

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

STATE OF OHIO ex rel.	:	PER CURIAM OPINION
INVESCO MGMT CO. LLC,	:	
	:	
Relator,	:	
	:	CASE NO. 2012-G-3085
- VS -	:	
	:	
GEAUGA COUNTY COURT OF	:	
COMMON PLEAS, et al.,	:	
	:	
Respondents.	:	

Original Action for Writ of Prohibition.

Judgment: Petition dismissed.

James R. Douglass, James R. Douglass Co., L.P.A., 20521 Chagrin Boulevard, Suite D, Shaker Heights, OH 44122-9736 (For Relator).

David P. Joyce, Geauga County Prosecutor, and *Rebecca F. Schlag*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Respondents).

PER CURIAM.

{¶1} This prohibition action is before the court for consideration of the respondents' motion to dismiss. Respondents assert that the application for writ of prohibition of relator, Invesco Mgmt Co. LLC ("Invesco"), fails to state a viable claim for the writ.

{¶2} Invesco seeks a writ of prohibition to prevent Judge Burt from exercising the trial court's jurisdiction over a land installation contract dispute. It claims it was not served a notice of forfeiture pursuant to R.C. 5313.06, and therefore, the trial court lacked jurisdiction to hear certain matters in a consolidated case. Because Invesco fails to demonstrate a patent and unambiguous lack of jurisdiction of the trial court, the dismissal of the instant prohibition (& mandamus) petition is warranted.

Procedural Background

{¶3} In 2010, Voldemars and Anna Kruza entered into a land installation contract with Ohio Disaster Restoration Services LLC ("Ohio Disaster") to sell their residence located at 16849 Kurzemes Drive, Chagrin Falls, Ohio. John Puntel, acting as manger of Ohio Disaster, signed the contract.

{¶4} Ohio Disaster, through Mr. Puntel, leased the property to Dawn and Ron Pagon, and, in July 2011, the land contract was allegedly modified, pursuant to which Mr. Kruza was to receive rental payments from the Pagons on behalf of Mr. Puntel and Ohio Disaster. A few days later on July 5, 2011, Ohio Disaster assigned the land contract to Invesco. The assignment was recorded on August 1, 2011.

{¶5} When the Kruzas did not receive the rental payments from the Pagons, they sent a notice of forfeiture to Mr. Puntel at his address and to Ohio Disaster at 16849 Kurzemes Drive, on August 18, 2011.

{¶6} On November 15, 2011, Invesco filed a complaint against the Kruzas in the Geauga County Court of Common Pleas, claiming the modification of the contract and the rental agreement constituted an anticipatory breach of the land installation contract. Later that day, the Kruzas filed a complaint in the same court against Mr.

Puntel and Ohio Disaster, seeking a declaratory judgment to quiet title. The trial court consolidated these two cases.

{¶7} Invesco then filed a motion to dismiss for lack of subject matter jurisdiction, claiming that it was not served with the prerequisite R.C. 5314.06 notice before the Kruzas filed their complaint. The trial court overruled the motion and scheduled a forfeiture hearing for June 25, 2012. On June 21, 2012, Invesco filed the instant petition for a writ of prohibition, seeking to prevent Judge Burt from exercising jurisdiction over the Kruzas' claims. Invesco also filed a motion for an ex parte stay of the June 21, 2012 proceeding. We denied the motion. Subsequently, respondent Judge Burt filed a motion to dismiss the petition for a writ of prohibition, which we now consider.

Requirements for the Issuance of a Writ of Prohibition

{¶8} Invesco requests a writ of prohibition to prevent Judge Burt from exercising jurisdiction over the Kruzas' claims. "A writ of prohibition constitutes a legal order that is intended to enjoin a court of inferior jurisdiction from acting beyond the scope of its jurisdiction." *State ex rel. Bandarapalli v. Gallagher*, 8th Dist. No. 95506, 2010-Ohio-3886, *1, citing *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70 (1998).

{¶9} In order for this court to issue a writ of prohibition, Invesco must establish that (1) Judge Burt is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is not authorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Sliwinski v. Burnham Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734.

{¶10} “An adequate remedy at law will preclude relief in prohibition.” *Bandarapalli* at *2, citing *State ex rel. Leshner v. Kainrad*, 65 Ohio St.2d 68 (1981) and *State ex rel. Sibarco Corp. v. City of Berea*, 7 Ohio St.2d 85 (1966). “[A]bsent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction over an action possesses the legal authority to determine its own jurisdiction, and a party challenging its jurisdiction has an adequate remedy at law by way of a post-judgment appeal.” *Id.*, citing *Whitehall ex rel. Wolfe v. State Civil Rights Comm.*, 74 Ohio St.3d 120 (1995). See also *State ex rel. Scott v. Cleveland*, 112 Ohio St.3d 324, 2006-Ohio-6573, ¶16. “However, if a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336-337 (1997), citing *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas*, 76 Ohio St.3d 287, 289 (1996).

