

IN THE DISTRICT COURT OF APPEAL FOR THE THIRD DISTRICT
STATE OF FLORIDA

APPELLATE CASE NO.: 3D23-317
LT CASE NO.: 22-21438

GARY NADER, et al.,

Appellants,

vs.

AIM RECOVERY SERVICES, INC.,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

I. NATURE OF THE CASE

In this appeal, Appellant, Nader+Museu I, LLLP,¹ after subjecting itself to the trial court's jurisdiction by seeking affirmative third-party relief, seeks to quash Appellee's service on it by arguing that the trial court misapplied Florida's service statutes to find that Appellee," AIM Recovery Services, Inc., properly served it. The trial court's Order should be affirmed because Appellant voluntarily submitted itself to the trial court's in personam jurisdiction when it filed a third-party complaint against a non-party, Appellant did not contradict AIM's evidence that Appellant was served by service on its registered agent, and because AIM properly served Appellant.

II. COURSE OF PROCEEDINGS

Appellant's "Procedural Background" section generally sets out the applicable course of proceeding, aside from its characterizations. Additional relevant procedural facts are:

¹ Appellants Gary Nader and Gary Nader Corp. both joined Appellant Nader+Museu I, LLLP's notice of appeal. They did not file a brief in this appeal nor join Nader+Museu's Initial Brief. Unless otherwise noted, all references to Appellant are to Nader+Museu.

1. After AIM served Appellants with process, Appellants' counsel claimed in Appellants' motion to quash that, just before Appellants' response to the complaint was due, he "inadvertently discovered this lawsuit while searching this court's docket for another case. App. at 7.

2. AIM responded to Appellant's motion to quash. App. at 14-35.

3. On January 23, the trial court conducted an evidentiary hearing on Appellant's motion to quash. App. at 246-76. At the hearing, AIM presented its process server's, Michael Rubi, testimony about how and on whom he served process. App. at 258-66. The trial court and Appellants also accepted as fact that AIM's attorney mailed process to Gary Nader, which Gary Nader agreed to accept by mail on his and Gary Nader Corporation's behalf. App. at 266. Appellant did not offer any evidence at the hearing. App. at 246-76.

4. Appellant filed a third-party complaint against Stok Kon + Braverman (“SKB”), who was not a party to AIM’s lawsuit below, on February 22. AIM’s App. at 141-57.²

5. Appellant filed another third-party complaint against SKB on April 3. AIM’s App. at 162-83

III. FACTUAL BACKGROUND

In September 2018, Gary Nader hired SKB to represent him and his company Gary Nader Corporation in several legal matters and executed a written retainer outlining the representation. App. at 61. During this representation, Gary Nader often expanded the scope of SKB’s representation including its representation of Appellant. App. at 61. SKB’s and Gary Nader’s retainer was orally modified and expanded to include each new representation, which Gary Nader or Gary Nader Corporation paid for. App. at 61-62.

Over time, SKB worked many hours with only partial payments for work done for Appellant (and Gary Nader and Gary Nader Corporation). App. at 62. Appellants thus owed SKB \$216,814.42 after SKB discounted Appellants’ bill by \$100,000.

² References to AIM’s amended appendix filed with its motion to dismiss on August 9 will be “AIM’s App. at ___.” References to Appellant’s appendix filed with its initial brief will be App. at ___.”

App. at 62. SKB demanded payment and Appellants did not pay. App. at 62. To collect its unpaid debt, SKB assigned Appellants' debt to AIM. App. at 63. AIM then sued Appellants. App. at 60-191.

SUMMARY OF THE ARGUMENT

The trial court's Order denying Appellant's motion to quash must be affirmed because 1) Appellant waived any service issues by voluntarily submitting itself to the trial court's in personam jurisdiction when it filed a third-party complaint, 2) Appellant failed to preserve its appellate arguments, 3) the trial court correctly relied on the evidence before it, and 4) AIM properly served Appellant.

