

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

DIPAULO INDUSTRIAL DEVELOPMENT, LLC, et al.,	:	O P I N I O N
	:	
Plaintiff-Appellant,	:	CASE NO. 2014-T-0006
	:	
- vs -	:	
	:	
BLAIR & LATELL CO., LPA, et al.,	:	
	:	
Defendants-Appellees.		

Civil Appeal from the Trumbull County Court of Common Pleas.
Case No. 2013 CV 1505.

Judgment: Affirmed.

Katherine E. Rudzik, 26 Market Street, Suite 904, Youngstown, OH 44503 (For Plaintiff-Appellant).

James O'Connor and Brian D. Sullivan, Reminger Co., L.P.A., 1400 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115-1093 (For Defendants-Appellees).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, DiPaolo Industrial Development, LLC, appeals the January 9, 2014 judgment entry of the Trumbull County Court of Common Pleas granting appellees, Matthew J. Blair and Blair & Latell Co., LPA's, motion for summary judgment. The trial court construed appellees' motion to dismiss as a motion for summary judgment. For the following reasons, we affirm.

{¶2} Appellant retained Attorney Matthew J. Blair, an attorney at Blair & Latell Co., to provide legal representation in matters related to appellant's demolition business. The attorney-client relationship concluded on April 14, 2011, when Judge Durkin granted Attorney Blair's motion to withdraw as appellant's counsel in *State v. DiPaolo*, Mahoning C.P. No. 2010-CV-3497.

{¶3} On July 22, 2013, appellant filed a legal malpractice complaint against appellees in the Trumbull County Court of Common Pleas. The complaint named the following as plaintiffs: DiPaolo Industrial Development, LLC ("DiPaolo Industrial"), Ohio One Contractors & Developers, LLC ("Ohio One"), Source One Contractors & Developers, Inc. ("Source One"), and Sergio DiPaolo. The complaint was signed and submitted by Sergio DiPaolo, President of DiPaolo Industrial Development, LLC. It is undisputed that Sergio DiPaolo is not an attorney licensed to practice law.

{¶4} On September 17, 2013, appellees filed a motion to dismiss, which argued that the complaint failed as a matter of law. The motion asserted:

(1) Mr. DiPaolo is not an attorney and lacks standing to prosecute claims on behalf of the Corporate Plaintiffs; (2) Mr. DiPaolo has failed to allege facts sufficient to support his individual claim of malpractice; and (3) Mr. DiPaolo's individual claim of malpractice is barred by the one year statute of limitations.

On September 23, 2013, the trial court issued a judgment entry stating that appellees' motion to dismiss would be construed as a motion for summary judgment as a result of appellees "present[ing] matters outside the pleadings as specifically enumerated by Civ.R. 56." Over two months later, on November 27, 2013, Attorney Katherine Rudzik filed a notice of appearance as counsel for plaintiffs and then filed a reply to appellees' motion for summary judgment.

{¶5} On January 9, 2014, the trial court granted appellees' motion for summary judgment. The trial court found that Sergio DiPaolo could not bring a complaint on behalf of DiPaolo Industrial, Ohio One, and Source One and, as a result, struck the complaint as a legal nullity as it related to those entities. The trial court also concluded that the complaint, as it related to Sergio DiPaolo personally, failed to allege sufficient facts to support a claim of malpractice and that any claim of malpractice was barred by the one-year statute of limitations.

{¶6} Appellant timely appealed the trial court's January 9, 2014 judgment entry. We note that counsel for appellant has indicated representation of DiPaolo Industrial, and the brief argues only on behalf of this entity. However, the issues are the same for all of the corporate entities. Additionally, no error is assigned from the trial court's granting of summary judgment against Sergio DiPaolo and in favor of appellees. Therefore, that portion of the trial court's judgment is specifically affirmed.

{¶7} Appellant sets forth one assignment of error:

{¶8} "The trial court err[ed] when it dismissed appellant's complaint with prejudice."

{¶9} Appellant argues that Sergio DiPaolo, as a corporate officer, was legally allowed to file a complaint on behalf of DiPaolo Industrial. Appellant's lone assignment of error presents three issues for review:

[1.] Whether the court err[ed] in dismissing plaintiff's complaint?

[2.] Whether [Sergio DiPaolo], as president for plaintiff, was legally able to file the complaint?

