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

PRO-ART DENTAL LAB, INC., a Florida Corporation,
Petitioner,

v.

V-STRATEGIC GROUP, LLC, a Florida limited liability company,
Respondent.

No. 4D06-5016

[June 27, 2007]

ON MOTION FOR REHEARING

GROSS, J.

We deny Pro-Art's motion for rehearing and write to certify conflict with *Crocker v. Diland Corporation*, 593 So. 2d 1096 (Fla. 5th DCA DCA 1992).

As the panel opinion indicated, this case involves a Chapter 51 proceeding where Pro-Art, a tenant, after being served with a five day eviction summons, filed defensive motions but not an answer. At a hearing, the court denied the motions and the landlord orally moved for a default. Before the default was entered, the defendant filed an answer and affirmative defenses. Three days later, the court granted the landlord's motion for default and entered a final judgment for possession.

This fact scenario is similar to *Crocker*. There, a defendant filed a counterclaim for unlawful detainer pursuant to Chapter 82, Florida Statutes (1989), a proceeding subject to Chapter 51 summary procedure. *Crocker*, 593 So. 2d at 1097. Eighteen days after service of the counterclaim, the defendant moved for default due to the plaintiff's failure to file an answer; the defendant noticed the motion for hearing 33 days later. *Id*. at 1097. On the day of the motion hearing, the plaintiff filed a "motion to dismiss," which the fifth district characterized as a "defective answer." *Id*. at 1100. The trial court denied the motion for default, ruling that the motion to dismiss tolled the time for an answer. On certiorari review, the landlord challenged the trial court's refusal to enter a default. The fifth district applied Florida Rule of Civil Procedure 1.500(c) to hold that entry of default would have been improper, because

the plaintiff had "plead[ed] or otherwise defend[ed]" within the meaning of the rule.

If *Crocker* and rule 1.500(c) controlled this case, then we would be required to grant the writ; after the court disposed of its defensive motions, but before the entry of a default, Pro-Art filed an answer. *Crocker* allows an untimely answer, filed outside the time limits of section 51.011, to preclude the entry of a default. However, we read section 51.011 as allowing the entry of a default once the time to answer has expired and the court has disposed of timely-filed defensive motions.[1,2]

Section 51.011(1), Florida Statutes (2006), states that "all defenses of law or fact **shall** be contained in defendant's answer which **shall** be filed within 5 days after service of process." The presence of the two "shalls" in the statute means that such filing is mandatory. The mandatory time limit for filing an answer is a crucial procedural requirement of section 51.011, since it brings the case to issue within 5 days of service, so it can be set for trial.[3] The section does not contemplate defensive motions that toll the time to file an answer, such as a motion to dismiss for failure to state a cause of action; the statute states that "*all* defenses of law or fact" shall be contained in the answer. The purpose of chapter 51 is to provide for an expedited procedure in certain actions and to avoid the protracted procedural dance that is allowed under the rules of civil procedure.

Significantly, Florida Rule of Civil Procedure 1.010 states: "The form, content, procedure, and time for pleading in all special statutory proceedings shall be as prescribed the statutes governing the proceeding unless these rules [i.e. the rules of civil procedure] specifically provide to the contrary." Chapter 51 is a "special statutory proceeding" under rule 1.010.

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[1]We note that the "defense of lack of jurisdiction of the subject matter may be raised at any time." Fla. R. Civ. P. 1.140(b) & (h)(2).

[2]It is not uncommon that defenses raised in an eviction action—such as failure of a three-day notice or improper service—are raised within the five-day time limit in a pleading called a "motion to dismiss." Such issues must be "heard by the court prior to trial" or the entry of a default. § 51.011(1), Fla. Stat. (2006).

[3]The usual time limits for setting a case for trial do not apply to Chapter 51 proceedings. *See* Fla. R. Civ. P. 1.440(d).

Rule 1.500(c) allows a defendant to file an answer "at any time before a default is entered." *Crocker* applies this rule in a Chapter 51 case.

Such an application of rule 1.500(c) would allow, as a matter of routine, the filing of answers after five days of service of process. The practice *Crocker* condones contravenes the mandatory time limit of section 51.011(1). Rule 1.500(c) does not say that it applies in Chapter 51 actions; it does not therefore "specifically provide" a contrary time limit rule, as is required by rule 1.010 to modify the time for pleading contained in a special statutory proceeding. Therefore, rule 1.500(c) does not apply to allow the filing of an untimely answer in a Chapter 51 proceeding, even one filed before the entry of a default.

WARNER and HAZOURI, JJ., concur.

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Petition for writ of certiorari to the Circuit Court for the Seventeenth Judicial Circuit; Dorian K. Damoorgian, Judge; L.T. Case No. 06-6243 CACE 12.

David H. Charlip and Eric A. Jacobs of Charlip Law Group, LC, Hollywood, for petitioner.

Craig S. Barnett and Cory W. Eichhorn of Greenberg Traurig, P.A., Fort Lauderdale, for respondent.