

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 160476-U

Order filed August 16, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

ELSIE YATES, SAMUEL YATES, and)	Appeal from the Circuit Court
DEANDRE YATES,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiffs-Appellants,)	
)	Appeal No. 3-16-0476
v.)	Circuit No. 15-L-796
)	
FRONTLINE REAL ESTATE PARTNERS,)	
LLC, and JOSHUA JOSEPH,)	Honorable
)	Roger D. Rickmon,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Plaintiffs could not maintain a suit against defendants in their individual capacity because defendants were acting in their official capacity as receiver of certain real property.
- ¶ 2 Plaintiffs, Elsie Yates, Samuel Yates, and Deandre Yates, filed a complaint for breach of contract, breach of fiduciary duty, and conversion against defendants, Frontline Real Estate Partners, LLC, (Frontline) and Joshua Joseph. The complaint alleged that plaintiffs rented a storage unit from defendants, and defendants wrongfully disposed of certain property plaintiffs

stored in the unit. Plaintiffs appeal the circuit court's order granting defendants' motion to dismiss the complaint, arguing that defendants operated the storage rental facility in their personal capacity rather than in their capacity as receiver of the real property on which the units were located. Alternatively, plaintiffs argue that the circuit court erred in failing to grant them the opportunity to refile their complaint to clarify that they were suing defendants in their individual capacity. Finally, plaintiffs argue that the doctrine of equitable estoppel did not immunize defendants from liability. We affirm.

¶ 3

FACTS

¶ 4

Prior to the filing of the complaint in the instant case, a lawsuit was filed to foreclose a mortgage on certain real estate comprising a storage unit rental facility. In the mortgage foreclosure proceedings, defendant Joshua Joseph, a manager of Frontline, was appointed as receiver of the real estate. The foreclosure court authorized Joseph to retain Frontline to assist with the management of the real estate. The order appointing Joseph as receiver stated, *inter alia*:

“3. The receiver is empowered with all the duties, responsibilities, and powers enumerated in the Illinois Mortgage Foreclosure Law [(Foreclosure Law)] (735 ILCS 5/15-1101 *et seq.*).

4. The receiver is authorized to collect all rents relating to the property, and the tenants of the property are directed to pay rent to the receiver from the effective date of this order until further notice. The receiver shall allocate all receipts from the operation of the real estate and other property subject to the mortgage in accordance with 735 ILCS 5/15-1704(d). ***

* * *

9. The receiver may not employ attorneys except with explicit court approval.

(a) ***

(b) Pursuant to 735 ILCS 5/15-1704(b)(1), the receiver is authorized to retain at a reasonable rate, [Frontline] as a broker and leasing agent in order to market vacant storage units of the Property for lease.”

¶ 5 On January 22, 2014, plaintiffs filed a complaint alleging breach of contract, breach of fiduciary duty, and conversion in a separate case. The complaint also contained a claim for punitive damages. The complaint alleged that plaintiffs leased three storage units from defendants on the property subject to the foreclosure proceedings in October 2012. Plaintiffs stored inventory for their store in the unit and paid their monthly rent in a timely manner. In July 2013, defendants disposed of all the property stored in plaintiffs’ units without notice to plaintiffs.

¶ 6 Defendants filed a motion to dismiss arguing that only the foreclosure court had jurisdiction over defendants. Plaintiffs voluntarily nonsuited their lawsuit. The foreclosure court granted plaintiffs seven days to file a claim. At that time, the foreclosure court had already discharged Joseph as receiver but had ordered that Joseph’s bond remain intact pending the outcome of plaintiffs’ lawsuit. On July 1, 2014, plaintiffs filed a claim against defendants in the foreclosure court. On August 11, 2014, the foreclosure court struck plaintiffs’ claim for failure to give notice. The foreclosure court ordered that Joseph’s bond be dissolved.

¶ 7 On June 16, 2015, plaintiffs filed a motion to file a claim against the receiver in the foreclosure proceedings. On August 24, 2015, the foreclosure court denied the motion without prejudice to file in another court.

¶ 8 On November 6, 2015, plaintiffs filed a complaint in the instant case alleging breach of contract, breach of fiduciary duty, and conversion against defendants for defendants' alleged disposal of the inventory plaintiffs stored in the units.

¶ 9 Defendants filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). Defendants argued that the circuit court did not have jurisdiction over plaintiffs' claims. Specifically, defendants argued that under section 2-415(c) of the Code (735 ILCS 5/2-415(c) (West 2012)), the foreclosure court had exclusive jurisdiction over plaintiffs' claims, and plaintiffs failed to properly file a claim in the foreclosure court. Defendants also argued that defendants did not have the legal capacity to be sued. Defendants contended that plaintiffs could not sue them in their individual capacity, but were required to bring suit against them in their official capacity as receiver and broker for the property subject to foreclosure. Additionally, defendants argued that plaintiffs' claims were barred by the doctrine of equitable estoppel, and plaintiffs could not state a viable claim against defendants as a matter of law.

¶ 10 Plaintiffs filed a response, and a hearing was held on the motion to dismiss. At the hearing, plaintiffs argued that Joseph was appointed in the mortgage foreclosure proceedings to maintain the property, but he was also operating a storage unit business. Plaintiffs contended that these were two separate matters, and plaintiffs were not required to raise claims regarding Joseph's operation of the business in the foreclosure court.

¶ 11 The circuit court took the matter under advisement and issued a written order granting defendants' motion and dismissing plaintiffs' complaint with prejudice. The court did not expressly make any findings or indicate the basis on which it was dismissing the case.