{¶11} “A writ of prohibition is an extraordinary writ that is not routinely or easily granted.” *Junkin* at 336, citing *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536 (1996). “The writ will not issue to prevent an erroneous judgment, or to serve the purpose of appeal, or to correct mistakes of the lower court in deciding questions within its jurisdiction.” *State ex rel. Sparto v. Juvenile Court of Darke Cty.*, 153 Ohio St. 64, 65 (1950).

{¶12} Relator filed a petition with this court seeking a writ of prohibition against the Geauga County Court of Common Pleas and Judge Forrest W. Burt to prevent the court from exercising jurisdiction in Geauga Common Pleas No. 11M001210, a

forfeiture case. Invesco seeks a writ of prohibition, claiming it is a successor in interest but was not served a notice pursuant to R.C. 313.06.

{¶13} R.C. 5313.06 provides the following:

{¶14} “Following expiration of the period of time provided in section 5313.05 of the Revised Code, forfeiture of the interest of a vendee in default under a land installment contract shall be initiated by the vendor or by his successor in interest, by serving or causing to be served on the vendee or his successor in interest, if known to the vendor or his successor in interest, a written notice which:

{¶15} “(A) Reasonably identifies the contract and describes the property covered by it;

{¶16} “(B) Specifies the terms and conditions of the contract which have not been complied with;

{¶17} “(C) Notifies the vendee that the contract will stand forfeited unless the vendee performs the terms and conditions of the contract within ten days of the completed service of notice and notifies the vendee to leave the premises.

{¶18} “Such notice shall be served by the vendor or his successor in interest by handing a written copy of the notice to the vendee or his successor in interest in person, or by leaving it at his usual place of abode or at the property which is the subject of the contract or by registered or certified mail by mailing to the last known address of the vendee or his successor in interest.”

{¶19} Invesco claims the trial court could not exercise jurisdiction over the claims raised by Kruzas because it was not served a notice of default as required by the statute. It claims that the failure to comply with the provisions of R.C. 5313.06 notice

requirements deprives the trial court of jurisdiction over the subject matter of the land contract. This issue is far from settled, however. Invesco cites a single authority, *Austin v. Sullivan*, 7th Dist. No. 93 C.A. 43, 1994 Ohio App. LEXIS 5173 (Nov. 17, 1994), for its claim. Our research discloses that *Austin* has never been followed. See also *Estate of Chasteen v. Cartee*, 4th Dist. No. 1993, 1992 Ohio App. LEXIS 4876, *13 (Sept. 25, 1992) (declining to hold that exact compliance with the R.C. 5313.06 notice requirements would be a jurisdictional prerequisite to a forfeiture action).

{¶20} Secondly, even if a failure to provide a notice pursuant to the requirements of R.C. 5313.06 were a jurisdictional prerequisite, this case is distinguishable from *Austin*. In *Austin*, a notice pursuant to R.C. 5313.06 was never served; rather, the plaintiff vendor served an R.C. 1923.04(A) three-day notice instead. Here, the Kruzas did send an R.C. 5313.06 notice, to “John Puntel, Ohio Disaster Restoration Services, LLC, 16849 Kurzemes Drive, Chagrin Falls, Ohio 44023,” and to “John Puntel, Ohio Disaster Restoration Services, LLC, 1585 Mallard Drive, #105, Mayfield Heights, OH 44124.” Among other factual issues to be resolved by the trial court is whether this notice of default suffices under the statute either as an actual or constructive notice to Invesco, assuming Invesco was entitled to a notice of default under the July 5, 2011 assignment, which was recorded only 17 days before the notice of default was sent. The statute permits the notice of default to be given by delivering it to the property which is the subject of the contract, and the August 18 notice appeared to have been sent to the subject property. Whether it complied with R.C. 5313.06, substantially or otherwise, is for the trial court to determine initially.

{¶21} Thus, the respondent fails to demonstrate the trial court patently and unambiguously lacks jurisdiction over the land installation contract dispute. The court of common pleas, which undisputedly has general subject-matter jurisdiction over land installment contract actions, possesses the legal authority to determine its own jurisdiction, based on the specific set of circumstances of this case.

{¶22} Therefore, in the absence of a patent and unambiguous lack of jurisdiction, Invesco has an adequate remedy in the ordinary course of law by way of appeal from any adverse final order entered by Judge Burt in the underlying case. This adequate remedy at law through appeal precludes relief through an extraordinary writ. The dismissal of the instant prohibition petition is warranted under Civ.R. 12(B)(6) because relator has failed to state a viable claim for relief.

{¶23} Relator's petition for a writ of prohibition is dismissed.

TIMOTHY P. CANNON, P.J., CYNTHIA WESTCOTT RICE, J., MARY JANE TRAPP, J.,
concur.