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

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

LEMKCO FLORIDA, INC.,
A FLORIDA CORPORATION, ET AL.,

Appellant,

v. Case No. 5D18-3928

GOLF PROPERTIES OF FLORIDA, LLC,
A FLORIDA LIMITED LIABILITY COMPANY,

Appellee.

_____/

Opinion filed September 11, 2020

Nonfinal Appeal from the Circuit Court
for Hernando County,
Peter M. Brigham, Judge.

Henry Gerome Gyden, of Gyden Law
Group, P.A., Tampa, and David H.
Walkowiak, of DHW Law, P.A., Lutz,
for Appellant.

Robert L. Chapman, of Bush Ross, P.A.,
Tampa, for Appellee.

WALLIS, J.

Appellant, Lemkco Florida, Inc., appeals the order denying its motion to set aside the final judgment entered in favor of Appellee, Golf Properties of Florida, LLC. Appellant argues that its due process rights were violated because it received insufficient notice of

Appellee's motion to amend the complaint to add a claim of punitive damages and because it received insufficient notice of trial. We agree and reverse.[1]

This case began when Appellant entered into a contract with Appellee for the sale of property. In September 2017, Appellee sued Appellant, alleging causes of action for fraud, negligent misrepresentation, conversion, breach of contract, and unjust enrichment. In February 2018, Appellant's attorney moved to withdraw from the case. On March 5, 2018, the trial court granted the motion to withdraw and ordered that Appellant obtain new counsel by March 19, 2018. One of Appellant's officers filed a request for an extension of time to retain new counsel, but the trial court denied that request.

On March 14, 2018, while Appellant was unrepresented, Appellee filed a Motion to Amend the complaint to add a claim for punitive damages. The same day, Appellee set the Motion to Amend for a hearing on March 20, 2018, and mailed the notice to Appellant's Florida address. The trial court held the hearing on March 20th and granted the Motion to Amend. Appellant did not attend that hearing. Thereafter, Appellee filed its Second Amended Complaint, adding a claim for punitive damages. Approximately two weeks later, the trial court granted Appellee's motion for default and entered a default against Appellant on all counts of Appellee's Second Amended Complaint.

On May 9, 2018, the trial court entered an amended order setting a non-jury trial to determine punitive damages for May 25, 2018. The trial court entered a second amended order setting the case for a non-jury trial, again identifying the trial date as May

[1] We find no merit to Appellant's claim that the trial court erred in considering the motion to set aside the final judgment without holding an evidentiary hearing.

25th. Several days before the scheduled trial, one of Appellant's officers filed a pro se motion to dismiss the amended order setting the cause for trial. The officer acknowledged receiving the May 9th order, but objected to the court holding the trial because Appellant had been unable to retain counsel and because none of Appellant's officers could attend trial.

The trial court subsequently entered the Final Judgment in favor of Appellee. The Final Judgment specifically stated that a non-jury trial was held on May 23rd and that Appellant failed to appear for trial after receiving proper notice. The Final Judgment awarded Appellee $4,832,482 in compensatory and punitive damages. In October 2018, Appellant filed its Motion to Set Aside the Final Judgment, claiming its failure to appear was based on excusable neglect and that it should be permitted to defend against the punitive damages claim. The trial court denied that motion.

Appellant argues for the first time on appeal that the trial court committed fundamental error when it failed to comply with the notice requirements set forth in Florida Rule of Civil Procedure 1.440(c). Rule 1.440(c) reads as follows:

> **(c) Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial. In actions in which the damages are not liquidated, the order setting an action for trial shall be served on parties who are in default in accordance with Florida Rule of Judicial Administration 2.516.

Rule 1.440(c) is meant to safeguard a party's procedural due process rights and the failure to follow the requirements set forth in the rule is reversible error. Ciprian-Escapa v. City of Orlando, 172 So. 3d 485, 488 (Fla. 5th DCA 2015); Grossman v. Fla. Power & Light Co., 570 So. 2d 992, 993 (Fla. 2d DCA 1990). A judgment that is entered in violation

of Rule 1.440(c) is void and "may be collaterally attacked at any time." Ciprian-Escapa, 172 So. 3d at 488.

Here, the trial court violated the requirements set forth in Rule 1.440(c) in two respects. First, both of the orders setting trial were served on Appellant less than thirty days from the trial date. Second, both orders erroneously listed the trial date as May 25th instead of May 23rd. We disagree with Appellee that these violations are merely technical violations that do not warrant reversal. Rather, the failure to give Appellant adequate notice and to correctly identify the trial date directly affected Appellant's ability to defend this case and violated its due process rights. See id. at 490 (vacating portion of final judgment awarding appellee unliquidated damages because the trial court failed to follow the notice requirements set forth in Rule 1.440(c)).

Furthermore, Appellant received, at most, six days to retain counsel and to prepare for the hearing on the Motion to Amend to add a claim for punitive damages, which was unreasonable under the circumstances and did not satisfy the requirements of due process. See Torres v. One Stop Maint. & Mgmt., Inc., 178 So. 3d 86, 89 (Fla. 4th DCA 2015) (finding that a few days' notice for a damages trial is unreasonable and violated appellant's due process rights); P&L Fla. Inv., Inc. v. Ferro, 545 So. 2d 448 (Fla. 3d DCA 1989) (holding that attorney's action of mailing a notice of hearing to opposing counsel six days before the hearing on the motion for sanctions was unreasonable). For these reasons, we reverse the order on appeal and vacate the Final Judgment. We also remand for a new hearing on the Motion to Amend and for a new trial.

REVERSED and REMANDED.

ORFINGER and EISNAUGLE, JJ., concur.