

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SIXTH DISTRICT

CASE NO: 5D22-2314;6D23-1496

L.T. Case No. 2021-SC-042066-0

FRANCISCO JOSE PERALTA,

Appellant,

vs.

SUNNOVA ENERGY CORPORATION,

Appellee.

**APPELLEE SUNNOVA ENERGY CORPORATION'S
ANSWER BRIEF**

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STATEMENT OF THE CASE AND FACTS¹

A. Nature of the Case

Francisco Jose Peralta ("Appellant" or "Peralta") filed a Statement of Claim against Sunnova Energy Corporation ("Appellee" or "Sunnova"). [App. A, ¶6]. In essence, Appellant's Statement of Claim alleges that a Windmar Solar² (not Sunnova) salesman was deceptive and deceitful when he sold solar panels to Appellant. [App. A, ¶6-7].

Appellant alleged that he thought he was doing business with Windmar Solar but he was really doing business with Appellee. *Id.* In his Statement of Claim, Peralta claimed that a Windmar Solar representative told him his monthly payment would be \$127 when, in reality, he was charged \$448.10 per month. [App. A, ¶7].

In addition to the alleged deceit, Appellant claimed that, after installation of the solar panels he purchased, he realized his roof had a leak. *Id.* Peralta alleges that Windmar Solar advised they would contact him to resolve the leak but over a month went by and the roof was further damaged. *Id.* As a result, Appellant claims he suffered economic damages. *Id.*

The Parties agreed to the case proceeding before the General Magistrate as a non-jury trial. [App. B., ¶10]. Once at trial,

¹ Unless otherwise indicated, Appellee will cite the record as [Appendix ID Letter, Page of Appendix] (i.e. [App. C, ¶ 14]).

² Windmar Solar is not a Defendant in the lower tribunal case.

Plaintiff made an *ore tenus* motion to continue the trial, which was denied. [App. K, ¶40]. After the Appellant presented his case in chief, including testimony of witnesses, the Appellee moved for a directed verdict. [App. K, ¶41] It was granted because there was no contract attached to the Statement of Claim or admitted into evidence and Appellant failed to provide expert testimony as to the cause of the damage to the roof or costs of damages. *Id.*

Peralta is appealing (1) the denial of his *ore tenus* motion to continue trial and (2) the Court's order approving the General Magistrate Report and Recommendation granting the directed verdict and denying Appellant's Statement of Claim.

B. Procedural History

On July 19, 2021, Peralta filed his Statement of Claim. [App. A, ¶6]. On November 15, 2021, the case was referred to the General Magistrate. [App. B, ¶10-11]. On March 25, 2022, a non-jury trial was set for April 22, 2022. [App. C, ¶13-14].

On April 22, 2022, the Parties appeared before the Court and informed that they were ready to proceed with trial but would communicate via email to attempt to reach an out-of-court settlement. A Report and Recommendation covering such representations was issued on April 25, 2022, therein also re-setting the non-jury trial for July 27, 2022. [App. E, ¶19-21]. On April 27, 2022, the Court approved the General Magistrate's Report

and Recommendation. [App. F, ¶23-24]. On April 29, 2022, an Order Setting Virtual Hearing, and including the Microsoft Teams meeting information was entered. [App. H, ¶30-31]. The trial instructions were also filed along with the Order Setting Virtual Hearing. [App. I, ¶33-35].

A non-jury trial was held on July 27, 2022. [App. J, ¶37-38]. The General Magistrate issued a Report and Recommendation on August 11, 2022 denying Peralta's motions to continue, granting Sunnova's Motion for Directed Verdict and denying Peralta's Statement of Claim. [App. K, ¶40-42].

On August 26, 2022 and September 1, 2022, the Court entered identical Orders approving the General Magistrate's Report and Recommendation. [App. L, ¶44-45] and [App. M, ¶47-48]³. On September 12, 2022, Peralta filed a Motion for Rehearing. [App. O, ¶54-55]. On September 16, 2022, Peralta filed a Notice of Appeal. [App. P, ¶57].

