County Civil Court: CIVIL PROCEDURE—Dismissal. The trial court correctly determined that the notice provision in § 559.715, Fla. Stat., creates a condition precedent that must be satisfied prior to bringing an action to collect on the underlying debt. However, Appellant satisfied the standard required at this stage in the proceedings by averring that all conditions precedent to bringing suit had been met. It was therefore inappropriate to grant Appellee's motion to dismiss. Reversed and remanded for further proceedings. *CACH, L.L.C. v. Mario Solano*, No. 13-AP-05-WS (Fla. 6th Cir. App. Ct. February 19, 2014).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION

CACH, L.L.C.,

Appellant,

v.

MARIO SOLANO,

Appellee.
_____/

UCN: 512013AP000005APAXWS
Appeal No: 2013-AP-5-WS
L.T. No: 512012CC002972WS

On appeal from County Court

Honorable Paul E. Firmani

Bryan Manno, Esquire, and
Jeremy Soffler, Esquire,
for Appellant

Kristine Callagy, Esquire,
for Appellee

ORDER AND OPINION

This matter comes before the Court on appeal of the trial court's order granting Appellee's motion to dismiss filed in the case below. Although we agree

with the trial court's determination that the notice provision in § 559.715, Fla. Stat., creates a condition precedent that must be satisfied prior to bringing an action to collect on the underlying debt, we find Appellant satisfied the standard required at this stage in the pleadings, by averring that all conditions precedent to bringing suit were met. It was therefore inappropriate to grant Appellee's motion to dismiss at this stage in the proceedings.

STATEMENT OF THE CASE AND FACTS

Appellee entered into a consumer credit agreement with the original creditor, Citibank South Dakota, N.A., and incurred consumer debt through purchases made with a Sears MasterCard. On December 15, 2010, Citibank sold the underlying debt to Appellant CACH, LLC. On August 23, 2012, Appellant filed an action against Appellee to collect the underlying debt. On October 18, 2012, Appellee filed a motion to dismiss for failure to state a cause of action, claiming Appellant failed to satisfy a condition precedent required by § 559.715, Fla. Stat., Assignment of Consumer Debts, because it failed to notify Appellee of the assignment of debt at least 30 days prior to bringing suit to collect the debt. On March 14, 2013, the trial court issued an order granting the motion to dismiss on this basis, and dismissing the complaint without prejudice but without leave to amend, finding the complaint failed to mention any notice having been sent to the Appellee, despite Appellee's specific denial of provision of notice.

STANDARD OF REVIEW

When "reviewing the trial court's interpretation and application of Florida law, the standard of review on appeal is de novo." *Pichowski v. Florida Gas. Transmission Co.*, 857 So. 2d 219, 220 (Fla. 2d DCA 2003). "The standard for appellate review of a trial court's order dismissing a complaint for failure to state a cause of action is de novo." *Storm v. Town of Ponce Inlet*, 866 So. 2d 713, 714 (Fla. 5th DCA 2004).

ANALYSIS

Appellant raises two issues on appeal. First, that the trial court erred by finding that § 559.715, Fla. Stat., creates a condition precedent that requires a party provide a debtor with notice of assignment of a debt as provided in the statute prior to bringing suit to collect the assigned debt. Second, Appellant contends that it was error to grant the motion to dismiss, because Appellant satisfied the pleading standards required by Fla. R. Civ. P. 1.120(c), by generally averring that all conditions precedent to bringing suit had been satisfied.

I. Condition Precedent

The statute in questions provides:

> This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

§ 559.715, Fla. Stat. The statute was amended effective October 1, 2010. The prior version of the statute provided:

> This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment within 30 days after the assignment. The assignee is a real party in interest and may bring an action in a court of competent jurisdiction to collect a debt that has been assigned to such assignee and is in default.

§ 559.715, Fla. Stat. Appellant contends that the 2009 version of the statute applies, despite acknowledging the debt was assigned on December 15, 2010, subsequent to the effective date of the 2010 statutory amendment. In the order granting the Motion to Dismiss, the trial court cites the 2009 version of the statute, but states that the "statute makes it a necessary condition precedent . . . that an assignee must give the debtor written notice of such assignment within 30 days after the assignment, *or at the very least must wait 30 days after such notice before filing a lawsuit*." (R. at 26) (emphasis

added). Although the court did not state which version of the statute it applied, it did make a factual finding that the debt was assigned on December 15, 2010, which requires application of the 2010 version of the statute. The trial court found that the Sixth Circuit requires strict compliance with the statute, citing a Pinellas County Court case which found the statute imposed a condition precedent to be met prior to bringing suit, and dismissed a case for failure to provide notice of assignment within 30 days prior to bringing the action. *See LVNV Funding, LLC v. George Scheitinger*, 20 Fla. L. Weekly Supp. 278a (Pinellas Cty. Ct. 2012).

Appellant contends that it is not subject to the statute in question, based on its contention that it "is a passive debt buyer which purchases debts and places them for collection with third party law firms and collection agencies." It is apparent from the record that Appellant is the owner of Appellee's debt, is registered as a consumer collection agency, and is the named Plaintiff in the action below brought to collect the debt. This argument is therefore not well taken.

