

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

KAC 2021-1, LLC, as assignee for Jeneka Hill v. Hudson SFR
Property Holdings, LLC

No. 2D2023-1024 (Fla. 2d DCA May 2, 2025) · No. 2D2023-1024 · Decided May 2, 2025

SUMMARY

The District Court of Appeal of Florida, Second District, reversed an order dismissing KAC 2021-1, LLC’s complaint alleging violations of the Florida Consumer Collection Practices Act arising from the posting of a residential eviction notice. The court held that the trial court addressed issues not raised in the motion to dismiss and improperly determined that amendment would be futile. The case was remanded to allow KAC an opportunity to amend its complaint.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	LaROSE, Judge; SLEET, C.J.; ATKINSON, J.
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	May 2, 2025
DOCKET	2D2023-1024
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a final order dismissing KAC's complaint with prejudice for alleged violations of the Florida Consumer Collection Practices Act.
STANDARD OF REVIEW	The dismissal of the complaint is reviewed de novo. The denial of leave to amend is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	KAC 2021-1, LLC, as assignee for Jeneka Hill v. Hudson SFR Property Holdings, LLC

TOPICS

- motions to dismiss
- motion to amend
- consumer protection
- landlord tenant
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court erred by dismissing the complaint based on issues that Hudson had not raised in its motion to dismiss.
2. Whether the trial court abused its discretion by denying KAC leave to amend its complaint on the ground that amendment would be futile.

HOLDINGS

1. The trial court erred by resolving the case on issues that Hudson did not raise in its motion to dismiss, including whether Hudson was an exempted debt collector under section 559.55(7), Florida Statutes.
2. The trial court should have allowed KAC to amend its complaint because the record did not establish that amendment was clearly futile.

KEY QUOTATIONS

"Leave to amend should not be denied unless the privilege has been abused or the complaint is clearly not amendable." (2)

"We remand for the trial court to give KAC an opportunity to amend its complaint." (4)

FACTUAL BACKGROUND

Hudson allegedly left a three-day residential eviction notice on tenant Jeneka Hill's front door. KAC, as Hill's assignee, alleged that posting the notice publicly disclosed that Hill owed money to Hudson and violated the Florida Consumer Collection Practices Act. The trial court dismissed the complaint with prejudice, finding that KAC had not alleged the statutory elements, that Hudson was not shown to be a creditor or debt collector, and that amendment would be futile because the eviction-notice conduct fell within statutory debt-collector exemptions.

PROCEDURAL HISTORY

KAC sued Hudson alleging that Hudson violated the Florida Consumer Collection Practices Act by posting a three-day residential eviction notice on the tenant's front door and thereby publicly disclosing that the tenant owed money. Hudson moved to dismiss for failure to state a cause of action. After initially granting the motion orally, the trial court granted rehearing but ultimately dismissed the complaint with prejudice and denied leave to amend, reasoning that amendment would be futile. KAC appealed, and Hudson conceded error.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must give KAC an opportunity to amend its complaint.

CASES CITED

- Locker v. United Pharmaceutical Group, Inc., 46 So. 3d 1126, 1127 (Fla. 1st DCA 2010)
- Readon v. WPLG, LLC, 317 So. 3d 1229, 1238 (Fla. 3d DCA 2021)
- New River Yachting Center, Inc. v. Bacchiocchi, 407 So. 2d 607, 609 (Fla. 4th DCA 1981)
- Osborne v. Delta Maintenance & Welding, 365 So. 2d 425 (Fla. 2d DCA 1978)
- NextGen Restoration, Inc. v. Citizens Property Insurance, 126 So. 3d 1255, 1256 (Fla. 2d DCA 2013)
- Reynolds v. Gables Residential Services, Inc., 428 F. Supp. 2d 1260, 1264 (M.D. Fla. 2006)
- Bennett v. Walton County, 174 So. 3d 386, 396 (Fla. 1st DCA 2015) (Makar, J., concurring in part and dissenting in part)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT KAC 2021-1, LLC, as assignee for Jeneka Hill, Appellant, v. HUDSON SFR PROPERTY HOLDINGS, LLC, Appellee. No. 2D2023-1024 May 2, 2025 Appeal from the Circuit Court for Hillsborough County; Lisa Ann Allen, Judge. Daniel W. Bialczak and Brian K. Korte of Korte & Associates, LLC, Loxahatchee, for Appellant. Mark R. Lippman of Lippman Law Offices, P.A., Orlando, for Appellee.

LaROSE, Judge. KAC 2021-1, LLC (KAC), as assignee of the tenant, Jeneka Hill, appeals the final order dismissing its complaint for alleged violations of the Florida Consumer Collection Practices Act (the Act). See § 559.72, Fla. Stat. (2022). Allegedly, Hudson SFR Property Holdings, LLC (Hudson), left its three-day residential eviction notice on the tenant's front door.

