IN AND FOR THE SECOND CIRCUIT COURT IN AND FOR LEON COUNTY FLORIDA

ADMINSTRATIVE ORDER 82-10

RE: MULTIPLE-COUNT COMPLAINTS

It has been brought to the attention of the Court that some claims filed in the Civil Division where there are multiple counts have been combined in value to determine which section of the Civil Division the claim should be referred to. Specifically, whether the entire lawsuit should be maintained in Summary Claims or combined to be placed in regular County Court or Circuit Court jurisdiction.

In all complaints where there are separate and distinct counts in a complaint each count is to be treated as a separate claim and should not be combined with other claims to determine the jurisdictional amount.

Attached is a memorandum in support of this order dealing with the combining of claims for jurisdiction.

DONE AND ORDERED in Chambers this 21 day of May, 1982.

Charles D. McClure
Administrative Judge

SEAL OF COUNTY JUDGE LEON COUNTY, FLORIDA

cc: Summary Claims Court
County Court
Circuit Court
Honorable Hal McClamma
Honorable John Crusoe
Honorable Eddie Boone, Sheriff
of Leon County
Tallahassee Police Department
State Attorney's Office
Public Defender's Office

MEMORANDUM

TO: BEN H. WILKINSON

FROM: EUGENE E. McCLELLAN

DATE: May 5, 1982

ISSUE: WHETHER THE CLERK OF THE COUNTY COURT MAY COMBINE THE PRINCIPAL AMOUNT OF SEPARATE PROMISSORY NOTES SUED ON IN A MULTI-COUNT COMPLAINT FOR PURPOSES OF DETERMINING WHETHER THE CASE SHOULD BE SUMMARY CLAIMS, COUNTY COURT, OR CIRCUIT COURT?

The law on combining claims for jurisdictional purposes is clear, i. e., claims for the amounts owed on separate promissory notes may not be combined to confer jurisdiction (see Trawick's Florida Practice, §3-5; Burkhart v. Gowin, 98 So. 140 (Fla. 1923); Canonico v. Devine, 130 So.2d 319 (Fla. 3d DCA 1961); copies of which are attached.

My chief concern is that the subject matter jurisdiction is subject to collateral attack and a Final Judgment obtained in the wrong court may be challenged in the future.

Eugene E. McClellan Jr.

Eugene E. McClellan

Attachments

§ 3-3 Objections to jurisdiction

The objection of lack of jurisdiction of the subject matter may be raised at anytime.[1] Jurisdiction cannot be conferred by agreement of the parties nor by the error, inadvertence, action or inaction of the parties.[2] A judgment rendered in an action in which the court lacks jurisdiction of the subject matter is void.[3]

Courts occasionally speak of subject matter jurisdiction when applying it to acquisition of jurisdiction over some thing within the territorial jurisdiction of the court.[4] This is inaccurate. In those cases the court means it has acquired jurisdiction over the parties that enables it to exercise its territorial jurisdiction over the thing.

Lack of jurisdiction of the subject matter is one of the defenses that can be raised by motion to abate the action or in the answer or a reply.[5] It can also be raised during the trial[6] and for the first time on appeal.[7] Ordinarily lack of jurisdiction of the subject matter will appear on the face of the record and the motion need recite no more than the record showing of the defect. The action may be transferred to the court having jurisdiction if the lack of jurisdiction can be thus remedied.[8] The motion or defense must show the defect and furnish the opponent with the information to correct it.[9] If the record does not show the defect, a speaking motion, showing the facts, must be made or affidavits must support the motion.[10] Speaking motions are discussed in § 9-4. The form of the motion is discussed in §§ 9-3 and 10-3.

The test for damages jurisdiction is the amount claimed in good faith.[11]

1. Rule 1.140 (h) (2).
2. Florida National Bank of Jacksonville v. Kassewitz, 156 Fla. 761, 25 So. 2d 271 (1946); Spitzer v. Branning, 139 Fla. 259, 190 So. 516 (1939).
3. Malone v. Meres, 91 Fla. 709, 109 So. 677 (1926).
4. Roberts v. Seaboard Surety Co., 158 Fla. 686, 29 So. 2d 743 (1947).
5. Rule 1.140 (b).
6. Rule 1.140 (b).
7. In re: O'Neal's Estate, 142 So. 2d 315 (2 D.C.A. 1962).
8. Rule 1.060.
9. Over 30 Association v. Blatt, 118 So. 2d 71 (3 D.C.A. 1960).
10. Viking Superior Corporation v. W. T. Grant Company, 212 So. 2d 331 (1 D.C.A. 1968).
11. Seaboard Air Line Railway v. Ray, 52 Fla. 734, 42 So. 714 (1906).

