

Third District Court of Appeal

State of Florida

Opinion filed September 4, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-744
Lower Tribunal No. 15-28352

Alberto L. Surijon,
Appellant,

vs.

Roberto Bueno Zarria,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig,
Judge.

Recalde Law Firm, P.A., Rafael Recalde and Jeremy Klein, for appellant.

Blaxberg, Grayson, Kukoff & Forteza, P.A., and Gaspar Forteza, for appellee.

Before LINDSEY, HENDON, and MILLER, JJ.

HENDON, J.

Alberto L. Surijon (“Surijon”) appeals from a “Summary Final Judgment.” For the reasons that follow, we reverse the order under review and remand with instructions.

Roberto Bueno Zarria (“Zarria”) filed a complaint against Alberto L. Surijon, alleging five counts, and all counts arise from the same set of facts. Zarria filed a motion for summary judgment addressing three of the five counts alleged against Surijon—Count II (unjust enrichment), Count V (fraud in the inducement), and Count VI (civil theft).¹

Following a hearing, the trial court entered the order under review, which is titled “Summary Final Judgment.” The order reflects that the trial court granted the motion for summary judgment as to Count II (unjust enrichment) and denied the motion for summary judgment “without prejudice” as to Counts V and VI, finding that a genuine issue of material fact exists. Further, as to Count II, the trial court ordered that Zarria is to recover \$150,000, plus attorney’s fees and prejudgment interest from Surijon, “for all of which let execution issue.” The trial court also ordered Surijon, as the judgment debtor, to fill out the Fact Information Sheet (Form 1.977 of the Florida Rules of Civil Procedure).

¹ The remaining two counts—Count III and Count IV—were not addressed in the motion for summary judgment and were never disposed of by any other order. Unlike the other counts alleged against Surijon, which sought to recover \$150,000, Count VI sought to recover treble damages (\$450,000).

Although the order under review provides that the trial court denied “without prejudice” the motion for summary judgment as to Counts V and VI, the order inconsistently includes words of finality—“for all of which let execution issue”—and closes the case as to all parties. Accordingly, we reverse the purported “Summary Final Judgment” and remand with directions to the trial court to enter an interlocutory order against Surijon as to Count II (unjust enrichment), without words of execution, and to retain jurisdiction to consider the pending related claims.² See Investacorp, Inc. v. Evans, 88 So. 3d 248 (Fla. 3d DCA 2011); Molina v. Watkins, 824 So. 2d 959 (Fla. 3d DCA 2002); Culverhouse v. Barth, 699 So. 2d 795 (Fla. 3d DCA 1997); Del Castillo v. Ralor Pharmacy, Inc., 512 So. 2d 315 (Fla. 3d DCA 1987); but see East Avenue, LLC v. Insignia Bank, 136 So. 3d 659 (Fla. 2d DCA 2014). Further, we direct the Clerk of the Circuit Court to reopen the lower tribunal case.

Reversed and remanded with directions.

² We only address the form of the order on review. The merits of the underlying ruling granting summary judgment as to Count II of the operative complaint will be considered only on appeal from a properly entered final judgment or a nonfinal order reviewable under Florida Rule of Appellate Procedure 9.130.