First, Appellant mooted this appeal by seeking affirmative relief. A defendant that objects to service of process must make that objection in a pre-answer motion or in its answer. Failure to do so waives the objection. A defendant can file a compulsory counterclaim without waiving its service objection. If, however, the defendant seeks affirmative relief by filing a permissive counterclaim or a third-party claim in the pending lawsuit, the defendant submits itself to the court's jurisdiction and waives any objection to service of process.

Here, Appellant sought affirmative relief against SKB. SKB was not a party to the case below and Appellant filed a third-party claim asserting that SKB's negligence caused it more than \$2,000,000 in damages. Appellant could have filed its negligence claim in a new case but made the voluntary decision to file it in the case below which was also a voluntary decision to submit itself to the trial court's in personam jurisdiction. That submission mooted this Appeal.

Second, Appellant did not preserve its appellate arguments. Appellate courts cannot consider arguments on appeal that were not raised before the trial court. This rule prevents unnecessary appeals where a trial court could have corrected itself, had an appellant made that argument before the trial court. An appellant must present an error with specific legal argument to the trial court to preserve that argument for appeal.

Here, Appellant preserved no issues with AIM's service because its argument before the trial court was based on an incorrect version of the applicable statutes. On appeal, Appellant argues that AIM did not comply with the 2022 versions of sections 48.061 and 48.062. Appellant never made this argument to the trial

court. Instead, Appellant argued that AIM did not comply with the 2023 versions of those statutes, which are materially different from the 2022 versions, as seen by Appellant's new and different arguments it now presents for the first time before this Court.

Third, the trial court correctly found that service was proper because the evidence showed that AIM served Appellant's registered agent. Mr. Rubi testified that he served Appellant's registered agent's employee and Appellant presented no evidence to contradict or rebut his testimony. Appellant never introduced the sunbiz records, which it requested the trial court take judicial notice of, into evidence. An appellate court cannot consider evidence judicially noticed for the first time on appeal. The unrebutted testimony thus showed that AIM served Appellant's registered agent.

Last, AIM served Appellant properly. Under the partnership service statute, AIM had the choice to serve Appellant's registered agent or its general partner. AIM served Appellant's general partner. Under section 48.062 (2022), only service *against* an LLC needs to be served on its registered agent. AIM's service was against Appellant, a dissolved limited liability limited partnership, and not Appellant's limited liability company general partner.

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Appellants return of service is also facially valid. Under section 48.21, Florida Statutes (2022), a process server needs to list the name of the “person” served. Under Florida’s definitional statute, corporations, partnerships, and all other groups or combinations are defined as “persons.” Thus, Appellant’s return listing Appellant as the person served satisfies section 48.21’s requirements notwithstanding that Mr. Rubi included extra information and notwithstanding that the individuals served attempted to evade service by refusing to provide their names to Mr. Rubi.

The Court should not sanction Appellant’s gamesmanship; doing so will encourage parties to attempt to avoid service by refusing to give the process server their name. If Mr. Rubi excluded the statement that Gary Nader’s personal assistant refused to give his name, the return of service would have been facially valid because John Doe is a name.

For all these reasons, the Order denying Appellant’s motion to quash must be affirmed.

STANDARD OF REVIEW

A trial court’s decision on a motion to quash is generally reviewed *de novo*. *Morgan Stanley Smith Barney, LLC v. Gibraltar*

Priv. Bank & Tr. Co., 162 So. 3d 1058, 1060 (Fla. 3d DCA 2015) (citations omitted). But when a trial court hears live testimony on a jurisdictional issue, the appellate court defers to the trial court's factual findings. *Oldock v. DL &B Enters., Inc.*, 100 So. 3d 50, 52 (Fla. 2d DCA 2011) (citing *Dev. Corp. of Palm Beach v. WBC Constr., LLC*, 925 So. 2d 1156, 1160 (Fla. 4th DCA 2006)).

ARGUMENT

The trial court's denial of Appellant's motion to quash should be affirmed. As a first matter, Appellant mooted this appeal by submitting itself to the trial court's jurisdiction when it sought affirmative relief against a non-party, SKB, by filing, and then refile, a third-party complaint against it. Next, Appellant did not preserve its arguments for appeal because it argued an incorrect version of Florida law applied and the arguments that it is now making before this Court were never made to the trial court. Next, AIM presented evidence that it served Appellant's registered agent and Appellant did not contradict or rebut that evidence. Lastly, AIM served appellant properly because it served the process against Appellant on its general partner and because the return of service named the person served, Appellant, as required by section 48.21.