§ 3-4 Combining claims for jurisdiction

At first glance the question of combining claims by or against the same parties in the same right to confer jurisdiction appears to be the reverse of splitting a cause of action, discussed in § 1-8. This is not so because the

principles applicable to splitting a cause of action are based on res judicata and estoppel. The principles that apply to combining claims are based on jurisdiction of the subject matter. Combining claims can take two forms. The first is combining items from one cause of action. The second is combining causes of action. This is not the same as joinder of causes of action, discussed in § 1-6.

Claims may be combined to confer jurisdiction when all arise from the same transaction or occurrence or when they are joint, rather than several, claims.[1] Successive obligations to pay rent under one lease[2] or many items in a running account[3] may be combined. Separate and independent promissory notes cannot be.[4]

Separate causes of action, none of which meet a jurisdictional requirement, cannot be combined to confer jurisdiction.[5] Separate causes of action between the same parties when one or more exceeds the jurisdictional limit confers jurisdiction to determine those that do not meet the limit.[6]

1. Burkhart v. Gowin, 86 Fla. 376, 98 So. 140 (1923).
2. Livingston v. L'Engle, 27 Fla. 502, 8 So. 728 (1891).
3. Container Corp. of America v. Seaboard Air Line Railroad Company, 59 So. 2d 737 (Fla. 1952).
4. Burkhart v. Gowin, 86 Fla. 376, 98 So. 140 (1923); Canonico v. Devine, 130 So. 2d 319 (3 D.C.A. 1961).
5. Walker v. Smith, 119 Fla. 430, 161 So. 551 (1935).
6. Milhet Caterers Inc. v. North Western Meat Inc., 185 So. 2d 196 (3 D.C.A. 1966) in which all were legal claims; Brown v. Solary, 37 Fla. 102, 19 So. 161 (1896).

§ 3-5 Multiple pending actions

When two actions based on the same cause of action are pending, jurisdiction vests in the court from which service of process is first perfected.[1] The objection of prior pending action is available to abate the second action. The second action must be between the same parties or their representatives, be based on the same cause of action, ask for the same relief and be pending in another Florida court. The objection is raised by a speaking motion, discussed in § 9-4, alleging the facts or by an affirmative defense in the answer.[2] The motion or defense should be supported by certified copies of the record in the second action showing the required identity and be accompanied by a certificate of the clerk that the second action is pending.

The principle does not apply to actions pending in Florida and a foreign jurisdiction.[3] However the doctrine of comity has the same effect and the same relief is usually granted.[4] The proper motion is to stay the second action. A stay order should not except any proceedings in the stayed action.[5]

in double the sum claimed, and conditioned for the payment of any judgment which may be recovered on said lien, with costs."

No such bond appears in the transcript of the record. There is an order in the transcript reciting that such a bond was given by the defendant owner. By this order the lien is canceled, a lis pendens notice set aside, and the land described released and discharged from the lien. The decree is against the defendant owner alone. The question of how the obligation of the surety or sureties on the bond would be enforced is not presented. That a decree in personam against the defendant in such a case is proper seems to be settled by the authorities. 18 R. C. L. title "Mechanics' Liens," § 106, p. 964; King v. Ramsey, 66 Fla. 257, 63 South. 439; Scott v. Goldinghorst, 123 Ind. 268, 24 N. E. 333; Phillips v. Gilbert, 101 U. S. 721, 25 L. Ed. 833.

[3] 3. Discussion of the question of the sufficiency of the evidence to support the decree would be of no value. That certain materials were furnished and certain labor performed by complainant are admitted. The question of whether they were of such character as to benefit the defendant's property is the point in dispute. The material furnished was for a windmill and irrigation plant. The defendant contends that the work of setting up and installing the tank and plant was so imperfectly done that it added no value to the premises, but the court holds otherwise, and there is evidence in the record to sustain this holding.

None of the contentions can be sustained. The decree is affirmed.

Affirmed.

WHITFIELD, P. J., and TERRELL, J., concur.

TAYLOR, C. J., and ELLIS and BROWNE, JJ., concur in the opinion.

(86 Fla. 376)

BURKHART v. GOWIN.

(Supreme Court of Florida. Nov. 5, 1923.)

(Syllabus by the Court.)

1. Courts ⇐121(4)—Jurisdictional limitations cannot be violated by splitting or aggregating demands wholly distinct and several.

The organic limitations as to jurisdiction cannot be violated by splitting demands, or by aggregating demands that are in fact not joint or composite, and that are in no way related, but are wholly distinct and several in their character.

