald and Linda Thompson to foreclose on their residence based on a promissory note and mortgage allegedly assigned to the trust. The Thompsons challenged Djurasevic's standing, arguing that she could enforce the instruments only as executor of Walker's estate. Djurasevic then sought to join herself in her individual capacity and as estate executor, several years after filing suit solely as trustee.

PROCEDURAL HISTORY

Djurasevic, as surviving trustee of Stanley Walker's revocable trust, sued Ronald and Linda Thompson to foreclose a mortgage and enforce a promissory note. After the parties filed competing summary-judgment motions and the Thompsons challenged Djurasevic's standing, she moved to amend the complaint to join herself individually and as executor of Walker's estate. The circuit court denied joinder, and the Third District affirmed.

DISPOSITION

affirmed

CASES CITED

- *Metro. Dade Cnty. v. Hicks*, 323 So. 2d 590, 591 (Fla. 3d DCA 1975)
- *Pensacola Elec. Co. v. Soderlind*, 53 So. 722, 724 (Fla. 1910)

- *Miami Dairy Farms, Inc. v. Tinsley*, 155 So. 850, 851 (Fla. 1934)
- *Dep't of Ins. of the State of Fla. v. Coopers & Lybrand*, 570 So. 2d 369, 370-71 (Fla. 3d DCA 1990)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed August 9, 2023. Not final until disposition of timely filed motion for rehearing. _____ No. 3D22-902 Lower Tribunal No. 16-11257 _____ Mary Djurasevic, etc., et al., Appellants, vs. Ronald Thompson, et al., Appellees. An Appeal from the Circuit Court for Miami-Dade County, Lourdes Simon, Judge.

McCarthy & Yersel, PLLC, and Martin G. McCarthy and Emre Yersel, for appellants. Quaranta P.A., and John M. Quaranta and Natasha L. Biela, for appellees. Before LOGUE, C.J., and HENDON and GORDO, JJ. LOGUE, C.J. Mary Djurasevic seeks review of the trial court's order denying her joinder motion.

In her capacity as the surviving trustee of the revocable trust of Stanley Walker, Djurasevic sued Ronald and Linda Thompson to foreclose on their residence. The Thompsons had executed a promissory note and mortgage to Walker. Djurasevic alleged that the note and mortgage were assigned to Walker's revocable trust.

The parties filed competing motions for summary judgment. The Thompsons argued that Djurasevic, as the trustee, lacked standing, and she could only enforce the note and mortgage as executor of Walker's estate. Thereafter, Djurasevic filed a motion to amend her complaint to join herself in her individual capacity and in her capacity as executor of Walker's estate.

The trial court denied the motion, ruling that joinder was improper because Djurasevic could not sue in separate capacities in a single suit. Djurasevic contends this was error and argues she should have been permitted to bring suit in her three capacities—as trustee, executor, and individual—because she has the right to recover on the promissory note in each capacity.

However, “a cause of action accruing to a plaintiff individually cannot be joined with one accruing to the plaintiff in a representative capacity although they rise out of the same occurrence because the respective 2 causes of action are not in the same right.” *Metro. Dade Cnty. v. Hicks*, 323 So. 2d 590, 591 (Fla. 3d DCA 1975) (citation omitted). An individual recovers in a personal capacity, whereas a representative recovers on behalf of another.

Id. See also *Pensacola Elec. Co. v. Soderlind*, 53 So. 722, 724 (Fla. 1910). Thus, while the causes of action may result from the same transaction or occurrence, the right to relief differs. *Hicks*, 323 So. 2d at 591. See also *Miami Dairy Farms, Inc. v. Tinsley*, 155 So. 850, 851 (Fla. 1934) (“These

recoveries are in different rights for distinct injuries, and the damages are determined upon evidence of a different nature; therefore two separate actions are provided for.”).

This “long established rule of law in Florida” requires us to affirm the trial court’s denial of joinder. Hicks, 323 So. 2d at 591. Djurasevic further contends that the trial court erred by not allowing her to elect the capacity in which she sought to sue when denying her request for joinder, relying on this Court’s opinion in Department of Insurance of the State of Florida v. Coopers & Lybrand, 570 So.

2d 369 (Fla. 3d DCA 1990). Coopers & Lybrand, however, does not require a trial court to afford a plaintiff the choice of which capacity to sue. The Department in Coopers & Lybrand was only given this choice because it initially filed suit in all relevant capacities and the issue was before the trial court on a motion to dismiss. Id. 3 at 370-71.

Here, in contrast, Djurasevic sought to join herself in separate capacities several years after she originally sued solely in her capacity as surviving trustee of Walker’s revocable trust. Affirmed. 4