I. APPELLANT WAIVED ANY SERVICE ISSUES WHEN IT VOLUNTARILY SUBMITTED ITSELF TO THE TRIAL COURT'S JURISDICTION BY SEEKING AFFIRMATIVE RELIEF FROM A THIRD PARTY.

This Court should deny Appellant's appeal because it waived any jurisdictional complaint when it submitted itself to the trial court's jurisdiction in personam jurisdiction by filing third party claims in the trial court.

A defendant waives even timely jurisdictional challenges, including to service of process, if it seeks affirmative relief. *Eskenazi v. Eskenazi*, 283 So. 3d 389 (Fla. 3d DCA 2019) (citing *Babcock v. Whatmore*, 707 So. 2d 702, 704-05 (Fla. 1998)). A party that "timely raises an objection to personal jurisdiction or service of process...may plead to the merits and actively defend the lawsuit without waiving the objection, but if the defending party also seeks affirmative relief, such as asserting a permissive counterclaim, the defending party then waives the objection to personal jurisdiction." *Dov v. Nirestates, LLC*, 319 So. 3d 778, 780 (Fla. 3d DCA 2021) (internal citations and quotations omitted). "Affirmative relief" is "relief for which defendant might maintain an action independently of plaintiff's claim and on which he might proceed to recovery, although plaintiff abandoned his cause of action or failed to

establish it.” *Inter American Coal, S.A. v. SHE DDF2-FL2, LLC*, 255 So. 3d 432, 434 (Fla. 2018).

Here, Appellant sought affirmative relief in the trial court and, by doing so, waived any objection to service of process. Appellant filed two third-party claims against SKB on negligence theories that it alleges caused Appellant \$2,000,000 in damages. AIM’s App. at 150, 180. Appellant’s third-party claims are “affirmative relief” because even if AIM “abandoned [its] cause of action,” *Inter American Coal*, 255 So. 3d at 434, Appellant could proceed against SKB, not previously joined as a party before the third-party complaint, to recover damages they allege they suffered from SKB’s actions. Because Appellant’s third-party claim against SKB is based on transactions unrelated to the main complaint, it cannot be gainsaid that those claims are compulsory. *Carl Domino, Inc. v. Dixon*, 358 So. 3d 29, 35 (Fla. 4th DCA 2023); *Diplomat Properties Ltd. P’ship v. Tecnoglass, LLC*, 114 So. 3d 357, 362-63 (Fla. 4th DCA 2013) (the language of Florida Rule of Civil Procedure 1.180 governing third party practice is not mandatory. “[A] party may refrain from impleading a third party defendant and assert his claim in an independent action if he so prefers.”).

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Even if Appellant's counterclaims against AIM are compulsory counterclaims and not subject to the affirmative relief rule, *Berne v. Beznos*, 819 So. 2d 235, 238 n.1 (Fla. 3d DCA 2002), Appellant's third-party claim against SKB is not compulsory. Compulsory third-party claims are nonexistent under the Florida Rules of Civil Procedure. *Diplomat Props. Ltd.*, 114 So. 3d at 362. Appellant's third-party malpractice claim against SKB is not a counterclaim, permissive, compulsory, or otherwise because AIM is the only plaintiff below and SKB was not a party below until Appellant invoked the trial court's jurisdiction by filing its third-party claim. AIM's App. at 177-80; Fla R. Civ. P. 1.170(a), (b) ("A pleading must state as a counterclaim any claim which at the time of serving the pleading the pleader has against any *opposing party...*," & "A pleading may state as a counterclaim any claim against *an opposing party...*") (emphasis added); Fla. R. Civ. P. 1.180(a) ("a defendant may have a summons and complaint served on a person *not a party to the action...*") (emphasis added).