2. Courts ⇐121(4)—"Demand," in organic limitations as to jurisdiction, defined, and "demand" does not authorize joinder of distinct substantive causes to confer jurisdiction.

The word "demand," as used in the organic limitations as to jurisdiction, means the amount of a claim that may properly be and is duly put in controversy by the plaintiff. The "demand" referred to in the Constitution is single, and does not authorize the joinder of distinct substantive causes of action to confer jurisdiction.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Demand (Legal Obligation).]

3. Courts ⇐121(4)—Several causes of action may be joined and claims aggregated to confer jurisdiction, if related; causes of action may not be joined, nor claims aggregated, where distinct and several.

Several causes of action between parties litigant, each of which causes of action is within the jurisdiction of the court, may be joined in one action (see section 2585, Rev. Gen. Stats. 1920); and several claims, no one of which is in amount within the jurisdiction of the court may be aggregated to confer jurisdiction, if the claims from their nature or character are joint or composite, or are in some way related to each other, or arise out of the same transaction or circumstances or occurrence, and the sum of the claims makes the requisite jurisdictional amount. But where substantive claims are not in their nature or character joint or composite, and do not arise out of the same transaction, circumstances, or occurrence, and are not consequent upon a continuous course of dealing, as evidenced by an open account, or a continuing contract, or other appropriate means, and the claims are in no way related, but are several, distinct, and wholly independent demands, whether ex contractu or ex delicto, they may not be aggregated to give jurisdiction, as this would violate the organic limitations as to jurisdictional amounts.

Error to Circuit Court, Dade County; H. Pierre Branning, Judge.

Suit by W. S. Burkhart against J. I. Gowin. Judgment for defendant, and plaintiff brings error. Affirmed.

Lilburn R. Railey, of Miami, for plaintiff in error.

R. H. Seymour, of Miami, for defendant in error.

WHITFIELD, P. J. The declaration and exhibits herein filed October 11, 1920, are as follows:

"In Circuit Court, Eleventh Judicial Circuit of Florida, in and for Dade County.

"W. S. Burkhart, Plaintiff, v. J. I. Gowin, Defendant.

"Declaration.

"Now comes the plaintiff, W. S. Burkhart, by his attorney, Lilburn R. Railey, and brings this his suit against the defendant, J. I. Gowin, for that—

"Whereas, the defendant on the 14th day of December, 1918, by his promissory note, now overdue, promised to pay to the order of the plaintiff, W. S. Burkhart, on or before three

months after date of said note, the sum of $250, together with the interest thereon at the rate of 8 per cent. per annum from date thereof until fully paid, but did not pay same. Copy of note is hereto attached, marked Exhibit A and made a part hereof.

"Second Count.

"And the plaintiff further sues the defendant for that—

"Whereas, the defendant on the 1st day of February, 1919, by his promissory note, now overdue, promised to pay to the order of the plaintiff, W. S. Burkhart, 60 days after date thereof, the sum of $253.33, together with the interest thereon from date thereof until fully paid, but did not pay same. Copy of said note is hereto attached, marked Exhibit B and made a part hereof.

"Third Count.

"And the plaintiff further sues the defendant for that—

"Whereas, the defendant on the 1st day of February, 1920, by his promissory note of said date, now overdue, promised to pay to the order of the plaintiff, W. S. Burkhart, June 1st next after date of said note, the sum of $100, together with the interest thereon at the rate of 8 per cent. per annum from date until paid, but did not pay same. Copy of said note is hereto attached, marked Exhibit C and made a part hereof.

"Fourth Count.

"And the plaintiff further sues the defendant for that—

"Whereas, the said defendant, by each of said notes set forth in counts 1, 2, and 3 of this declaration, promised that in case same were not paid at maturity and same were placed in the hands of an attorney for collection or suit was brought thereon, to pay a reasonable attorney's fee for bringing said suit or making such collection, and the plaintiff avers and says that neither of said notes were paid at maturity thereof, and that all of said notes were past due and unpaid, and that all of said notes have been placed in the hands of an attorney for collection, and suit has been brought thereon, and that a reasonable attorney's fee for bringing said suit is $200.

"Wherefore, on account of the matters set forth in the foregoing counts numbered 1 to 4, both inclusive, the plaintiff brings this his suit, and alleges his damages in the sum of $1,500.

"Lilburn R. Railey, Attorney for Plaintiff."

"Exhibit A.

"No. ——. $250.00.

"Miami, Florida, Dec. 14, 1918.

"On or before three months after date, for value received, I promise to pay to the order of W. S. Burkhart two hundred and fifty and no/100 dollars at the Fidelity Bank & Trust Co., of Miami, Florida, with interest thereon at the rate of 8 per cent. per annum from date until fully paid. Interest payable semiannually. The maker and indorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 10 per cent. per annum, payable semiannually.