On January 3, 2023, the Trial Court held a Hearing on Peralta's Motion for Rehearing. [App. R, ¶61]. On March 13, 2023, the Court granted Peralta's Motion for Rehearing. [App. S, ¶63]. In such order, the Court order the parties to coordinate a date and time for rehearing within sixty (60) days of the order -by May 12, 2023.

³ While, presumably, the dual entry of the same order was a clerical mistake, Appellee is herein including both filings to avoid confusion.

Id. A review of the docket shows that Peralta failed to set that hearing within the allotted timeframe.

C. TRIAL COURT's Findings of Facts

At trial, Peralta testified that the solar panels that were put on his roof caused damage to the roof. [App. K, ¶40]. Peralta additionally testified that the solar panels were put on in approximately August 2019 and the noticed the leaks in June 2020. *Id.* Appellant also called Katherine Peralta to the stand. [App. J, ¶37]. Katherine Peralta testified as to what took place during the installation of the solar panels and what happened after the solar panels were installed. [App. K, ¶41]

After Plaintiff moved *ore tenus* to continue trial, the General Magistrate denied it finding that the parties were appropriately put on notice about the virtual trial and requirements thereof. [App. K, ¶40]. The General Magistrate also found that (1) there was no contract attached to Peralta's Statement of Claim or admitted into evidence and (2) that Plaintiff failed to provide expert testimony as to the cause of damage to the roof or costs of damages. [App. K, ¶41]. Furthermore, the Court found that Plaintiff failed to submit competent and substantial evidence to support his claims and therefore, granted Sunnova's motion for directed *Id.*

SUMMARY OF THE ARGUMENT

Peralta, in his appellate brief, attempts to argue that this Appellate Court should reverse the Trial Court's orders denying

his Statement of Claim because he filed a timely Motion for Rehearing. In essence, Peralta argues that this Honorable Court should reverse the order granting Sunnova's motion for directed verdict and allow Peralta to have a new trial hearing that considers the documentation attached to his motion for rehearing.

Peralta's arguments fail for several reasons. The first being that Peralta fails to direct this Court on any evidence that was overlooked or miscalculated by the Trial Court. Secondly, Peralta also fails to address the fact that the Trial Court granted his motion for rehearing, and he failed to set a date for the new hearing within the timeframe provided by the Court's order. Therefore, the record does not contain any evidence that was admitted at trial and that it can consider in its proper view to reverse the granting of the directed verdict.

Lastly, Appellant argues on appeal that this Court should reverse the Trial Court's order denying his *ore tenus* motion to continue trial **on the day of trial**. Appellant, however, fails to present any arguments based on the record that would suggest that the Trial Court abused its discretion when denying his *ore tenus* motion to continue trial. For the reasons we will discuss in further detail below, this Honorable Court should affirm the Trial Court's orders subject of this appeal.

ARGUMENT

A. STANDARD OF REVIEW

The standard of review on appeal of a trial court's ruling on a motion for directed verdict is de novo in which the appellate court applies the same test used by the trial court in ruling on the motion. *Sims v. Cristinzio*, 898 So.2d 1004, 1006 (Fla. 2d DCA 2005).

On the other hand, a review of the trial court's denial of a motion for continuance is reviewed under the deferential abuse of discretion standard. *Brown v. State*, 942 So.2d 12, 14 (Fla. 1st DCA 2006); 376 U.S. 575, 589-90, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). "Whether to grant or deny a motion to continue a trial is a matter that rests within the sound discretion of the trial judge." *Shands Teaching Hosp. & Clinics, Inc. v. Dunn*, 977 So.2d 594, 599 (Fla. 1st DCA 2007). This discretionary decision is given even greater deference than others. *Id.*

B. LEGAL ANALYSIS

a. The TRIAL COURT did not err when approving the Magistrate Judge's Report and Recommendation denying Appellant's Statement of Claim via directed verdict