Appellant could have, but chose not to, file a new action against SKB. Appellant's voluntary decision to seek affirmative relief and bring its claims against SKB in the action pending in the trial {00752154}

court waived any objection it had to AIM's service of process because by doing so it submitted itself to the trial court's jurisdiction even if jurisdiction against it were not properly invoked because of service defect. Appellant mooted this appeal—centered on Appellant's objection to service of process—by Appellant filing its third-party claims against SKB, when it voluntarily invoked the trial court's jurisdiction that it now seeks to avoid through this appeal.

II. APPELLANT FAILED TO PRESERVE ANY SERVICE ISSUE BECAUSE ITS OBJECTION TO SERVICE RAISED IN THE TRIAL COURT IS BASED ON THE WRONG VERSION OF THE SERVICE STATUTE.

Appellant did not preserve its appellate arguments because it did not raise them before the trial court. Appellant argued to the trial court that the 2023 version of section 48.101 applied and that under subsection four, the trial court needed to look at the 2023 version of section 48.061 to decide whether or not AIM served it properly. But as Appellant now concedes in its brief, the 2022 versions apply. Without arguing the correct statutes at play, Appellant failed to give the trial court an opportunity to rule on its service objection that it now raises for the first time on appeal and this Court should thus affirm.

“As a general rule, reviewing courts will not consider points raised for the first time on appeal.” *Saka v. Saka*, 831 So. 3d 709, 711 (Fla. 3d DCA 2002) (citing *Castor v. State*, 365 So. 2d 701, 703 (Fla. 1978)). This rule is in place to prevent delay and unnecessary appeals by requiring a party to raise an issue with the trial court and allow that court to first correct any error. *Id.* “[A]n appellate court must confine the parties litigant to the points raised and determined in the court below, and must not permit the presentation of points, or objections for the first time in the appellate court, when the same might have been cured or obviated by amendment, if attention had been called to them in the trial court.” *Id.*

“In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.” *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 459 (Fla. 3d DCA 2023) (quoting *Tillman v. State*, 471 So. 2d 32, 35 (Fla.1985)).

Here, Appellant argues that the trial court erred by not ensuring that service was proper under the 2022 versions of {00752154}

sections 48.061 and 48.062. Initial Br. 7-10, 7 n.2. Appellant never made this specific legal argument to the trial court. At the hearing, Appellant only argued that section 48.101(4) (2023) requires that service on a dissolved limited liability partnership must be done according to section 48.061(2)(a) (2023). App. at 267:11-68:21. Those subsections were not in effect when Appellant was served with the process it is now challenging.

The service provisions now in effect are materially different from the statute in effect when service was done in 2022. The 2023 versions of sections 48.101 and 48.061 address service on limited liability partnerships and dissolved limited liability partnerships for the first time. Section 48.101 (2022) has no subsections and section 48.061 (2022) does not have a subsection (2)(a). Appellant never raised the relevant law before the trial court that it now argues compel reversal here. That preservation failure requires that this Court affirm the trial court's order denying Appellant's motion to quash.

III. THE EVIDENCE BEFORE THE TRIAL COURT WAS THAT AIM SERVED APPELLANT AT ITS REGISTERED AGENT'S OFFICE; APPELLANT PRESENTED NO EVIDENCE TO CONTRADICT AIM'S EVIDENCE.

The trial court correctly denied Appellant's motion to quash because AIM presented evidence at the hearing that it served Appellant's registered agent.

A return of service that is regular on its face is presumed valid unless the defendant presents clear and convincing evidence to the contrary. *Bennett v. Christina Bank & Tr. Co.*, 50 So. 3d 43, 45 (Fla. 3d DCA 2010) (citations omitted). If the defendant shows that the return of service is defective, the plaintiff then has the burden to prove that service was proper. *Id.* at 46 (citation omitted). Neither affidavits nor counsel's argument substitute for admissible evidence. *Linville v. Home Sav. of Am., FSB*, 629 So. 2d 295, 296 (Fla. 4th DCA 1993) (citation omitted). At the evidentiary hearing below, Appellant presented no evidence at all. App. at 267.