"J. I. Gowin. [Seal.]

"Due ——, 19—."

"Exhibit B.

"No. —— $253.33.

"Miami, Florida, Feb. 1, 1919.

"Sixty days after date, for value received, I promise to pay to the order of W. S. Burkhart two hundred and fifty-three 33/100 dollars at the Fidelity Bank & Trust Co., of Miami, Florida, with interest thereon at the rate of —— per cent. per annum from —— until fully paid. Interest payable semiannually. The maker and indorser of this note further agree to waive demand, notice of nonpayment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent. per annum, payable semiannually.

"J. I. Gowin. [Seal.]

"Due April 2, 1919."

"Exhibit C.

"$100.00. Miami, Fla., Feb. 1, 1920.

"June 1 next after date, for value received, —— promise to pay to the order of Dr. W. S. Burkhart one hundred dollars at Fidelity Bank & Trust Co., with interest thereon at the rate of 8 per cent. per annum from —— until fully paid. Interest payable semiannually. The maker and indorser of this note further agree to waive demand, notice of nonpayment, and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at —— per cent. per annum, payable semiannually.

"J. I. Gowin. [Seal.]

"Due June 1, 19—."

The court made the following final order:

"This cause coming on to be heard after being set down for hearing upon the demurrer of plaintiff to the pleas of defendant, and the court, after an inspection of the record and proceedings in said cause, being of the opinion that the court is without jurisdiction of the subject-matter of said suit, because the court is of the opinion that each of the notes sued on herein constitutes separate and distinct causes of action each in itself, and none of said notes being in a sufficient sum to confer jurisdiction upon this court, therefore it is ordered by the court, of its own motion, that said cause be and the same is hereby dismissed.

"And it is further ordered that the writ of garnishment issued in this cause be and the same is hereby dismissed, and that the goods, chattels, or money, if any, of the defendant, held in the hands of the garnishee, or the sureties upon the bond given by the defendant, to release his goods, chattels, money, or effects from the said writ of garnishment, shall upon demand be delivered to the defendant by whoever has possession of same.

"It is further ordered that the bond given by the defendant to secure the release of his property from the operation of the writ of garnishment be and the same is hereby discharged, and the defendant and the sureties thereon released from liability thereon."

[1] There is in Dade county a county court which has jurisdiction "of all cases of law in which the demand or value of the property involved shall not exceed five hundred dollars." Section 18, art. 5, Constitution of Florida; section 3325, Rev. Gen. Stats. 1920; chapter 4434, Acts of 1895.

By section 11, art. 5, of the Constitution, it is provided that:

"The circuit courts shall have exclusive original jurisdiction in all cases in equity, also in all cases at law, not cognizable by inferior courts."

While the total amounts of several claims may constitute the jurisdictional "demand," where all such claims arise out of the same transaction or occurrence, or where all such claims are from their nature in reality joint and not several (see Livingston v. L'Engle, 27 Fla. 502, 8 South. 728; Georgia, F. & A. R. Co. v. Andrews, 61 Fla. 246, 54 South. 461; Ring v. Merchants' Broom Co., 68 Fla. 515, 67 South. 132), yet where each of such claims is a separate and unrelated demand, they cannot be joined to give jurisdiction to a court which has not jurisdiction of any one of the claims because each is below the amount of the demand required to give jurisdiction to such court. Director General of Railroads v. Wilford, 81 Fla. 430, 88 South. 256.

[2, 3] Under the above-quoted organic provisions, a county court having been established in Dade county, it has jurisdiction where the "demand" does not exceed $500 in amount; and while the circuit courts are given "exclusive original jurisdiction in all * * * cases at law, not cognizable by inferior courts," they have not been given original jurisdiction of assumpsit actions at law that are "cognizable by inferior courts." See State ex rel. Birmingham Trust & Savings Co. v. Reeves, 44 Fla. 179, 32 South. 814; Ferrell v. Reed, 60 Fla. 62, 53 South. 935; Varn v. Alderman, 42 Fla. 378, 29 South. 323. The organic limitations as to jurisdiction cannot be violated by splitting demands, or by aggregating demands that are in fact not joint or composite, and that are in no way related, but are wholly distinct and several in their character. The word "demand," as used in the organic limitations as to jurisdiction, means the amount of a claim that may properly be and is duly put in controversy by the plaintiff. The "demand" referred to in the Constitution is single, and does not authorize the joinder of distinct, substantive causes of action to confer jurisdiction. Director General of Railroads v. Wilford, 81 Fla. 430, 88 South. 256. Several causes of action between parties litigant, each of which causes of action is within the jurisdiction of the court, may be joined in one action (see section 2585, Rev. Gen. Stats. 1920); and several claims, no one of which is in amount within the jurisdiction of the court, may be aggregated to confer jurisdiction, *if* the claims from their nature or character are joint or composite or are in some way related to each other, or arise out of the same transaction or circumstances or occurrence, and the sum of the claims makes the requisite jurisdictional amount. See 15 C. J. 771. But where substantive claims are not in their nature or character joint or composite, and do not arise out of the same transaction, circumstances, or occurrence, and are not consequent upon a continuous course of dealing as evidenced by an open account, or a continuing contract, or other appropriate means, and the claims are in no way related, but are several, distinct, and wholly independent demands, whether ex contractu or ex delicto, they may not be aggregated to give jurisdiction, as this would violate the organic limitations as to jurisdictional amounts. See 11 Cyc. 778; 7 R. C. L. 1055, § 91.