[3.] Whether existing law that allows corporate officers to file for a corporation in small claims cases extends to common pleas cases?

As appellant's argument on appeal does not differentiate between the three issues presented for review, the issues are considered in a consolidated fashion.

{¶10} Appellant has apparently misconstrued the judgment of the trial court. Initially, the trial court struck the complaint as it related to the corporate entities, inclusive of appellant, as a nullity. It was treated as if it was never filed on their behalf. With regard to the remaining claim of Sergio DiPaolo, the trial court construed appellees' motion to dismiss pursuant to Civ.R. 12(B)(6) as a motion for summary judgment. As noted above, there is no assigned error with regard to this portion of the judgment.

{¶11} It was proper for the trial court to strike the complaint and treat it as a nullity as it related to the corporate plaintiffs.

{¶12} R.C. 4705.01 provides, in pertinent part:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

{¶13} The Ohio Supreme Court has long interpreted R.C. 4705.01 as prohibiting a corporation from maintaining an action through an officer who is not a licensed attorney. *Union Sav. Assn. v. Home Owners Aid, Inc.*, 23 Ohio St.2d 60, 64 (1970). Likewise, this court has previously held that an individual, including a corporate officer, who is not an attorney may not appear in court or maintain litigation in propria persona on behalf of a corporation. See, e.g., *Kruck v. Agile Equip. Distrib., Inc.*, 11th Dist. Lake No. 95-L-109, 1996 Ohio App. LEXIS 888, *4 (Mar. 8, 1996) (holding that the appellant's

answer was insufficient as a matter of law because the answer was undertaken by a non-attorney).

{¶14} Likewise, courts throughout the state have consistently held that a complaint, or other pleading undertaken on behalf of a corporation by a non-attorney, is a legal nullity. See, e.g., *Coburn v. Toledo Hosp*, 6th Dist. Lucas No. L-00-1215, 2001 Ohio App. LEXIS 127, *3 (Jan. 19, 2001); *Talarek v. M.E.Z., Inc.*, 9th Dist. Lorain No. 98CA007088, 1998 Ohio App. LEXIS 4494, *3 (Sept. 10, 1998); *Sheridan Mobile Village, Inc. v. Larsen*, 78 Ohio App.3d 203, 205 (4th Dist.1992). “When a non-attorney files a complaint in a court in violation of R.C. 4705.01, the court should dismiss the complaint without prejudice.” *Williams v. Global Constr. Co. Ltd.*, 26 Ohio App.3d 119 (10th Dist.1985), paragraph two of the syllabus. The dismissal should be without prejudice, as it would be “‘inconsistent’ for a court to hold that a non-attorney had no authority to assert a claim on behalf of another, yet hold that the claim the non-attorney had wrongfully attempted to assert on behalf of that party was, as a result, subject to dismissal with prejudice.” *Kinasz v. Southwest Gen. Health Ctr.*, 8th Dist. Cuyahoga No. 100182, 2014-Ohio-402, ¶18, citing *Williams, supra*, at 121.

{¶15} In this case, appellant’s complaint was a legal nullity, as it was filed by Sergio DiPaolo as President of DiPaolo Industrial. By filing a complaint signed in his personal capacity, Sergio DiPaolo attempted to engage in the practice of law on behalf of the corporate entities. As a result, the trial court properly identified appellant’s complaint, with regard to those entities, as a legal nullity and struck it. It was not until after striking the complaint as related to appellant that the trial court granted summary judgment in favor of appellees on Sergio DiPaolo’s remaining individual claim for legal

malpractice. Accordingly, the trial court did not err in striking appellant's complaint as a result of it being a legal nullity.

{¶16} Appellant also asks this court to address “whether existing law that allows corporate officers to file for a corporation in small claims cases extends to common pleas cases.” Appellant fails to present any case law that extends R.C. 1925.17 to cases filed outside of a small claims division. Indeed, the language of R.C. 1925.17 makes clear that the legislature intended to allow corporate officers to file on behalf of a corporation in small claims cases only in very limited circumstances. Those circumstances do not apply to this case. Accordingly, we answer appellant’s question in the negative.

{¶17} For the reasons stated in this opinion, the judgment of the Trumbull County Court of Common Pleas is affirmed in all respects.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.