¶ 12 ANALYSIS

¶ 13 Plaintiffs argue that the circuit court erred in granting defendants’ motion to dismiss because defendants were operating the business of the storage rental facility in their individual capacity rather than their official capacity as receiver of the real property. Thus, plaintiffs contend, defendants were acting outside their authority as receiver of the real property when they went beyond collecting and dispersing rents and “operat[ed] a business for profit at the location, including entering into new contracts for storage with Plaintiffs.”

¶ 14 Initially, we reject defendants’ claim that plaintiffs forfeited this argument by failing to raise it in the circuit court. While plaintiffs did not raise the issue in their written response to the motion to dismiss, they did argue it at the hearing on the motion. Therefore, we will consider the issue on its merits.

¶ 15 Turning to the merits of plaintiffs’ argument, we find that the order appointing Joseph as receiver clearly gave Joseph the authority to lease vacant storage units. The order granted Joseph all powers enumerated in the Foreclosure Law. Section 15-1704(b)(1) of the Foreclosure Law (735 ILCS 5/15-1704(b)(1) (West 2012)) provides that a receiver has the power and authority to “secure tenants and execute leases for the real estate, the duration and terms of which are reasonable and customary for the type of use involved, and such leases shall have the same priority as if made by the owner of the real estate.” Additionally, the order appointing Joseph as receiver explicitly contemplated that Joseph would have the power to rent storage units, as it expressly authorized Joseph to retain Frontline “as a broker and leasing agent in order to market vacant storage units of the Property for lease.” Thus, the record clearly shows that defendants were acting in their capacity as receiver, rather than in their individual capacity, when they leased storage units to plaintiffs.

We reject plaintiffs' reliance on *Goff v. Will County National Building Corp.*, 311 Ill. App. 207 (1941). In *Goff*, the defendant was appointed receiver of a bank by the Comptroller of Currency. *Id.* at 208. The defendant was also appointed receiver of the building where the bank was located by the United States District Court for the Northern District of Illinois in a mortgage foreclosure proceeding. *Id.* The plaintiff filed a lawsuit alleging that she sustained personal injuries after falling out of the bank's elevator. *Id.* The defendant was added as a party to the lawsuit in his capacity as receiver of the bank. *Id.* at 209. The *Goff* court reversed the circuit court's judgment against the defendant, finding that defendant was not timely served with process in his capacity as receiver of the building. *Id.* at 212-13. The court reasoned:

“A suit against a receiver is not a proceeding against him personally, but it is in the nature of a proceeding in rem against the res which he holds in his capacity as receiver. Any judgment recovered against him is payable only from funds that are under the jurisdiction and control of the court that appointed him. [Citations.] Under these authorities the suit against [the defendant] as receiver of the bank is in effect a suit against the assets of the bank, and a suit against him as receiver of the building in the foreclosure proceeding is in effect a suit against the assets in that proceeding. The bank receivership and the building receivership were separate and distinct matters in different causes of action, each within the jurisdiction of the particular court in which it was pending, and having no relation to the other. As receiver of the building appellant acted in a separate and distinct capacity from that as receiver of the bank, the same as if different persons were acting in the respective capacities.” *Id.* at 210-11.

¶ 17 We find that *Goff* is factually distinguishable from the instant case. In *Goff*, the defendant was appointed receiver of the bank in a separate proceeding by the Comptroller of Currency rather than the foreclosure court. In the instant case, however, the foreclosure court’s order appointing Joseph as receiver granted him authority to rent vacant storage units. Whereas the business of operating the bank in *Goff* was a separate endeavor from management of the real property on which the bank was situated, the business of leasing storage units in the instant case was part of the management of the real property subject to foreclosure.

¶ 18 Thus, defendants’ actions in renting storage units to plaintiffs were within their powers as receiver and broker of the real property. Section 2-415(c) of the Code (735 ILCS 5/2-415(c) (West 2012)) provides:

“Every receiver of any property appointed by any court of this State may be sued in respect of any act or transaction of the receiver in carrying on the business connected with the property, without the previous leave of the court in which the receiver was appointed; but the action shall be subject to the jurisdiction of the court in which the receiver was appointed, so far as the same is necessary to the ends of justice.” *Id.*

See also *In re Teknek, LLC*, 343 B.R. 850, 876 (Bankr. N.D. Ill. 2006) (“Official capacity suits against a receivership must be maintained in the court creating the receivership, but they may be initiated without leave of such court.”). Accordingly, because defendants were acting in their official capacity when they leased the units to plaintiffs, the circuit court lacked jurisdiction and therefore did not err in dismissing the lawsuit. Stated another way, the foreclosure court had exclusive jurisdiction over causes filed against defendants in their capacity as receiver and broker. 735 ILCS 5/2-415(c) (West 2012).

¶ 19 We reject plaintiffs’ alternative argument that the circuit court abused its discretion in failing to allow plaintiffs to amend their complaint to clarify that they were suing defendants in their individual capacity. In light of our holding that defendants were acting in their official capacity when they rented the storage units to plaintiffs, such an amendment to the complaint would not change the outcome of this case. *Cookson v. Price*, 393 Ill. App. 3d 549, 552 (2009) (“[W]hen a proposed amendment will not cure a pleading defect, a trial court is within its discretion to deny leave to amend.”).

¶ 20 Because we have found that the circuit court did not err in dismissing the complaint for lack of jurisdiction, we need not reach plaintiffs’ argument that the circuit court erred in dismissing the complaint on the alternative basis of equitable estoppel.

¶ 21 **CONCLUSION**

¶ 22 The judgment of the circuit court of Will County is affirmed.

¶ 23 Affirmed.