

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2007*

**JAMES L. REINGLASS,**  
Appellant,

v.

**SPIROS PETTAS** a/k/a **HRISTOS PETTAS**, individually & d/b/a **FLEX YACHT, INC.**, and **JOHN SERVETAS**, individually & d/b/a **EUROPEAN CUSTOM WOODWORKS, INC.**,  
Appellees.

No. 4D06-1676

[July 5, 2007]

STEVENSON, J.

James Reinglass appeals an order denying his motion for rehearing and relief from the trial court order dismissing with prejudice his lawsuit against European Custom Woodworks, Inc. Since the motion stated that the trial court dismissed the lawsuit due to the excusable neglect of Reinglass's former attorney, we treat it as a motion filed pursuant to Florida Rule of Civil Procedure 1.540(b). Based upon the circumstances presented, we conclude that Reinglass established a basis for relief and reverse.

On November 8, 2005, European Custom Woodworks moved to dismiss the amended complaint with prejudice for failure to state a cause of action or for a more definite statement. The trial court granted European Custom Woodworks' motion to dismiss, but granted Reinglass leave to file a second amended complaint by December 2, 2005. When Reinglass failed to file a second amended complaint within the specified time frame, the trial judge dismissed the lawsuit with prejudice. Less than one year later, Reinglass's new counsel filed the motion and a sworn affidavit, stating that Reinglass was not timely informed of the December 2, 2005 deadline, the order dismissing the lawsuit, or his prior counsel's suspension from the practice of law on February 3, 2006. The motion further contended that immediately upon learning of the trial judge's orders and his prior attorney's suspension, Reinglass obtained new counsel for the purposes of seeking the lawsuit's reinstatement and filing a second amended complaint.

We review a trial court's decision on a rule 1.540(b) motion for abuse of discretion. See *Gillett v. Callaway*, 289 So. 2d 36 (Fla. 4th DCA 1974) (holding trial judge did not abuse his discretion when vacating a dismissal order because plaintiff's counsel was solely responsible for failure to comply with discovery orders). "In order to obtain relief pursuant to rule 1.540(b), the party seeking relief must demonstrate: (1) excusable neglect in failing to respond; (2) meritorious defense; and (3) that the party acted with due diligence in seeking relief." *Schneider v. Schneider*, 683 So. 2d 187, 188 (Fla. 4th DCA 1996). In *Schneider*, this court found the former wife's failure to attend the calendar call and trial was the result of excusable neglect due to her former attorney's failure to properly notify her of the pertinent dates. See *id.* Here, as in *Schneider*, we find that the appellant demonstrated excusable neglect. Reinglass's affidavit was uncontradicted and established that he acted immediately upon learning of the prior orders and his former attorney's suspension. Further, Reinglass presented a meritorious defense and exercised due diligence in seeking to vacate the dismissal. We thus reverse and remand with directions to vacate the order of dismissal and allow further proceedings on the merits.

*Reversed and Remanded.*

KLEIN and MAY, JJ., concur.

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Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John J. Hoy, Judge; L.T. Case No. 502004CA006192XXXXMBAG.

Gary A. Isaacs of Gary A. Isaacs, P.A., West Palm Beach, for appellant.

No brief filed for appellees.

***Not final until disposition of timely filed motion for rehearing.***