

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)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-of-florida-third-district/2023/mary-djurasevic-etc-et-al-v-ronald-thompson-et-al-3uy77v7u>