

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13943
Non-Argument Calendar

D.C. Docket No. 9:17-cv-80386-KAM

FR TAX GROUP, LLC,
a Florida limited liability company,
RICHARD SABELLA,
ALLERAND 675 COMPANY, LLC,
a Delaware limited liability company,

Plaintiffs-Appellants,

versus

PHILIP KASSOVER,
individually, and as executor of the Estates of
Nathan Kassover and Ruth Kassover,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(May 25, 2018)

Before WILSON, JORDAN, and ANDERSON, Circuit Judges.

PER CURIAM:

FR Tax Group, LLC, et al. (“FR Tax Group”) and Sabella (collectively “Appellants) appeal the dismissal with prejudice of their complaint against Philip Kassover (“Kassover”). In their complaint, Appellants alleged that Kassover had committed two torts—abuse of process and intentional infliction of emotional distress. Appellants also sought declaratory relief. The district court dismissed with prejudice both torts. Appellants’ challenge on appeal focuses only on abuse of process, thus abandoning any claim for intentional infliction of emotional distress. We affirm the district court’s holding that Appellants failed to state a claim of abuse of process.¹

We review the dismissal of a complaint for failure to state a claim *de novo*. See SFM Holdings, Ltd. v. Bank of America Securities, LLC, 600 F.3d 1334 (11th Cir. 2010). “We review the district court's refusal to grant leave to amend for abuse of discretion, although we exercise *de novo* review as to the underlying legal conclusion that an amendment to the complaint would be futile.” Id. at 1336. In evaluating a district court’s decision to dismiss a complaint, we accept “the complaint’s allegations as true and constru[e] them in the light most favorable to

¹ Because Appellants’ assertion of personal jurisdiction over Kassover is entirely dependant on their intentional tort claim—pendant personal jurisdiction—and because Appellants’ tort claims fail, we also affirm the district court’s holding of lack of personal jurisdiction.

plaintiff.” *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1337 (11th Cir. 2012). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (internal quotation omitted).

Under Florida law, “[a] cause of action for abuse of process contains three elements: (1) that the defendant made an illegal, improper, or perverted use of process; (2) that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and (3) that, as a result of such action on the part of the defendant, the plaintiff suffered damage.” *S&I Investments v. Payless Flea Mkt., Inc.*, 36 So. 3d 909, 917 (Fla. Dist. Ct. App. 2010). Additionally, “[w]here the process was used to accomplish the result for which it was intended, ‘regardless of an incidental or concurrent motive of spite or ulterior purpose,’ there is no abuse of process.” *Id.* (internal citation omitted).

Here, Kassover obtained a Temporary Restraining Order (“TRO”) against a non-party to this case, GCC Realty Company, LLC (“GCC”) to prevent GCC from “transferring, selling, pledging, assigning, and/or disposing” of the assets of the company. Appellants allege that the use of this TRO to prevent a “non-party,” Allerand, from obtaining assets owed to it from GCC constituted an abuse of process. However, it is axiomatic that preventing an entity from selling or divesting itself of assets necessarily prevents any other entity from purchasing or

acquiring those same assets. Thus, Appellants fail to allege “an illegal, improper, or perverted use of process,” but only that “the process was used to accomplish the result for which it was intended.” S&I Investments, 36 So. 3d at 917. Because Appellants fail to allege this essential element of an abuse of process claim, the district court did not err in dismissing the complaint for failure to state a claim for abuse of process.

Additionally, pendant personal jurisdiction in this case was based on the abuse of process claim. Because we affirm the dismissal of the abuse of process claim, we also affirm the dismissal of the other claims for lack of personal jurisdiction. Finally, because the district court correctly held that Kassover’s TRO was used to accomplish a result for which such process was intended, and thus did not constitute an abuse of process, we agree with the district court that any amendment would be futile.

AFFIRMED.