For example: Successive obligations to pay rent or other items growing out of a contract or lease of land (see Livingston v. L'Engle, 27 Fla. 502, 8 South. 728), and open accounts containing many small items (15 C. J. 771), or claims for several head of live stock killed in the same railroad accident (see Georgia, F. & A. R. Co. v. Andrews, 61 Fla. 246, 54 South. 461; 15 C. J. 771), may be aggregated to give jurisdiction, without violating the organic provisions as to jurisdictional amounts. But separate, unrelated, distinct, and wholly independent demands, as promissory notes given for wholly unrelated and separate items of indebtedness, as is apparently the case in this action, where there is nothing in the notes or in the pleadings to show a composite or other relation between the notes that were given at different times, or where live stock are killed at different times, as in Director General of Railroads v. Wilford, 81 Fla. 430, 88 South. 256, such demands, being separate and unrelated and within the jurisdiction of a lower court, may not be joined or aggregated to make up the amount to give jurisdiction to a superior court. See 7 R. C. L. 1055; American Soda Fountain v. Battle, 85 Ark. 213, 107 S. W. 672, 108 S. W. 508; Carroll County Bank v. State, 95 Ark. 191, 128 S. W. 1012; Winer v. Bank of Blytheville, 80 Ark. 435, 117 S. W. 232, 131 Am. St. Rep. 102; Keller v. Olson, 187 Mo. App. 469, 173 S. W. 28; Troy Bank v. Whitehead, 222 U. S. 39, 32 Sup. Ct. 9, 56 L. Ed. 81.

In some jurisdictions the matter is regulated by statute. See Martin v. Goode, 111 N. C. 288, 16 S. E. 232, 32 Am. St. Rep. 799; Johnson v. Cooke, 85 Conn. 679, 84 Atl. 97,

Ann. Cas. 1913C, 275; 15 C. J. 770. See Wilson v. Sparkman, 17 Fla. 871, 35 Am. Rep. 110.

The demands alleged in the declaration in this case, apparently, are separate and unrelated, and each demand is below $500, and consequently is within the jurisdiction of the county court. As circuit court had jurisdiction only of such cases at law as are "not cognizable by inferior courts," the county court, and not the circuit court, had jurisdiction in the premises. See Varn v. Alderman, 42 Fla. 378, 29 South. 323; Sumner Lumber Co. v. Mills, 64 Fla. 513, 60 South. 757.

The intermediate pleadings between the declaration and the final order of dismissal do not appear in the transcript of the record brought here, and, as no error is made to appear, the order of dismissal is affirmed.

WEST and TERRELL, JJ., concur.

TAYLOR, C. J., and ELLIS and BROWNE, JJ., concur in the opinion.

(86 Fla. 371)

FARMERS' BANK & TRUST CO. v. PALMS PUB. CO. et al.

(Supreme Court of Florida. Nov. 5, 1923.)

(Syllabus by the Court.)

1. Landlord and tenant ⇐112(1)—Acceptance by lessor of benefits of lease after forbidden assignment or subletting held a waiver of forfeiture.

A lessor, by accepting the benefits of a lease, after an assignment or subletting by the original lessee, and by a course of conduct reasonably susceptible of a construction that he acquiesces in the assignment or subletting of the leased premises, notwithstanding a covenant against an assignment or subletting, may be held to have waived the covenant and to be estopped from asserting a forfeiture because of its breach.

2. Landlord and tenant ⇐112(2)—Permitting assignee to remain in possession after assignment forbidden by lease held waiver of breach.

If a lessor, with knowledge of a breach by the lessee of the restriction against an assignment or subletting of the leased premises, permits the assignee to remain in possession of the premises and accepts subsequently accruing rents from him, the breach is waived.

