

# Third District Court of Appeal

## State of Florida

Opinion filed September 16, 2020.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-2289  
Lower Tribunal No. 18-1652

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**Cuomo Trading, Inc., etc.,**  
Appellant,

vs.

**World Contract S.R.L., etc.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Alexander Bokor,  
Judge.

Jay M. Levy, P.A., and Jay M. Levy, for appellant.

Moris & Associates, and Giacomo Bossa and Angelique Gulla, for appellee.

Before LOGUE, SCALES and LINDSEY, JJ.

PER CURIAM.

Defendant below, Cuomo Trading, Inc., (“Buyer”), appeals a final judgment  
for plaintiff below, World Contract S.R.L. (“Seller”), rendered after a bench trial.

Concluding that the trial court's factual findings<sup>1</sup> are supported by competent, substantial evidence and that the lower court committed no legal error, we affirm. See Haas Automation, Inc. v. Fox, 243 So. 3d 1017, 1023 (Fla. 3d DCA 2018) (recognizing that, in its review of a judgment after a bench trial, an appellate court reviews the trial court's findings of fact for competent, substantial evidence and the trial court's purely legal conclusions *de novo*).

The parties' agreement was evidenced, in part, by a series of invoices that Seller generated after shipping goods to Buyer. Seller was obligated to install the goods, at no charge, on a vessel belonging to Buyer's client, but Seller failed to perform the installation work. Rather than terminate or otherwise repudiate the parties' agreement, Buyer elected to keep the goods and perform the installation work itself. Buyer profited from this decision by charging its client for the installation services at a significant markup.

When Seller sued Buyer for Buyer's refusal to make the last installment payment due to Seller, Buyer asserted, as an affirmative defense, that it was justified in withholding the final payment because Buyer was entitled to repudiate the entire agreement based on Seller's failure to perform the installation work. The trial court rejected Buyer's affirmative defense because Buyer had affirmed the parties'

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<sup>1</sup> The facts set forth herein are taken from the trial court's written findings of fact and conclusions of law.

agreement, kept the goods and not been damaged by Seller's breach. Under the particular facts and circumstances of this case, we do not quarrel with the trial court's legal conclusion and affirm the final judgment. See Forbes v. Prime Gen. Contractors, Inc., 255 So. 3d 448, 451 (Fla. 2d DCA 2018) (providing that, when faced with a breach of contract, the non-breaching party may treat the contract as void and seek to be restored to the position the party was in prior to entering into the agreement; alternately, the non-breaching party may affirm the agreement and be limited to being placed in the position the non-breaching party would be in had the contract been performed completely).

Affirmed.