

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2006*

**WILLIAM P. REGIS,**  
Appellant,

v.

**WEST SUNRISE DEVELOPMENT CORPORATION,  
PAUL E. TAYLOR, and IAN GARDNER,**  
Appellees.

No. 4D05-3124

[December 13, 2006]

FARMER, J.

We reverse the summary judgment and remand for trial. The rule of *Ellison v. Anderson*, 74 So.2d 680 (Fla. 1954) (affidavit filed in opposition to motion for summary judgment may not contradict prior deposition testimony), does not apply to an affidavit of a witness purporting to be the first expression by the witness under oath in the litigation as to a fact in dispute even though it contradicts a prior out-of-court, non-sworn statement by the witness in a corporate document. *See Andrews v. Midland Nat'l Ins. Co.*, 208 So.2d 136, 137 (Fla. 3d DCA 1968) (holding that witness is not irrevocably bound by his first written statement upon the issues of a case); *see also Lawrence v. Pep Boys Manny Moe & Jack Inc.*, 842 So.2d 303, 305 (Fla. 5th DCA 2003) (holding that court is required to view record evidence, including properly asserted supporting affidavits, in light most favorable to non-moving party, and if slightest doubt exists summary judgment must be reversed).

*Reversed.*

SHAHOOD, J., and LEWIS, TERRY P., Associate Judge, concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Robert B. Carney, Judge; L.T. Case No. 03-12257 CACE 04.

Ira Marcus of Ira Marcus, P.A., Fort Lauderdale, for appellant.

Ian Gardner, Sunrise, pro se.

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