3. Appeal and error ⇐954(1)—Grant of relief on sufficient bill within discretion of chancellor, which will not be disturbed unless abused.

The granting of an injunction upon a bill, the allegations of which are sufficient upon which to rest a prayer for such relief and upon affidavits offered in support of the application, is a matter of discretion to be exercised by the chancellor, and will not be interfered with where no abuse of discretion is shown.

Appeal from Circuit Court, Palm Beach County; E. C. Davis, Judge.

Suit by the Palms Publishing Company, a corporation, and another against the Farmers' Bank & Trust Company, a corporation, for an injunction. From a temporary restraining order, defendant appeals. Affirmed.

M. D. Carmichael, of West Palm Beach, for appellant.

H. L. Bussey, of West Palm Beach, for appellees.

WEST, J. This is a suit to enforce specific performance of a contract to renew a lease upon certain premises in the city of West Palm Beach and to restrain the lessor from molesting or interfering with the lessee's possession or from instituting any action or proceeding for the purpose of dispossessing the occupant. After answer and upon a hearing upon an application for temporary restraining order, an order was entered in accordance with the prayer of the bill, enjoining the lessor from taking any action for the purpose of dispossessing the lessee and repossessing itself of said premises.

The original parties to the lease were the Farmers' Bank & Trust Company, a corporation, lessor, and the Palms Publishing Company, a corporation, lessee. The term of the lease was from the 1st day of August, A. D. 1918, to the 1st day of January, A. D. 1922, "with the privilege of renewing the lease for a period of two years from the date of expiration." It contained a covenant by the lessee "not to assign this lease or to sublet any part of said premises without the written consent of the lessor."

The bill alleges that the Post Publishing Company, a corporation, one of the complainants, succeeded to the interests of the Palms Publishing Company, the lessee, in February, 1921, as the owner and publisher of a daily newspaper, continued the occupancy of said leased premises as theretofore by the original lessee, paying the monthly rentals to the lessor, as agreed and stipulated in the lease, and that the lessor knew of said transfer and occupancy and received and accepted payments of rent until the month of January, 1922, at which time the lessor refused the request of complainant Post Publishing Company for a renewal of the lease and notified the lessee to quit and deliver up possession of said premises to the lessor.

The answer in substance denies knowledge of the defendant lessor of the assignment of the lease or subletting of the premises, and denies any waiver of the provision of the lease against its assignment or a subletting by the lessee.

The granting of a temporary restraining order is assigned as error.

⇐For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes

"It is apparent, therefore, that George was in a good position to obtain a divorce on this ground when he could rely on the Mexican decree, then unattacked. We must, however, give the New York decree full faith and credit, and this decree in effect says that the Mexican decree never existed. Therefore, it is the opinion of this Court that Plaintiff must be denied his relief upon the ground asserted.

"The parties have forgotten, however, that society is a party to this litigation. A child has been born, and unless some relief is given that child will carry an indelible burden the rest of its life.

"By Defendant's own admission she has been guilty of adultery with one Norton. When, in 1948 she lived with him as husband and wife in California for nine months, she placed herself in a position of an adulterous wife of George during that time and has a New York decree to prove it. This action on her part has never been condoned, according to the testimony in this record, anyway. Therefore, under Rule 1.15(b), Florida Rules of Civil Procedure [30 F.S.A.] this Court, sua sponte, deems the Plaintiff's complaint to be amended to allege the ground of adultery. This ground has been proven by competent evidence and testimony.

"It is, therefore * * *."

[1-3] It appears that the Chancellor misconstrued or misapplied the law to the facts as he found them in entering the decree of divorce. Finding that the decree of New York should have been given full faith and credit, the plaintiff did not come into equity with clean hands as he started living again with Loretta Fogarty after said decree was entered. Furthermore, there was not enough evidence to prove adultery on the part of the defendant. Although according to the Chancellor, this case reflects bizarre conduct by both parties, it is our opinion that the lower court should have left them where they were and should have entered a decree denying the divorce. The court was correct in dismissing the counterclaim as the defendant is estopped from claiming separate maintenance due to her conduct in obtaining her Mexican mail-order divorce. Chisholm v. Chisholm, 105 Fla. 402, 141 So. 302; Devlin v. Devlin, 157 Fla. 17, 24 So.2d 704; Straughter v. Straughter, Fla.1956, 87 So. 2d 499; Holmes v. Holmes, Fla.1957, 95 So.2d 593; Astor v. Astor, Fla.App.1958, 107 So.2d 201, certiorari denied Fla.1959, 120 So.2d 176.

The final decree appealed is reversed in so far as it decreed a divorce to the plaintiff. In all other respects, the decree is affirmed.