A motion for a directed verdict is not an evidentiary ruling; the motion raises the legal sufficiency of the evidence. See Fla. R. Civ. P. 1.480(b); *Lincare Holdings Inc. v. Ford*, 307 So. 3d 905, 909 (Fla. 2d DCA 2020). "A motion for directed verdict should be granted only where no view of the evidence, or inferences made

therefrom, could support a verdict for the nonmoving party. In considering a motion for directed verdict, the court must evaluate the testimony in the light most favorable to the nonmoving party and every reasonable inference deduced from the evidence must be indulged in favor of the nonmoving party. If there are conflicts in the evidence or different reasonable inferences that may be drawn from the evidence, the issue is factual and should be submitted to the jury." *Sims*, 898 So.2d at 1005.

On appeal, Peralta attempts to argue that this District Court of Appeals should reverse the Trial Court's grant of the Defendant's directed verdict motion because, after it was granted, Peralta timely moved the Court for rehearing. See *Initial Brief on Page 7*. In its Initial Brief, Peralta argues that his motion for rehearing included the contract between the parties, a report from a roofing contractor, a repair estimate, and pictures of the alleged damages.

Peralta, however, fails to present in its Initial Brief is that the Court granted his Motion for Rehearing [App. S, ¶62]. Within the order granting Peralta's Motion for Rehearing on March 13, 2023, the Court ordered the parties to coordinate a date and time for rehearing within 60 days from the order -by May 12, 2023. *Id.* A quick review of the record shows that Peralta never coordinated the setting of a rehearing. Because he never set the

matter for rehearing, there is no additional evidence that the Trial Court could have reviewed in order to reconsider his position.

The burden of an appellant upon an appeal from a final judgment entered upon a directed verdict is to demonstrate that there is a proper view of the evidence under which the jury could have found for the appellant. *Air Travel Associates Inc. v. Eastern Air Lines Inc.*, 273 So.2d 3 (3rd DCA 1973). In determining a 'proper view of the evidence', the appellant, as the party moved against, is entitled to all reasonable inferences to be drawn from the evidence as a whole. *Id.* at 3-4 (citing *Hilkmeyer v. Latin American Air Cargo Expeditors, Inc.*, Fla. 1957, 94, So.2d 821).

In this case, the record shows that Peralta failed to admit into evidence: (1) any contract between him and the appellant, (2) expert testimony as to the cause of the damage to his roof; or (3) expert testimony as to the costs of damages relating to the alleged damage to the roof. [App. K, ¶40-41]. Despite later attaching documents to his Motion for Rehearing, and it being granted, Peralta failed to follow the Court's procedures to set this matter for rehearing. The documents attached as exhibits to Appellant's Motion for Rehearing were never admitted into evidence due to Appellant's own decision or lack of diligence.

Peralta has failed -because he can't- to inform this Appellate Court as to what evidence was admitted but overlooked by the Trial Court when granting the motion for directed verdict. For such reasons, the Trial Court's order granting Appellee's Motion for Directed Verdict should be affirmed.

b. The TRIAL COURT did not err when denying Appellant's Ore Tenus Motion to Continue Trial

In considering whether the trial court abused its discretion in denying a motion for continuance, appellate courts must consider three factors: 1) whether denial of the motion creates injustice for the movant; 2) whether the cause of the request was foreseeable or due to dilatory practices; and 3) the potential of prejudice or inconvenience to opposing parties. *See Garner v. Langford*, 55 So.3d 711, 714 (Fla. 1st DCA 2011) (quoting *Fleming v. Fleming*, 710 So.2d 601, 603 (Fla. 4th DCA 1998)); *see also C.J. v. Dep't of Children & Families*, 756 So.2d 1108, 1109-10 (Fla. 3d DCA 2000) (identifying best interests of the child and fairness to the parents as primary concerns).

While Peralta's Initial Brief does not discuss any of these factors, we will discuss why they all favor affirming the Trial Court's order denying Peralta's *ore tenus* motion to continue trial.