Here, Mr. Rubi testified that he went to Appellant's registered agent's address between ten a.m. and twelve p.m. and asked for Gary Nader, who was the registered agent. App. at 259:20-60:1; App. at 264:24-65:1. The receptionist said that Gary Nader was unavailable. App. at 260:2-3. Mr. Rubi then asked to speak to Gary

Nader's right-hand man. App. at 260:4-5. The receptionist called out Gary. Nader's personal assistant. App. at 260:5-12. Mr. Rubi explained to her that he had a complaint to serve on Gary Nader for Appellant and Gary Nader's personal assistant agreed to accept service. App. at 260:5-15. Mr. Rubi was allowed to serve Gary Nader's employee as valid service. See § 48.062(1)³, (2)(c)⁴ Fla. Stat. (2022)

Appellant argues, without an evidentiary basis, that it is undisputed that Mr. Rubi did not serve its registered agent or its general partner. That representation is false. As Appellant clarified on cross-examination, Mr. Rubi served the registered agent. App. at 264:24-265:1.

Appellant relied on unverified, uncertified sunbiz records to show who it believes is the correct registered agent, the registered agent's address, and who its general partner is. But Appellant never

³ "A person attempting to serve process pursuant to this subsection may serve the process on an employee of the registered agent...even if the registered agent is a natural person and is temporarily absent from his or her office."

⁴ "If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service."

introduced the sunbiz records into evidence at the motion to quash hearing. See *C.D. v. Agency for Persons with Disabilities*, 95 So. 3d 383, 385 (Fla. 3d DCA 2012) (holding that an appellate court could not judicially notice records for the first time on appeal when the records were not introduced as evidence); *City of Miami v. Kho*, 290 So. 3d 942, 945 (Fla. 3d DCA 2019) (holding that a record that a trial court did not actually take judicial notice of was not proper evidence). Those records would not have been admissible even had Appellant tried to introduce them. See §§ 90.902(4), 90.955, Fla. Stat. (2023).

Nor has Appellant requested that this Court take judicial notice of those non-certified, unauthenticated sunbiz records. Appellant's appellate arguments about the appropriate entity or place to serve it is outside the record because it failed to introduce the evidence⁵ it now relies on to argue for reversal. The trial court correctly denied Appellant's motion to quash because the only evidence presented at the hearing showed that Mr. Rubi served Appellant's registered agent both by in person service and by agreed

⁵ AIM's counsel did reference the sunbiz records during the hearing but they were not introduced into evidence by any party. *Linville, FSB*, 629 So. 2d at 296.

on mail service (or as Appellant argues is required, Appellant's general partner's registered agent). The trial court's Order should be affirmed.

IV. AIM SERVED APPELLANT PROPERLY.

A. AIM's service on Appellant's general partner satisfied the statutory requirements for service of process.

AIM properly served Appellant because it served Appellant's general partner at their business address as required by section 48.061(2).

A court's task when interpreting a statute "is to give effect to the words that the legislature has employed in the statutory text." *Lab. Corp. of Am. v. Davis*, 339 So. 3d 318, 323 (Fla. 2022) (citing *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020)) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."). "The words of a statute are to be taken in their natural and ordinary signification and import; and if technical words are used, they are to be taken in a technical sense." *Lab. Corp.*, 339 So. 3d at 323 (quoting James Kent, *Commentaries on American Law* 432 (1826), quoted in Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 n.1 (2012)).

Textual interpretation looks to reach a fair reading of the text by “determining the application of [the] text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.” *Lab. Corp.*, 339 So. 3d at 323–24 (quoting *Ham*, 308 So. 3d at 947). A fair reading is reached by looking at context to figure out a word’s meaning. *Lab. Corp.*, 339 So. 3d at 324 (citing *Deal v. United States*, 508 U.S. 129, 132 (1993)). Context—the primary way to determine a word’s meaning—requires courts to consider “the entire text, in view of its structure and of the physical and logical relation of its many parts.” *Lab. Corp.*, 339 So. 3d at 324 (quoting Scalia & Garner, *Reading Law* at 167).

Under section 48.061(2), Florida Statutes (2022), “[p]rocess *against* a domestic limited partnership may be served on any general partner or on the agent for service of process....” (Emphasis added). Thus, under a plain reading of section 48.061(2), a party

serving a limited partnership⁶ could serve a general partner or the registered agent.

