STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1101

U. S. Federal Credit Union,
Respondent,

vs.

Stars & Strikes, LLC,
Appellant,

Nancy K. Immel,
Appellant,

Elizabeth A. Rud, et al.,
Defendants,

and

Nancy Immel,
Third Party Plaintiff,

vs.

Lighthouse Management Group, Inc., et al.,
Third Party Defendants.

Filed April 19, 2011
Affirmed
Ross, Judge

Chisago County District Court
File No. 13-CV-08-1425

Karl E. Robinson, David G. Hellmuth, Anthony T. Smith, Hellmuth & Johnson, PLLC, Eden Prairie, Minnesota (for respondent)

Bruce A. Rasmussen, Bruce A. Rasmussen & Associates, LLC, Minneapolis, Minnesota (for appellant Stars & Strikes, LLC)

Nancy K. Immel, Forest Lake, Minnesota (pro se appellant)

Considered and decided by Lansing, Presiding Judge; Ross, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The dispute in this case arises from a foreclosure of two business loans entered into by the business's court-appointed receiver. The business and its manager appeal from a district court order granting the creditor certain loan-securing assets and from summary judgment with an award of attorney fees. They argue that the receiver lacked the authority to have entered into the loan contracts on the business's behalf. The business argues that the district court improperly dismissed its counterclaims against the creditor and denied its motion to amend its complaint. The district court did not err, so we affirm.

FACTS

This foreclosure dispute has roots in the settlement of an earlier dispute involving Stars & Strikes, LLC, a bowling alley in Wyoming, Minnesota. Nancy Immel, Elizabeth Rud, and Michael Rud started the business in 2002 with capital contributions from Immel's three brothers, the Wheatons, who partly owned but did not manage the business.

In 2005 and 2006, Stars & Strikes borrowed $8 million from U.S. Federal Credit Union (USFCU). Stars & Strikes granted USFCU a mortgage on its land and buildings and a security interest in equipment, vehicles, fixtures, and goods. Immel and the Ruds also personally guaranteed the loan and agreed to pay USFCU's attorney fees and expenses in the event it needed to enforce the guarantees, and they gave USFCU mortgages on their personal residences.

In early 2007, Immel and the Ruds were deadlocked in operational decisions and could no longer jointly manage Stars & Strikes. So Immel sued the Ruds to force the sale of their interest and the Ruds filed counterclaims. USFCU intervened. The parties settled, authorizing the district court to appoint a receiver over Stars & Strikes. The district court appointed a receiver to operate the business on an interim basis, directing it to liquidate or sell the business "in a manner designed to preserve and maximize [its] value . . . for [USFCU]."

The receiver was managing Stars & Strikes in 2007 when USFCU foreclosed on its mortgages and bought all of the mortgaged property at a sheriff's foreclosure sale for $8,612,141.02, the amount of the business's outstanding debt. USFCU also tried to recover the assets secured under the loan (the business property and the two residences), but the district court concluded that by foreclosing on the mortgage at a sheriff's sale for the full amount of the debt, USFCU had extinguished the debt completely so that no debt remained for which Stars & Strikes, Immel, or the Ruds could be held liable. That decision was embodied in a 2008 judgment ending that lawsuit.

This appeal follows from a different lawsuit involving the same parties. After the receiver was appointed in 2007, he entered into two additional loan contracts with USFCU, borrowing a total of more than $450,000 to operate Stars & Strikes. Because of their 2006 personal guarantees, which purported to bind them to future loans entered into between Stars & Strikes and USFCU, Immel and the Ruds appeared to be personally liable for the two additional loans, both with regard to their personal assets and their agreement to pay attorney fees for collection.

These new loans went unpaid, so USFCU sued Stars & Strikes for breach of contract, replevin of secured assets, eviction, unjust enrichment, and for attorney fees. It also sued Immel and the Ruds jointly for breach of the contracts and attorney fees. Stars & Strikes filed a counterclaim alleging an "illegal scheme," and Immel filed a counterclaim against USFCU and the receiver alleging that the receiver breached his fiduciary duty and that, among other acts, USFCU breached its contract, was unjustly enriched, and failed to mitigate damages. She maintained that USFCU was obligated to return wrongfully obtained unsecured assets.