Affirmed in part and reversed in part.

HORTON, C. J., and CARROLL, CHAS., J., concur.

29 Apr 82
OR/pher KO

Attilio G. CANONICO and Mary E. Canonico, jointly and severally, and Attilio G. Canonico and Mary E. Canonico, d/b/a Continental Designs, Appellants,

v.

Barney DEVINE, Appellee.

No. 60-261.

District Court of Appeal of Florida.

Third District.

May 18, 1961.

Action at law on an overdue note for $2,700 and an unpaid loan of $1,500, plus interest and attorney fees. The Circuit Court for Dade County, J. Fritz Gordon, J., rendered a judgment for the plaintiff, and the

defendants appealed. The District Court of Appeal, Carroll, Chas., J., held that demands were separate and unrelated and, even if combined, exclusive of interest and costs, were not sufficient to confer jurisdiction on the Circuit Court in Dade County, which has jurisdiction in actions at law where the matter in controversy, exclusive of interest and costs, exceeds $5,000.

Reversed and remanded with directions.

1. Courts ⇐121(4)

Separate and unrelated demands cannot be joined to give jurisdiction to court which does not have jurisdiction of any one of claims because each is below amount required to give jurisdiction.

2. Courts ⇐121(4)

Demands on overdue note for $2,700, and on unpaid loan of $1,500, plus interest and attorney fees, were separate and unrelated, and, even if combined, exclusive of interest and costs, were not sufficient to confer jurisdiction on circuit court with $5,000 minimum jurisdictional limit. F.S.A.Const. art. 5, § 6.

3. Courts ⇐483

Circuit Court for Dade County had duty to transfer cause to proper court when attention was called to jurisdictional inadequacy of amounts in controversy. 30 F.S.A. Rules of Civil Procedure, rule 1.39(b); F.S.A.Const. art. 5, § 6.

Nestor Morales, Miami, for appellants.

G. Milton Rubin, Miami Beach, and Burton B. Loebl, No. Miami Beach, for appellee.

CARROLL, CHAS., Judge.

The appellee Barney Devine filed an action at law in the circuit court in Dade County seeking damages on an overdue promissory note for $2,700, and on an unpaid loan of $1,500, plus interest and attorney fees. From a judgment for the plaintiff the defendants appealed.

The note was alleged to have been given "on or about the first day of June, 1954." The $1,500 loan was alleged to have been made on August 8, 1958. Regarding the loan the complaint stated as follows:

"That on or about the 8th day of August, 1958, the defendants under the assumed trade name of Continental Designs, and under the same terms and conditions as the promissory note heretofore described, borrowed the sum of One Thousand Five Hundred ($1,500.-00) Dollars, which sum was to be repaid within a reasonable time thereafter.

"That on or about the 7th day of October, 1958, payment of said sum was duly demanded of the defendants and no part thereof has been paid."

The trial of the cause without a jury resulted in the following judgment:

"This Cause coming on for trial before the Court, without jury, on March 3, 1960, upon the complaint of the plaintiff herein, against the defendants, Attilio G. Canonico and Mary E. Canonico, jointly and severally, and Attilio G. Canonico and Mary E. Canonico, d/b/a Continental Designs, and this Court having heard the testimony and heard the evidence offered by each of the parties hereto, and having heard argument of counsel for each party, and the Court having found for the plaintiff, it is

"Considered, Ordered and Adjudged:

"1. That the plaintiff, Barney Devine, do have and recover of and from the defendants, Attilio G. Canonico and Mary E. Canonico, jointly and severally, and Attilio G. Canonico and Mary E. Canonico, d/b/a Continental Designs, the sum of $2,700.00 together

with compounded interest at the rate of 10% per annum from the date of the promissory note executed by the said defendants herein, said interest being determined in the amount of $1,858.17, together with attorney's fees in the amount of $455.81; that plaintiff further recover the sum of $1,500.00, together with costs in this behalf expended and herein taxed at $34.50, a sum total of $6,548.48, for all of which let execution issue."

At the time of filing a motion for new trial, the defendants filed a motion suggesting the insufficiency of the amount in controversy and seeking dismissal of the cause for want of jurisdiction. That motion and the motion for new trial were denied. The assignments of error were directed to this jurisdictional question. Appellants argued that the complaint included two unrelated demands, neither of which met the minimum jurisdictional amount of the circuit court, and that the two demands combined, exclusive of interest and costs, were less than required.

The jurisdiction of the circuit court in Dade County in actions at law is of those cases where the matter in controversy, exclusive of interest and cost, exceeds the sum of $5,000.

