

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2005

JOEL DAVIS,
Appellant,

v.

CONDOMINIUM ASSOCIATION OF PLAZA TOWERS SOUTH, INC., a Florida
non-profit corporation,
Appellee.

No. 4D04-1876

[June 29, 2005]

KLEIN, J.

This appeal arises out of a dispute between a condominium owner and the association involving an air conditioner installed by the owner. After non-binding arbitration and a request by the owner for a trial de novo, the trial court granted the association's motion for summary judgment. We reverse for a trial de novo.

The association petitioned for mandatory non-binding arbitration under section 718.1255(4)(a), Florida Statutes (2002) and the arbitrator ruled in favor of the association, requiring the owner to remove the air conditioner. The owner then timely petitioned for a trial de novo in the circuit court under section 718.1255(4)(k). The association moved for a summary judgment in circuit court which was granted, and the owner has appealed, arguing there are issues of fact.

The association recognizes that there were conflicting affidavits on material issues of fact, but contends that the arbitrator resolved these factual issues against the owner. Although section 718.1255(4) provides that the final decision of the arbitrator is admissible in the circuit court trial de novo, the association has cited no authority which would authorize the circuit court to grant a summary judgment where there were material issues of fact. If a trial court were allowed to do this, the statutory right to a trial de novo would be meaningless in most cases. We therefore reverse for a trial de novo.

WARNER and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; J. Leonard Fleet, Judge; L.T. Case No. 03-2638 CACE 08.

Eric M. Glazer of Glazer & Associates, P.A., Hallandale, for appellant.

Edo Meloni of Fein & Meloni, Plantation, for appellee.

Not final until disposition of timely filed motion for rehearing.