USFCU successfully moved the district court for summary judgment on its replevin and eviction actions. The district court dismissed Stars & Strikes's "illegal scheme" claim and all of Immel's claims. Stars & Strikes and Immel appealed from the summary judgment order, but their appeal was dismissed after this court determined that the order was a nonappealable partial summary judgment. *See U.S. Federal Credit Union v. Stars & Strikes, LLC*, No. A09-1425 (Minn. App. Sept. 8, 2009) (order). We held that the judgment was partial because it did not adjudicate the money-damages claim and

reasoned that the parties could obtain review on appeal from the eventual final judgment. *Id.*

Stars & Strikes moved to amend its counterclaim, but the district court denied the motion. USFCU soon settled with the Ruds, dismissing with prejudice all its claims against the Ruds and its breach-of-contract and unjust-enrichment claims against Stars & Strikes and Immel. But it specifically retained its claim for attorney fees against Stars & Strikes and Immel.

The district court entered final judgment, incorporating its summary judgment decision and holding Stars & Strikes and Immel jointly and severally liable for attorney fees to USFCU in the amount of $49,804.50 and costs in the amount of $2,435.30. Stars & Strikes and Immel appeal.

D E C I S I O N

Stars & Strikes and Immel argue on appeal that the receiver had no authority to bind Immel and the business by entering the loan contracts. They assert also that the district court erred by reaffirming its grant of summary judgment to USFCU on USFCU's replevin claims and by granting its attorney-fees request. Stars & Strikes also argues that the district court erred by dismissing its counterclaim and denying its motion to amend the counterclaim.

I

Stars & Strikes and Immel make two arguments challenging the validity of the loan contracts entered into by the receiver. They argue that the contracts are invalid because the receiver's authority was limited to managing only the liquidation, not the

ongoing business operations, of Stars & Strikes. They also argue that the receivership was illegal because receivers must be impartial and the receiver in this case openly worked on behalf of one creditor, USFCU.

We review the scope of a receiver's duties de novo. *See State Bank of Delano v. Centerpoint Energy Res. Corp.*, 779 N.W.2d 582, 585 (Minn. App. 2010), *review denied* (Minn. May 26, 2010). The equitable remedy of receivership is governed by rule, statute, and court practice. Minn. R. Civ. P. 66; *see also* Minn. Stat. § 576.01 (2010) (permitting the appointment of receivers in a variety of contexts); Minn. Stat. § 302A.753, subd. 1 (2010) (permitting court to "appoint receivers with all powers and duties the court directs" in corporate dissolutions); *Folsom v. Evans*, 5 Minn. 418, 418, 5 Gil. 338, 338 (1861) (using receivers in courts of chancery). The scope of a receiver's express and necessarily implied authority is defined by the district court's receiver-appointing order. *Hancock-Nelson Mercantile Co. v. Weisman*, 340 N.W.2d 866, 869 (Minn. App. 1983). The district court can authorize a receiver to continue operating the business, Minn. Stat. § 302A.753, subd. 1, or to sell it entirely, Minn. Stat. § 576.12 (2010).

The district court's receiver-appointing order did not limit the receiver merely to liquidating Stars & Strikes. Rather, it "authorized and empowered [the receiver] *to operate* the business on an interim basis *and liquidate or sell* the . . . business and assets in a manner designed to preserve and maximize the value of [its] assets for [USFCU]." (Emphasis added.) And it ordered Immel and the Ruds to "cooperate and assist the [r]eceiver . . . [in his] efforts to *operate, liquidate or sell* [Stars & Strikes]." (Emphasis added.) It added that "[t]he [r]eceiver shall have all of the powers and authority usually

held by receivers and reasonably necessary to accomplish the purposes stated in this Order."

The district court found that maximizing USFCU's interest required the receiver to keep the business afloat and that to do so the receiver needed to borrow money. Given the broad authority conferred expressly and implicitly by the receiver-appointing order of the district court and the unchallenged finding that Stars & Strikes needed additional operational funding, it is clear to us that the receiver acted within the scope of his authority when he borrowed on the business's behalf.