Appellant relies on *Westport Recovery Corp. v. Devord*, 18 Fla. L. Weekly Supp. 230a (Broward Cty. Ct. 2010), for the contention that the provisions of the statute do not impose a condition precedent to bringing suit, as well as three unpublished opinions from county courts of Duval, Sarasota, and Broward County, holding the same and denying motions to dismiss on this basis. Appellant cites *Florida Med. & Injury Ctr., Inc. v. Progressive Express Ins. Co.*, for the proposition that the Legislature could have expressly created a condition precedent, had it intended to do so. 29 So. 3d 329, 341 (Fla. 5th DCA 2010) ("Florida statutes are filled with duties and requirements unaccompanied by penalties or consequences for noncompliance," and "courts are not at liberty to manufacture one"). Appellant contends that this Court may not find the statute creates a condition precedent unless it is "explicitly" stated in the statute.

Appellee cites to county and circuit court cases interpreting the statute as imposing a condition precedent of providing notice of assignment of debt prior to bringing suit to collect on the debt. *See UMLIC-VP, LLC v. Levine*, 10 Fla. L. Weekly Supp. 336a (15th Cir. Ct. 2003); *LVNV Funding, LLC v. Scheitinger*, 20 Fla. L. Weekly

Supp. 278a (Pinellas Cty. Ct. 2012); *Equable Ascent Fin., LLC v. Davis*, 19 Fla. L. Weekly Supp. 592b (Orange Cty. Ct. 2011). We are in agreement that the language of the statute creates a condition precedent. *See Metro. Cas. Ins. Co. v. Tepper*, 2 So. 3d 209, 213-15 (Fla. 2009) (discussing principles of statutory construction and finding that "the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless"). The plain language of the statute provides that "the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, *but at least 30 days before any action to collect the debt*." § 559.715, Fla. Stat. (emphasis added). Appellant's contentions of error on this point are not well taken, and we affirm the trial court's holding on this issue.

II. Sufficiency of the Pleadings

Appellant's second contention of error is that the general averment in the complaint filed in this case, stating that all conditions precedent to this action had been performed or had occurred prior to bringing suit, satisfied the pleading standard required by Fla. R. Civ. P. 1.120(c): "in pleading the performance or occurrence of the conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred." Appellant cites the standard for reviewing a motion to dismiss, which examines the sufficiency of the pleadings to determine whether a cause of action exists as a matter of law. *See Holland v. Anheuser Busch, Inc.*, 643 So. 2d 621, 623 (Fla. 2d DCA 1994). Appellant correctly states that for purposes of a motion to dismiss for failure to state a cause of action, the court accepts as true the well-plead allegations of the complaint. *See id*. "On a motion to dismiss for failure to state a cause of action, a trial court is restricted to a consideration of the well-pled allegations of the complaint," and "must accept those allegations as true and then determine if the complaint states a valid claim for relief." *Id.* And, the "trial court has no authority to look beyond the complaint by considering the sufficiency of the evidence which either party is likely to produce, or any affirmative defense raised by the defendant." *Id.*

Appellee responds that although Appellant correctly states the general law as it applies to pleading standards, once Appellee specifically denied the performance of the condition the burden then shifted to Appellant "to prove the allegations concerning the subject matter of the specific denial." *See Griffin v. American Gen. Life and Acc. Ins. Co.*, 752 So. 2d 621, n.1 (Fla. 2d DCA 1999); *Fid. Cas. Co. of New York v. Tiedtke*, 207 So. 2d 40 (Fla. 4th DCA 1968). Appellee cites the Comments to Fla. R. Civ. P. 1.120(c), which state that "specific denial of a general allegation of the performance or occurrence of conditions precedent shifts the burden on the plaintiff to prove the allegations." Appellee contends that despite the specific denial of satisfaction of the alleged condition precedent, Appellant has failed to demonstrate that it ever provided Appellee notice of the assignment of debt.

Despite this comment to the Rule, we find that Appellant met the standard required at the pleading stage by Rule 1.120(c), which requires that the pleading "aver generally that all conditions precedent have been performed or have occurred."[1] This "rule is intended to facilitate pleading in cases involving conditions precedent by relieving the claimant of the onerous chore of alleging and proving the satisfaction of each and every condition while at the same time preventing a general denial from being sufficient to put compliance with such conditions at issue." *Fid. & Cas. Co. of New York*, 207 So. 2d at 42. "The law is well settled that a motion to dismiss a complaint is not a motion for summary judgment in which the court may rely on facts adduced in depositions, affidavits, or other proofs." *Lewis v. Barnett Bank of South Florida*, 604 So. 2d 937, 938 (Fla. 3d DCA 1992). Based on this finding, we reverse the order of the trial court granting the motion to dismiss, and remand this case for further proceedings consistent with this Opinion.[2]

[1] *See Holland v. Anheuser Busch, Inc.*, 643 So. 2d 621, 623, (Fla. 2nd DCA 1994) ("Although the trial court may ultimately be correct, it was inappropriate to make such a legal conclusion on a motion to dismiss.").

[2] Because we reverse and remand the case for further proceedings, Appellee's Motion for Appellate Attorney Fees is denied as moot.

CONCLUSION

We agree with the trial court's determination that the notice provision in § 559.715, Fla. Stat., creates a condition precedent that must be satisfied prior to bringing an action to collect on the underlying debt. However, we find Appellant satisfied the standard required at this stage in the pleadings by averring that all conditions precedent to bringing suit were met, and find it was error to grant Appellee's motion to dismiss at this stage in the proceedings.

It is therefore ORDERED that this cause is REVERSED AND REMANDED for further proceedings consistent with this Opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 19th day of February, 2014.

Original order entered on February 19, 2014 by Circuit Judges Stanley R. Mills, Shawn Crane and Daniel D. Diskey.