

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

DR. MITCHELL SENFT,
Appellant,

v.

PATTERSON DENTAL SUPPLY, INC.,
Appellee.

No. 4D11-712

[August 1, 2012]

PER CURIAM.

We reverse the final summary judgment entered in this contract action, as the appellee failed to conclusively negate the affirmative defenses raised by appellant. *See Corya v. Sanders*, 76 So. 3d 31, 34 (Fla. 4th DCA 2011); *Riverwood Condo. Ass'n, Inc. v. Litecrete, Inc.*, 69 So. 3d 983, 985 (Fla. 3d DCA 2011). Moreover, the appellee relied in its affidavit in support of summary judgment on a contract (order form) which was never mentioned or relied upon as part of the contract in its complaint. At the very least, it raises a material issue of fact as to what constituted the contract between the parties. *See, e.g., Grumman Ecosystems Corp. v. Palm Beach Cnty.*, 391 So. 2d 699 (Fla. 1st DCA 1980).

WARNER, POLEN and DAMOORGIAN, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Donald W. Hafele, Judge; L.T. Case No. 502009CA026549XXXXMB.

Eric Ash of Shochet Law Group, Greenacres, for appellant.

Christopher D. Hale of Christopher D. Hale, P.A., Fort Lauderdale, for appellee.

Not final until disposition of timely filed motion for rehearing.