We next address Stars & Strikes and Immel's argument that the contracts are invalid on account of the receiver's failure to abide by his order-trumping, common-law duty to act impartiality rather than to act essentially in USFCU's interest. They cite to *Atlantic Trust Co. v. Chapman* for the proposition that receivers are always required to be impartial. 208 U.S. 360, 371, 28 S. Ct. 406, 409 (1908). They argue that the receiver order in this case "violates Justice Harlan's maxim that a receiver is appointed in behalf of all parties." But *Atlantic Trust* does not declare a universal rule of receiver impartiality. In that case, the receiver was appointed specifically to protect a canal and irrigation business for the benefit of all the parties pending litigation. *Id.* at 366; 28 S. Ct. at 407. It made perfect sense to require the *Atlantic Trust* receiver to be impartial. *Id.* at 371; 28 S. Ct. at 409. But the receiver here, unlike the receiver in *Atlantic Trust*, was appointed specifically to act in the interest of a designated creditor, and the appointment was made pursuant to a settlement agreement between disputing owners and that creditor.

In this case, Justice Harlan's actual maxim is more on point: "A receiver . . . comes . . . under the sole direction of the court." *Id.* at 375; 28 S. Ct. at 411.

We add that Stars & Strikes and Immel are essentially challenging the 2007 order defining the pro-USFCU purpose of the receiver. But that order is not the subject of this appeal and, as far as we can discern from the record, the scope of the receiver's authority was determined in a final judgment that no party ever challenged.

Because the receiver acted within his authority, and the appellants have pointed us to no legal authority preventing enforceability of actions undertaken by receivers appointed and directed to favor an identified creditor, we reject the contention that the contracts are unenforcable.

II

We now address whether the district court erred by granting USFCU's attorney fees claim and by incorporating in its final summary judgment order its previous order granting USFCU's replevin claim. We review de novo the district court's grant of summary judgment. *STAR Ctrs., Inc. v. Faegre & Benson, LLP*, 644 N.W.2d 72, 77 (Minn. 2002). Given our holding that the loan contracts are not invalid, we necessarily also reject Stars & Strikes and Immel's argument that attorney fees were improperly awarded on the notion that they were incurred while USFCU was enforcing invalid contracts.

Their next contention is also not compelling: that the district court lacked jurisdiction to order replevin. We review de novo whether a district court has subject-matter jurisdiction. *In re Welfare of Children of R.A.J.*, 769 N.W.2d 297, 302 (Minn.

App. 2009). Stars & Strikes and Immel's jurisdiction theory is essentially that USFCU's replevin claim was contingent on its prevailing on its breach-of-contract or unjust-enrichment claims and that, by dismissing those claims with prejudice, the district court relinquished its decision-making authority over the business assets and thereby extinguished its prior order granting replevin. But clear from USFCU's initial complaint, the partial summary judgment order, and the final order, the replevin action was at all times separate from the breach-of-contract action; and when USFCU dismissed its breach-of-contract and unjust-enrichment claims, the district court had already granted the replevin writ. Perhaps Stars & Strikes and Immel mistook our previous order declaring the summary judgment order to be partial and not yet appealable to suggest that the replevin action was somehow dependent on the survival of USFCU's other claims. And although they correctly cite civil procedural rule 54.02 for the proposition that "the order . . . is subject to revision at any time before the entry of judgment," there was no revision. The original order stands. The jurisdictional argument falls.

III

Stars & Strikes's contention that the district court erred by dismissing its counterclaim and denying its motion to amend is also not compelling. Stars & Strikes alleged that USFCU and the court-appointed receiver engaged in an "illegal scheme" against it and that, because of the illegal scheme, the contracts entered into by the receiver are void. The district court dismissed this claim in its partial summary judgment order, holding that the counterclaim failed to state a cause of action.

Stars & Strikes does not maintain on appeal that "illegal scheme" is a recognized cause of action, but it argues that the facts alleged in the pleading nevertheless provide sufficient notice of other actions under Minnesota's liberal notice-pleading rules to survive summary judgment. We hold that the facts alleged in the complaint fail to state any claim that could withstand summary judgment.