See § 83.56(4), Fla. Stat. (2022) (providing for the delivery of written notice terminating a rental agreement). We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). KAC contends that the trial court erroneously dismissed the complaint, with prejudice, by ruling on issues not raised by Hudson and failing to allow KAC to amend its complaint.¹ Hudson concedes error.

Accordingly, we reverse and remand for the trial court to permit KAC to amend its complaint. I. Background KAC argues that in posting the eviction notice, Hudson publicly disclosed that the tenant owed money to the landlord. This, according to KAC, violated section 559.72 of the Act. Hudson moved to dismiss the complaint, claiming that KAC failed to state a cause of action.

See generally Fla. Sm. Cl. R. 7.090(c) (permitting pretrial motions). Hudson admits that KAC is a "person" covered by the Act. But Hudson asserted that KAC failed to allege how posting the eviction notice violated the Act.

After a hearing, the trial court orally granted Hudson's motion. Before rendition of a written order, KAC moved for rehearing or, alternatively, leave to amend its complaint. The trial court granted

the rehearing motion. Ultimately, it dismissed KAC's complaint with prejudice.

The trial court found that KAC failed to allege "the violation of a particular subsection or state[] ultimate facts that would support a cause of action [under the Act]," that Hudson is a "creditor" or "debt collector" under the Act, and that Hudson "disclosed information concerning the 1 Given our disposition, we need not address the other issues KAC raises on appeal.

2 existence of a debt known to be reasonably disputed by the debtor" under section 559.72(6). The trial court also found that amending the complaint would be futile. In its view, the eviction notice "squarely falls under the 'debt collector' exemptions" of section 559.55(7).

The trial court reasoned that section 83.56 required Hudson to deliver its eviction notice "by leaving a copy... at the residence," if the tenant is not present. The trial court also noted that it was "unaware of any case law" prohibiting the posting of the eviction notice on a tenant's door, as it "is [a] common practice for landlords and property management employees."

II. Discussion We review the trial court's order dismissing the complaint de novo. See *Locker v. United Pharm. Grp., Inc.*, 46 So. 3d 1126, 1127 (Fla. 1st DCA 2010). We review the trial court's denial of leave to amend for an abuse of discretion. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1238 (Fla. 3d DCA 2021). "Leave to amend should not be denied unless the privilege has been abused or the complaint is clearly not amendable."

New River Yachting Ctr., Inc. v. Bacchiocchi, 407 So. 2d 607, 609 (Fla. 4th DCA 1981) (citing *Osborne v. Delta Maint. & Welding*, 365 So. 2d 425 (Fla. 2d DCA 1978)). Our record indicates, and the parties agree, that Hudson never raised issues addressed by the trial court in dismissing the case. See generally *NextGen Restoration, Inc. v. Citizens Prop. Ins.*, 126 So.

3d 1255, 1256 (Fla. 2d DCA 2013) ("We reverse the order because the trial court resolved the case on an issue that was not raised in the motion to dismiss and could not have been resolved on this record even if it had been raised.").

For example, neither party argued that Hudson was an exempted "debt collector" under section 559.55(7). 3 We also conclude that the trial court should have allowed KAC to amend its complaint. The trial court's finding that KAC could allege no facts showing that Hudson was a "debt collector" is misguided.

Although section 83.56 required Hudson to deliver the eviction notice, that act, without any other factual allegations, does not fall "squarely" under the statutory exemptions in section 559.55(7). Cf. *Reynolds v. Gables Residential Servs., Inc.*, 428 F. Supp. 2d 1260, 1264 (M.D. Fla. 2006) (holding that "Gables is not a debt collector within the meaning of the term in 15 U.S.C. § 1692(a)(6)(F)" because the lease agreement and facts showed that "Gables had a fiduciary relationship and obligation to West Park, and/or its owners, to manage the apartment"; the rent owed was "not in

default until [it was] past due, at which time the past due balance was referred by Gables to a third-party collection agency"; and "Gables not only had a right but indeed a fiduciary obligation to collect rent and corresponding fees from tenants in West Park").

The trial court's reliance on the absence of case law allowing a cause of action under the alleged circumstances also cannot support a finding of futility. Cf. *Bennett v. Walton County*, 174 So. 3d 386, 396 (Fla. 1st DCA 2015) (Makar, J., concurring in part, dissenting in part) ("The absence of Florida caselaw involving state substantive due process challenges to executive actions might suggest that such challenges are non-actionable (like federal substantive due process challenges to state executive actions); it might simply reflect, however, that no Florida court has yet addressed the matter.").

III. Conclusion We reverse the trial court's order dismissing the complaint. We remand for the trial court to give KAC an opportunity to amend its complaint. See *Readon*, 317 So. 3d at 1238. 4 Reversed and remanded. SLEET, C.J., and ATKINSON, J., Concur. Opinion subject to revision prior to official publication. 5