

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
FLORIDA

U.S. Capital Global Investment Management, LLC v. Herring
Imming, LLP, Ruston T. Imming, and Maria Sweeney

U.S. Capital Global · No. 26-cv-20447-BLOOM/Elfenbein · Decided May 20, 2026

SUMMARY

The United States District Court for the Southern District of Florida grants Defendants’ motion to dismiss a Florida negligence claim arising from the issuance of a California post-judgment notice of levy that allegedly caused the freezing of Plaintiff’s bank account. The Court holds that Plaintiff failed to sufficiently plead a legally cognizable duty and that Florida’s litigation privilege provides absolute immunity for the levy issued in connection with judicial proceedings. The Court also denies leave to amend and dismisses the action with prejudice.

CASE DETAILS

COURT	United States District Court for the Southern District of Florida
JURISDICTION	United States District Court for the Southern District of Florida
DECIDED	May 20, 2026
DOCKET	26-cv-20447-BLOOM/Elfenbein
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants removed a Florida-law negligence action under the court's diversity jurisdiction and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) and to strike the prayer for attorney's fees.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws plausible inferences in the nonmoving party's favor, and disregards legal conclusions. The court may consider documents central to the complaint and referenced in it without converting the motion to one for summary judgment. Applicability of Florida's litigation privilege is a question of law when the complaint clearly establishes the defense.
PRECEDENTIAL VALUE	unpublished district court opinion

TOPICS

- motions to dismiss
- civil procedure
- negligence
- commercial litigation
- remedies

PRACTICE AREAS

civil procedure

torts

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether the court could consider the California order, judgment, notice of levy, and garnishee memorandum attached to Defendants' motion without converting the Rule 12(b)(6) motion into one for summary judgment.
2. Whether Plaintiff sufficiently pleaded that Defendants owed it a legally cognizable duty and thereby stated a Florida negligence claim.
3. Whether Florida's litigation privilege provides absolute immunity for Defendants' post-judgment issuance of a notice of levy to execute a money judgment.
4. Whether Plaintiff should receive leave to amend its complaint.

HOLDINGS

1. The court may consider documents attached to the motion to dismiss when the complaint refers to them and they are central to the claim, without converting the motion into one for summary judgment.
2. Plaintiff failed to state a negligence claim because the complaint did not allege sufficient facts showing that Defendants owed Plaintiff a legally cognizable duty.
3. Florida's litigation privilege absolutely immunizes Defendants from Plaintiff's negligence claim based on issuing the post-judgment notice of levy.
4. Leave to amend was properly denied because amendment would be futile in light of the litigation privilege.

KEY QUOTATIONS

“absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior, so long as the act has some relation to the legal proceeding.” (III.C)

“Thus, executing a Notice of Levy to enforce the Judgment is protected by the litigation privilege as an “act permitted by law in the due course of the judicial proceedings.” (III.C)

FACTUAL BACKGROUND

A California marital-dissolution court entered a judgment requiring Jeffrey Sweeney to pay Maria Sweeney \$358,287 in attorney's fees and costs. Maria Sweeney's law firm and attorneys caused a California Notice of Levy Under Writ of Execution to be filed identifying accounts in Jeffrey Sweeney's name or accounts in which he was an authorized owner or signator. Plaintiff alleged that the levy resulted in the freezing of an account held in Plaintiff's name, causing client confusion, reputational harm, and damage to its banking relationship. Plaintiff asserted one Florida-law negligence claim based on Defendants' allegedly improper execution of the levy.

PROCEDURAL HISTORY

Plaintiff filed a negligence complaint in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Defendants timely removed under 28 U.S.C. § 1332 and moved to dismiss with prejudice, asserting failure to state a claim and immunity under Florida's litigation privilege, while also moving to strike the request for attorney's fees. The district court granted the motion to dismiss, denied leave to amend as futile, dismissed the complaint with prejudice, denied the motion to strike as moot, terminated deadlines, and closed the case.

DISPOSITION

dismissed

CASES CITED

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57
- Ashcroft v. Iqbal, 556 U.S. 662, 678
- Chaparro v. Carnival Corp., 693 F.3d 1333, 1337
- Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration All., 304 F.3d 1076, 1084
- AXA Equitable Life Ins. Co. v. Infinity Fin. Grp., LLC, 608 F. Supp. 2d 1349, 1353
- Thaeter v. Palm Beach Cnty. Sheriff's Office, 449 F.3d 1342, 1352
- Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369
- Harris v. Ivax Corp., 182 F.3d 799, 802 n.2
- Virgilio v. Ryland Grp., Inc., 680 F.3d 1329, 1339
- Curd v. Mosaic Fertilizer, LLC, 39 So. 3d 1216, 1227-28
- Williams v. Davis, 974 So. 2d 1052, 1057 n.2
- Greenwald v. Eisinger, Brown, Lewis & Frankel, P.A., No. 3D12-1181, 2013 WL 3455600, at *2
- Jackson v. BellSouth Telecomm., Inc., 372 F.3d 1250, 1274-77
- Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co., 639 So. 2d 606, 607-09
- Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 384
- Zucker for BankUnited Fin. Corp. v. U.S. Specialty Ins. Co., 856 F.3d 1343, 1349
- AGM Investors, LLC v. Business Law Group, 219 So. 3d 920, 924-27
- Fridovich v. Fridovich, 598 So. 2d 65, 66
- Ange v. State, 123 So. 916, 917
- LatAm Investments, LLC v. Holland & Knight, LLP, 88 So. 3d 240, 242, 244-45
- Connor v. Midland Credit Mgmt., Inc., No. 18-23023-CIV, 2019 WL 13062664, at *9
- Macedo v. LVNV Funding LLC, No. 16-cv-46-FtM-38MRM, 2016 WL 2944047, at *2-3
- Bothman v. Harrington, 458 So. 2d 1163, 1168 & n.5
- Grippa v. Rubin, 133 F.4th 1186, 1197-99
- Wagner v. Daewoo Heavy Indus. Am. Corp., 314 F.3d 541, 542
- Newton v. Duke Energy Fla., LLC, 895 F.3d 1270, 1277

- Pop v. LuliFama.com, LLC, 145 F.4th 1284, 1297-98
- Garfield v. NDC Health Corp., 466 F.3d 1255, 1270
- Foman v. Davis, 371 U.S. 178, 182
- St. Charles Foods, Inc. v. America's Favorite Chicken Co., 198 F.3d 815, 822-23
- Rivas v. Bank of N.Y. Mellon, 777 F. App'x 958, 965
- Cockrell v. Sparks, 510 F.3d 1307, 1310
- Florida Power & Light Co. v. Allis Chalmers Corp., 85 F.3d 1514, 1520
- Amick v. BM & KM, Inc., 275 F. Supp. 2d 1378, 1381

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