

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT
Greg A. Bouwer
Koransky Bouwer & Poracky, P.C.
Dyer, Indiana

ATTORNEYS FOR APPELLEE
1987 TROY ROAD LLC
H. Brent Stuckey
T. Graham Dycus
Hart Bell LLC
Vincennes, Indiana

IN THE COURT OF APPEALS OF INDIANA

Centier Bank,
Appellant-Respondent,

v.

1987 Troy Road LLC, Boyd and
Company Construction LLC,
and Michael E. Boyd,
Appellees-Claimants.

January 30, 2024

Court of Appeals Case No.
23A-MF-1261

Appeal from the Daviess Circuit
Court

The Honorable Gregory A. Smith,
Judge

Trial Court Cause No.
14C01-2102-MF-114

Memorandum Decision by Judge Mathias
Chief Judge Altice and Judge Foley concur.

Mathias, Judge.

[1] Centier Bank (“the Bank”) appeals the trial court’s denial of the Bank’s motion to amend its complaint to include 1987 Troy Road LLC (“the Property Owner”) on a count of replevin to recover secured personal property from the Property Owner’s premises. The Bank raises two issues for our review, which we restate as the following dispositive issue: whether the trial court abused its discretion when it concluded that the Bank is equitably estopped from amending its complaint. We affirm.

Facts and Procedural History

[2] The facts relevant to this appeal were not disputed in the trial court. In February 2021, the Bank filed a complaint for judgment, foreclosure, replevin, and the appointment of a receiver against Boyd and Company Construction (“the Lessee”). The Bank and the Lessee had previously executed a note in which the Bank had agreed to lend the Lessee approximately six million dollars. The Bank and the Lessee also had executed various security agreements with the note, which included the Lessee’s leasehold interest in its lease of real property owned by the Property Owner and various personal property of the Lessee at that location. The Lessee defaulted on the note, and, in its complaint against the Lessee, the Bank sought in relevant part to recover the Lessee’s personal property from the leased premises. The Bank did not name the Property Owner as a party to the Bank’s complaint to recover the Lessee’s personal property.

- [3] In April, the lease agreement between the Property Owner and the Lessee terminated after the Lessee defaulted on the lease.¹ Although the lease was set to terminate on April 26, on April 23 counsel for the Bank emailed counsel for the Property Owner and stated that the Bank was “in the process of removing the personal property . . . that it has a perfected security interest in” and that the Bank “believes all of the personal property will be removed on or before May 3, 2021.” Appellant’s App. Vol. 2, p. 133. The Bank’s counsel further acknowledged that the Property Owner intended to take possession of the premises soon, and he thanked the Property Owner for its cooperation. The Property Owner did not take possession of its property until after May 3.
- [4] On August 23, the Property Owner sold the real property to a third-party buyer. That buyer immediately took possession of the premises and any personal property within. On October 12, the Bank sent a letter to the third-party buyer and informed the buyer that the Bank intended to take possession of any personal property at the premises in which it had a perfected security interest.
- [5] On January 14, 2022, the Bank moved to amend its complaint to add the Property Owner as a party to the Bank’s claim to recover the Lessee’s personal property. The Property Owner objected and attached the Bank’s April 23 email and the Bank’s October 12 letter to show that the Bank had been dilatory in seeking to amend the complaint and, further, that the Bank should be equitably

¹ The Bank had the option to assume the lease and declined.

estopped from amending the complaint. The Bank did not object to or otherwise challenge the Property Owner’s representation of the facts, and, thereafter, the trial court denied the Bank’s motion to amend. In doing so, the court stated that the Bank should be “estopped” from amending its complaint as requested. *Id.* at 17.

[6] This appeal ensued.

Standard of Review

[7] The Bank appeals the trial court’s denial of the Bank’s motion to amend its complaint. “[M]otions to amend civil complaints are . . . reviewed for an abuse of discretion.” *Tapia v. State*, 753 N.E.2d 581, 586 (Ind. 2001). “The policy in this state is liberally to allow the amendment of pleadings, and leave to amend should be given unless the amendment will result in prejudice to the opposing party.” *Criss v. Bitzegaio*, 420 N.E.2d 1221, 1223 (Ind. 1981).

Discussion and Decision

[8] The Bank contends that the trial court abused its discretion when the court concluded that the Bank should be equitably estopped from amending its complaint to add the Property Owner as a party. To show that it was entitled to rely on the doctrine of equitable estoppel, the Property Owner was required to show: “(1) [its] lack knowledge and the means of knowledge as to the facts in question, (2) [that it relied] upon the conduct [of the Bank], and (3) [that it] experience[d] a prejudicial change in position based on the conduct of [the Bank].” *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 523 (Ind. 2021).

[9] We cannot say that the trial court abused its discretion on these undisputed facts. The Bank's April 23, 2021, email to the Property Owner informed the Property Owner that the Bank intended to have all personal property at the premises in which the Bank had a perfected security interest removed by May 3, 2021. The Bank was the only party with knowledge of whether it had in fact acted as it said it would, and the Property Owner had no reasonable means to independently discern whether the Bank had a perfected security interest in any of the personal property that remained on the premises after May 3. Further, the Property Owner affirmatively relied on the Bank's representations, both in declining to take possession of the premises on April 26 and then in selling the premises to the third-party buyer in August. And, once the Property Owner sold the premises, it had experienced a detrimental change in position vis-à-vis its ability to access the premises to recover the Bank's secured personal property for the Bank. Accordingly, the trial court reasonably concluded that the Property Owner was entitled to invoke the doctrine of equitable estoppel to prevent the Bank's attempt to amend its complaint.

[10] Still, the Bank asserts on appeal that the Property Owner should not have assumed that the Bank had in fact completed the removal of the personal property by May 3 and, instead, should have waited until the Bank followed up to confirm that it had removed the personal property. We disagree. The Property Owner voluntarily gave the Bank the time the Bank requested to get its property, and the Property Owner had no obligation to sit around indefinitely awaiting confirmation from the Bank. And the Bank's other arguments on

appeal simply seek to have this Court reweigh the evidence and disregard the trial court's discretion, which we will not do.

[11] For all of these reasons, we affirm the trial court's judgment.

[12] Affirmed.

Altice, C.J., and Foley, J., concur.