The viability of hypothetical claims also applies to the district court's denial of Stars & Strikes's motion to amend its counterclaim, so we address the issues together. Stars & Strikes waited five months after its illegal-scheme counterclaim was dismissed before it sought to amend its complaint to bring new claims against USFCU, including trespass, conversion, breach of fiduciary duty, fraud on the court, commercial bribery, interference with economic relations, ordering or inducing the receiver to breach his fiduciary duty and commit other torts, and conspiracy. The district court denied Stars & Strikes's motion, holding that none of the claims could withstand summary judgment. We review for abuse of discretion the district court's denial of a party's motion to amend its complaint. *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 332 (Minn. 2004).

Although the district court should freely grant leave to amend a pleading "when justice so requires," Minn. R. Civ. P. 15.01, it may not permit amendments when the proposed claims could not survive summary judgment, *Rosenberg*, 685 N.W.2d at 332. And even if one or more claims could withstand summary judgment, it is still within the district court's discretion to deny a motion to amend if the district court concludes that justice does not require granting it. *See* Minn. R. Civ. P. 15.01. The district court

erroneously held that the trespass, conversion, breach of fiduciary duty, and interference claims were previously disposed of in the district court's partial summary judgment order and barred by res judicata and collateral estoppel. But for the reasons that follow, we hold that these claims, and the others proposed, could not survive summary judgment.

Trespass and Conversion

Stars & Strikes has not alleged facts that support trespass or conversion claims. Both claims require proof of rightful ownership or possession. *See Wendinger v. Forst Farms, Inc.*, 662 N.W.2d 546, 550 (Minn. App. 2003) (stating that trespass requires entry on rightful possession of plaintiff), *review denied* (Minn. Aug. 5, 2003); *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (stating that conversion requires interference with rightful use or possession of plaintiff). USFCU appropriately prevailed in its eviction claim and replevin action, depriving Stars & Strikes of rightful possession of the premises or property.

Breach of Fiduciary Duty

The fiduciary-duty claim was properly dismissed because Stars & Strikes has not established that USFCU was its fiduciary.

Interference with Economic Relations

We observe that interference with economic relations has not yet been recognized in Minnesota. *See Harbor Broad., Inc. v. Boundary Waters Broadcasters, Inc.*, 636 N.W.2d 560, 569 n.4 (Minn. App. 2001) (declining to decide validity of a tortious-interference-with-business-expectancy claim). But even if an interference-with-economic-relations claim does exist, at a minimum, it would require Stars & Strikes to

establish that it had a reasonable expectation of economic advantage and that USFCU knowingly and wrongfully interfered with that advantage, causing Stars & Strikes damages. *See id.* Stars & Strikes points to nothing in the record that we can construe as either an expected economic advantage of Stars & Strikes or a wrongful interference with that advantage by USFCU.

Miscellaneous Claims

The district court rightly held that none of Stars & Strikes miscellaneous other claims—fraud on the court, commercial bribery, ordering or inducing the receiver to breach his fiduciary duty and commit other torts, and conspiracy—are recognized causes of action. For example, although "fraud on the court" is a theory on which a losing party may seek to vacate a judgment under Minnesota Statutes section 548.14 (2010) and Minnesota Rule of Civil Procedure 60.02, it has not been recognized as a civil claim in Minnesota. *See Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989) (declining to define fraud on the court); *but see Rucker v. Schmidt*, 794 N.W.2d 114, 115 (Minn. 2011) (mentioning a successful fraud-on-the-court claim in a related marital dissolution). And even if it were a recognized civil claim, Stars & Strikes has not pointed to facts that could prove that one party schemed to interfere with the court. *Maranda*, 449 N.W.2d at 165 (citing *Pfizer, Inc. v. Int'l Rectifier Corp.*, 538 F.2d 180, 195 (8th Cir. 1976)). And "commercial bribery" is a criminal act under Minnesota Statutes section 609.86 (2010), not a civil cause of action. Ordering another person to breach a fiduciary duty is also not itself a cause of action (the appropriate claim—breach of fiduciary duty—would lie against the fiduciary, not the orderer). And "conspiracy," at least without some

underlying cause of action as the subject of the conspiracy, is also not itself a civil cause of action. *Harding v. Ohio Cas. Ins. Co.*, 230 Minn. 327, 337, 41 N.W.2d 818, 824 (1950).

Affirmed.