

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA.

WESTPORT RECOVERY
CORPORATION,

Appellant,

v.

PATRICIA A. CORDIE,

Appellee.

APPELLATE DIVISION (CIVIL)
Case No.: 502008AP000021XXXXMB
L.T. No.: 502006SC007860XXXXMB
DIVISION 'AY'

Opinion filed: JAN 30 2009

Appeal from the County Court in and for Palm Beach County,

For Appellant: Debra L. Greenberg, Esq., Friedman & Greenberg, P.A., 9675 West
Broward Blvd., Plantation, Florida 33324

For Appellee: Christopher B. Knox, Esq., 300 South Pine Island Road, Suite 210,
Plantation, Florida 33324

REVERSED and REMANDED.

Westport Recovery Corporation ("Westport") appeals the order granting Patricia Cordie's Motion to Dismiss a Statement of Claim to Extend Final Judgment. This Court reviews rulings on motion to dismiss for failure to state a cause of action subject to the de novo standard. *See Atkins v. Topp Telecom, Inc.*, 873 So. 2d 397 (Fla. 4th DCA 2004). We find that the trial court erred by dismissing the case.

In reviewing an order granting a motion to dismiss for failure to state a cause of action, allegations of fact contained in the complaint must be accepted as true. *See Graham v. Great Atlantic & Pacific Tea Company*, 240 So. 2d 157 (Fla. 4th DCA 1970). The only issue to consider is whether the facts, as plead, would have entitled the plaintiff to the relief requested.

See id. The court is not allowed to speculate as to what the true facts might be or what facts might ultimately be established at trial. *See Zuckerman-Vernon Corp. v. Rosen*, 361 So. 2d 804 (Fla. 4th DCA 1978). The appellate court considers only whether those facts plead, if proven, would entitle the plaintiff to the relief requested. *See Graham*, 240 So. 2d at 157. It is important to note that a motion to dismiss is not a motion for summary judgment in which the court may rely on facts adduced in depositions, affidavits or other proofs. *See Barbado v. Green & Murphy, P.A.*, 758 So. 2d 1173 (Fla. 4th DCA 2000) *citing Mancher v. Seminole Tribe of Fla. Inc.*, 708 So. 2d 327, 327 (Fla. 4th DCA 1998).

Westport alleged in its Amended Statement of Claim to Extend Final Judgment that it was the owner of a judgment against Ms. Cordie by way of an assignment. With regard to the Motion to Dismiss, these factual allegations must be regarded as true, without credence being paid to the likelihood of being able to establish such at trial. Although there is no specific form of an assignment required for judgments in particular, the general requirements of an effective assignment apply. No particular words or form of instrument is necessary to create an assignment. *See Giles v. Sun Bank, N.A.*, 450 So. 2d 258 (Fla. 5th DCA 1984). Any language which shows an intention on one side to assign a right or chose in action and an intention on the other side to receive will operate as an effective assignment so long as valuable consideration is exchanged. *See id.* Delivery and acceptance of possession is also essential to the consummation of the assignment. *See Boulevard Nat. Bank of Miami v. Air Metal Industries, Inc.*, 176 So. 2d 94 (Fla. 1965).

It is clear the trial court dismissed the action against Ms. Cordie based upon a belief that Westport would be unable to prove the allegations in its complaint. The trial court was in a position to accept all facts asserted in the pleading as true and, in assessing the Motion to

Dismiss, was only permitted to determine whether those facts were sufficient to assert a legal cause of action. Westport properly plead facts amounting to an assignment of a judgment and dismissal of such constitutes reversible error. Accordingly, the trial court's order of dismissal is reversed and the case is remanded for further proceedings.

ROSENBERG, COX and FRENCH, JJ., concur.