1. WHETHER DENIAL OF THE MOTION CREATES INJUSTICE FOR THE MOVANT

Appellant filed his Statement of Claim on July 19, 2021. [App. A, ¶5-8] As it is his right, Appellant filed his Statement of Claim as a *pro se* litigant. *Id.* More than a year later, on July 27, 2022, the Trial Court held a trial on the merits. [App. J, ¶37-38]. A review of the record shows that, during the preceding year, Appellant never retained an attorney or made any request to the Trial Court for the appointment of one.

Appellant waited until after his testimony was heard at trial to move the court for the first time for a continuance of the trial. [App. K, ¶40-41]. The Trial Court's findings of fact state that the basis for the denial was that the parties were "put on notice about the virtual trial and requirements thereof". *Id.* at paragraph 4. After Appellee's Motion for Directed Verdict was granted, Appellant once again moved the court to continue the trial for an in-person trial to have an attorney. *Id.* at paragraph 8.

The record shows that not only was Appellant appropriately noticed about the virtual trial and but also that he had plenty of time to retain counsel beforehand should he had wish to do that.

Even assuming *arguendo* that the denial of Appellant's trial day motion for continuance of trial created an injustice for him, such injustice was cured when his Motion for Rehearing, through counsel, was granted. Appellant still failed to set the matter for rehearing

and follow through on his own request -which is the same he is seeking from this Appellate Court.

2. WHETHER THE CAUSE OF THE REQUEST WAS FORESEEABLE OR DUE TO DILATORY PRACTICES

A simple read of the record demonstrates that Appellant's *ore tenus* motion to continue trial was nothing more than a dilatory practice once he realized that he was not going to -or did not- prevail on the merits of his Statement of Claim. The request for a continuance was not even raised until after Appellant had testified in support of his Statement of Claim. Additionally, other than requesting a continuance for the purpose of having an attorney present, the record is void of any non-dilatory reason for the request for continuance.

3. THE POTENTIAL PREJUDICE OR INCONVENIENCE TO OTHER PARTIES

As mentioned before, Appellant did not bring his request for continuance until the day of trial after he had already been noticed and testified in support of his Statement of Claim. Appellee, who had retained counsel, was prepared to move forward on the merits of Appellant's Statement of Claim. The record shows that the Court considered the arguments of the parties and exercised its discretion in denying the request. Appellant has not set forth any part of the record that would suggest that the Court abused its discretion when doing so and, therefore, the Trial

Court's denial of Appellant's *ore tenus* motion for continuance of trial should be affirmed.

CONCLUSION

Appellants arguments on appeal hold no water. Even after an order granting Peralta's Motion for Rehearing at the trial court level, he failed to set a new date for a trial hearing and failed to introduce any evidence that would require the reversal of the Trial Court's order denying his Statement of Claim. Nothing in Appellant's Initial Brief or the record suggests that the Trial Court overlook or did not review admitted evidence in its proper view to mandate the reversal of the order granting Appellee's motion for directed verdict.

In that same vein, nothing in the record suggests that the Trial Court abused its discretion when denying Appellant's motion to continue trial. The Initial Brief is void of any arguments that would support that contention and, on the contrary, the record suggests that the Trial Court did not abuse its discretion when doing so. For these reasons, the Trial Court's orders granting Appellee's Motion for Directed Verdict and denying Appellant's *Ore Tenus* Motion to Continue Trial should be affirmed.

Dated: October 8, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October 2024, a true and correct copy of the foregoing was filed with the Clerk of the Court via E-Filing Portal and served via e-service upon Zeffery A. Mims, Esq., *Attorney for Appellant*, 201 S. Orange Ave., Orlando, FL 23801(zefferymims@gmail.com).

/s/ Juan C. Ramos
Juan C. Ramos, Esq.

CERTIFICATE OF COMPLIANCE

I FURTHER CERTIFY compliance with Rule 9.210(a)(5)(B), Florida Rules of Appellate Procedure, and state that the font used in this brief is Courier New, 12 point.

s/ Juan C. Ramos

Juan C. Ramos, Esq.