"The jurisdiction of courts in this state is regulated by the Constitution or by statutes duly enacted pursuant to the Constitution. Section 11 [now § 6] of Article V of the Constitution of Florida, F.S.A., fixes the jurisdiction of the Circuit Courts of the State, including the Circuit Court of Dade County, by giving them 'exclusive original jurisdiction in all cases in equity, also in all cases at law, *not cognizable by inferior courts*, and in all cases involving the legality of any tax, assessment, or toll; of the action of ejectment and of all actions involving the titles or boundaries of real estate, and of all criminal cases not cognizable by inferior courts; and original jurisdiction of actions of forcible entry and unlawful detainer, and of such other matters as the Legislature may provide.'

"In Dade County, Florida, an inferior court, the Civil Court of Record of Dade County, is given original jurisdiction 'of all cases at law where the matter in controversy does not exceed, exclusive of interest and cost, the sum of five thousand dollars' and hence in that county the Circuit Court is divested of original jurisdiction in 'all cases at law' except those in which the minimum amount claimed, exclusive of interest and costs, is greater than the maximum amount of which the Civil Court of Record of Dade County has jurisdiction." Caudell v. Leventis, Fla. 1950, 43 So.2d 853, 854.

The cause of action on the $2,700 promissory note dated June 1, 1954, did not satisfy the jurisdictional requirement. The same is true of the second cause of action declared on in the complaint, the loan of $1,500 alleged to have been made to defendants on August 8, 1958. The amounts demanded or recoverable on the two causes of action combined, exclusive of interest and costs, would not exceed $5,000.

[1, 2] Separate and unrelated demands cannot be joined to give jurisdiction to a court which does not have jurisdiction of any one of the claims because each is below the amount required to give jurisdiction to the court. Burkhart v. Gowin, 86 Fla. 376, 98 So. 140; State ex rel. City of West Palm Beach v. Chillingworth, 100 Fla. 489, 129 So. 816; Staiger v. Greb, Fla.App.1957, 97 So.2d 494, 496. The demands in the instant case are not alleged or shown to be other than separate and unrelated, and, moreover, the amount of them combined, exclusive of interest and costs, was not sufficient to confer jurisdiction.

[3] Rule 1.39(b), F.R.C.P., 30 F.S.A., provides that "If *at any time* it should appear that a suit is pending in the wrong

court of any county it may be transferred to the proper court within said county, * * *." [Emphasis supplied.] Therefore, when the attention of the court was called to the jurisdictional inadequacy of the amount or amounts in controversy it became the duty of the court to transfer the cause to the proper court.

Accordingly the judgment is reversed and the cause is remanded with directions to the circuit court to vacate the judgment and to make an order transferring the cause, as provided for under rule 1.39, F.R.C.P., to the civil court of record in said county.

Reversed and remanded with directions.

HORTON, C. J., and LOPEZ, AQUILINO, Jr., Associate Judge, concur.

Ruth GELLER and Morton Geller, her husband, Appellants,

v.

2500 COLLINS CORP., a Florida corporation, d/b/a Aiglers Hotel, Appellee.

No. 60–256.

District Court of Appeal of Florida.

Third District.

May 8, 1961.

Rehearing Denied June 8, 1961.

Action to recover for personal injuries sustained by plaintiff while a guest at defendant's hotel, together with action by her husband for consequential damages. The Circuit Court, Dade County, Irving Cypen, J., after a verdict for plaintiff, directed a verdict for defendant and entered judgment accordingly, and plaintiffs appealed. The District Court of Appeal, Horton, Chief Judge, held that determination in a prior appeal that evidence was sufficient to take issue of liability to jury was conclusive in second trial where evidence was substantially the same, and direction of verdict in such second trial was therefore improper.

Reversed and remanded with directions.

1. Appeal and Error ⇐856(5)

An appeal from an order granting a new trial limits review by Appellate Court to grounds specified by trial judge in his order.

2. Trial ⇐142

A motion for directed verdict should never be granted unless it appears that recovery cannot be had upon any view of facts which evidence reasonably tends to establish.

3. Appeal and Error ⇐854(6)

If trial court grants new trial on ground that it erred in directing verdict, and incorporates in order reason for such ruling, it is ruling itself with which appellate court must deal, and not reasons assigned for the ruling.

4. Appeal and Error ⇐1097(1)

Determination in prior appeal that evidence was sufficient to take issue of liability to jury was conclusive in second trial where evidence was substantially the same, and direction of verdict in such second trial was therefore improper.

Sams, Anderson, Alper, Meadows & Spencer, Miami, for appellants.

Wicker, Smith, Blomqvist, Hinckley & Davant, Miami, for appellee.

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