

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2013

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

RONALD NALLEY,

Appellant,

v.

Case No. 5D11-3940

JONATHAN I. ROTSTEIN, ESQ ET AL.,

Appellee.

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Opinion filed March 28, 2013

Appeal from the Circuit Court
for Volusia County,
Richard S. Graham, Judge.

James P. Kelaher of Kelaher Law Offices,
P.A., Orlando, for Appellant.

William H. Rogner of Hurley, Rogner,
Miller, Cox, Waranch & Westcott, P.A.,
Winter Park, for Appellee.

PER CURIAM.

We reverse the lower court's order dismissing the suit for lack of prosecution. The filing of the motion to amend the complaint and the proposed amended complaint within the sixty-day grace period was sufficient to avoid dismissal. *Chemrock Corp. v. Tampa Elec. Co.*, 71 So. 3d 786 (Fla. 2011). The trial court erred by striking the motion and proposed amendment as a sham. *Yunger v. Oliver*, 803 So. 2d 884, 886 (Fla. 5th DCA 2002) (citing *Destiny Constr. Co. v. Martin K. Eby Constr.*, 662 So. 3d 388, 390

(Fla. 5th DCA 1995)); *see also Furst v. Blackman*, 819 So. 2d 222, 225 (Fla. 4th DCA 2002) (“A sham pleading is one which is ‘undoubtedly false’ and known to be so to the party preparing it.” (quoting *Menke v. Southland Specialties Corp.*, 637 So. 2d 285, 286 (Fla. 2d DCA 1994))).

REVERSED AND REMANDED.

TORPY, EVANDER and JACOBUS, JJ., concur.