

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).

2015 IL App (3d) 130988-U

Order filed January 14, 2015
Modified Upon Denial of Rehearing filed February 25, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

JAY B. ROSS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff,)	Will County, Illinois,
)	
v.)	
)	
IN TOWN DOCTORS, INC.; PIERRE)	
CHATELAIN; THE AUTUMN RIDGE)	
PROPERTY ASSOCIATION, INC.; THE)	
AUTUMN RIDGE TOWNES)	
HOMEOWNERS ASSOCIATION;)	
UNKNOWN OWNERS AND NON-RECORD)	
CLAIMAINTS,)	Appeal No. 3-13-0988
)	Circuit No. 12-CH-6158
Defendants.)	
)	
<hr/> IN TOWN DOCTORS, INC.,)	
)	
Defendant/Counter-Plaintiff/)	
Appellant,)	
)	
v.)	
)	
JAY B. ROSS,)	
)	Honorable
Plaintiff/Counter-Defendant/)	Joseph C. Polito,
Appellee.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The court abused its discretion when it dismissed, with prejudice, defendant's counterclaim without first allowing defendant leave to amend.

¶ 2 Plaintiff/counter-defendant, Jay B. Ross (Ross), filed a complaint for foreclosure against defendant/counter-claimant, In Town Doctors, Inc. (In Town). In Town filed an answer and counterclaim, alleging that Ross had violated his fiduciary duties as In Town's legal counsel when he sold the property in question to In Town. Ross moved to dismiss the counterclaim. The court granted Ross's motion and dismissed the counterclaim with prejudice. In Town filed a motion to reconsider, arguing that the court should have allowed In Town leave to amend its counterclaim. The court denied the motion to reconsider. In Town appeals. We reverse and remand.

¶ 3 **FACTS**

¶ 4 In September 2009, In Town entered into a written agreement (purchase agreement) to purchase real property from Ross. In December 2012, Ross filed a complaint for foreclosure against In Town, claiming that In Town defaulted on the purchase agreement by failing to pay the required monthly installments.

¶ 5 In Town filed both an answer and a counterclaim. In Town's counterclaim alleged that Ross was an attorney who represented In Town in other matters and owed In Town a fiduciary duty with respect to the purchase agreement. In Town further claimed that Ross breached his fiduciary duty by entering into the purchase agreement with his client, In Town, thereby receiving a benefit at his client's expense.

¶ 6 Ross filed a motion to dismiss In Town's counterclaim pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), arguing that In Town's counterclaim failed to properly state a cause of action. In Town filed a response, requesting the

court to deny Ross's motion to dismiss or, in the alternative, to grant In Town leave to amend its counterclaim. The court granted Ross's motion and dismissed In Town's counterclaim with prejudice. The court's order included a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), allowing the decision to be appealed immediately.

¶ 7 In Town filed a motion to reconsider, requesting leave to file an amended counterclaim. However, In Town did not attach a proposed amended counterclaim to its motion. The court denied the motion to reconsider, but granted In Town leave to file an additional motion to reconsider with an attached proposed amended counterclaim.

¶ 8 Pursuant to the court's directive, In Town filed a second motion to reconsider with an attached proposed amended counterclaim on December 30, 2013. However, earlier that same day, In Town filed a notice of appeal, listing the orders appealed from as: (1) the order granting Ross's motion to dismiss the counterclaim; and (2) the order denying In Town's first motion to reconsider the order granting Ross's motion to dismiss. The record on appeal does not include or indicate the trial court has ruled on In Town's second motion to reconsider simultaneously filed on December 30, 2013 with the notice of appeal.

¶ 9 ANALYSIS

¶ 10 In Town appeals the circuit court's decision granting Ross's motion to dismiss In Town's counterclaim.

¶ 11 On appeal, In Town argues that the trial court abused its discretion when it elected to dismiss In Town's counterclaim with prejudice without first granting In Town leave to amend. Initially, Ross renews his contention that this court lacks jurisdiction to hear the present appeal because In Town's notice of appeal was not timely filed. This court has previously considered the same issue as raised in Ross's motion to dismiss this appeal. We denied Ross's motion to

dismiss after finding that this court had jurisdiction to hear the present appeal. We stand by that decision.

¶ 12 Next, we consider the merits of the issue on appeal. Namely, whether the trial court improperly denied In Town's motion for leave to amend its counterclaim and the second motion to amend [record does not reflect that court ruled on the second motion to amend] filed after the court's ruling on Ross's section 2-615 [See C118] motion to dismiss. A motion to amend the pleadings is governed by section 2-616 of the Code (735 ILCS 5/2-616 (West 2012)), which allows the trial court discretion to decide whether to allow a proposed amendment. Hence, a court's decision denying a motion to amend the pleadings is reviewed for an abuse of discretion. *Cantrell v. Wendling*, 249 Ill. App. 3d 1093, 1095 (1993). A trial court abuses its discretion if allowing the amendment would have furthered the ends of justice. *W.E. Erickson Construction, Inc. v. Chicago Title Insurance Co.*, 266 Ill. App. 3d 905, 911 (1994).

¶ 13 Generally, the case law provides that a court should allow a party at least one opportunity to correct mistakes in its pleading. *Cantrell*, 249 Ill. App. 3d at 1095. Amendment of defective pleadings should be allowed “unless it is clear that the defect cannot be cured thereby.” *Id.* “Any doubts should be resolved in favor of allowing amendments.” *Id.* Amendments are particularly favored where a party “was merely restructuring her complaint so that she could obtain relief,” (*Cross v. Ainsworth Seed Co.*, 199 Ill. App. 3d 910, 926 (1990)) and not adding additional claims.

¶ 14 To determine whether the court abused its discretion in denying a motion to amend, we apply a four-factor test that asks whether: (1) the proposed amendment would cure the defective pleading; (2) other parties would be prejudiced; (3) the proposed amendment was timely; and (4) there were previous opportunities to amend. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992).

¶ 15 In the present case, the court did not make any explicit findings supporting its decision to deny the first request to amend the counterclaim. It appears the court denied the motion simply because the proposed amended pleading was not attached to the motion. In Town filed a timely notice of appeal from the court’s ruling on December 30, within 30 days of the court’s ruling issued on December 3, 2013.

¶ 16 In this case, the trial court did not make any findings supporting the court’s decision to deny In Town's first request to amend the counterclaim on December 3, 2013. We note that In Town filed its first motion to amend its counterclaim as part of its motion to reconsider. The motion to reconsider was timely filed within 30 days of the court's decision to grant Ross's motion to dismiss. In addition, In Town “gave notice of its intention [to amend] while this cause was still in the pleading stage. This cause was not near any established trial date.” *Id.* at 275. Once the dismissal occurred, In Town acted diligently in seeking leave to amend its counterclaim. Under such circumstances, we find In Town did not waste opportunities to amend its counterclaim.

¶ 17 Since the trial court denied In Town an opportunity to amend its counterclaim without making any findings concerning the four factors outlined in *Loyola*, 146 Ill. 2d 263, we conclude the trial court abused its discretion by denying In Town's first motion to amend its counterclaim. We reverse the circuit court's decision and remand with instructions to allow In Town leave to file an amended counterclaim.

¶ 18 **CONCLUSION**

¶ 19 The judgment of the circuit court of Will County is reversed and remanded with instructions.

¶ 20 Reversed and remanded.