Here, Appellant does not dispute that AIM served Appellant's general partner at its principal address. Appellant, however argues that AIM did not comply with section 48.062 (2022), which Appellant argues governs process *on* limited liability companies. But section 48.062 is only applicable for process "*against* a limited liability company." AIM's service was against Appellant and not against its general partner, a limited liability company.

"Against" is defined as "in opposition to or hostility to," "not in conformity with," "in competition with," "as a basis for disapproval of," "compared or contrasted with," "in preparation or provision for," "in the direction of and into contact with," "in contact with," "in a direction opposition to the motion or course of: counter to," "as a counterbalance to," "in exchange for," "as a charge on," and "before

⁶ Before the legislature enacted section 48.061 (2023), no specific provisions governed service on limited liability limited partnerships, such as Appellant.

the background of.” “Against.” Merriam-Webster.com Dictionary, Merriam-Webster.⁷

These definitions could not be plugged into section 48.062 and be consistent with AIM's service on Appellant's general partner. Instead, AIM's service of process against Appellant was properly made on Appellant's general partner.

This interpretation is bolstered by the legislature's amendments to section 48.062. The new version now says that a “limited liability company may be served with process *required or authorized by law* by service on its registered agent....” § 48.062(2), Fla. Stat. (2023). So, with these amendments, any process “authorized by law,” such as service on a limited liability limited partnership's general partner after first attempting service on the registered agent, § 48.061(3)(a)2, Fla. Stat. (2023), should be done on the registered agent. Before the statute was amended, only process *against* an LLC had to be served on the registered agent. AIM's complaint and thus AIM's process was against Appellant and

⁷ <https://www.merriam-webster.com/dictionary/against>. Accessed 25 Oct. 2023.

not against its general partner. Service on the general partner was proper.

B. A person being served cannot create service defects by obstructing service efforts by refusing to give their name to the process server.

The requirement to serve a summons on a defendant is to give proper notice to the defendant that it must answer the complaint. *Klosenski v. Flaherty*, 116 So. 2d 767, 768 (Fla. 1959) (citation omitted). That notice vests the court with jurisdiction. *Id.* (“it is the service of the writ, and not the sheriff’s return, which gives the court jurisdiction over the defendant.”). The return of service is just evidence allowing the judge to determine that it has acquired jurisdiction. *Id.* At bottom, a court has jurisdiction over a defendant validly served. *Id.* at 769. But without a facially valid return of service or evidence of proper service a court cannot proceed with the cause. *Id.*

Section 48.21, Florida Statutes (2022), requires that returns of service list the date and time the process server received the summons, the date and time of service, the manner of service, and the name of the person served. “The word ‘person’ includes individuals, children, firms, associations, joint adventures,

partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. § 1.01(3), Fla. Stat. (2022). In contradistinction, Chapter 48 specifically references “natural persons” when discussing individuals. *See, e.g.*, § 48.021(2)(a), Fla. Stat. (2022); § 48.091(4), Fla. Stat. (2022).

Here, AIM’s return of service lists the name of the person served; Appellant. *See* App. at 4. The return also has extra information—that Gary Nader’s personal assistant refused to give his name and Mr. Rubi could not name him. That does not invalidate the return because section 48.21 does not require the return to list the natural person served, only the person served, in this case Appellant.⁸

Appellant does not argue how the return of service is invalid beyond citation to a case finding that a “John Doe” return of service was facially invalid. Initial Br. 14 (citing *Carus v. Cove at Isles at*

⁸ If *arguendo* the Court finds that AIM’s return of service is defective, the Court should, at the very least remand so that AIM can amend the return to name the individual served, Conrado de la Torre, as subsequent investigation disclosed. *See* § 48.21(2) (“the return is amendable to state the facts.... On amendment, service is as effective as if the return had originally stated the omitted facts....”).

Bayshore Homeowners Assoc., 354 So. 3d 1111, 1114 (Fla. 3d DCA 2022)). That case does not compel the same result here because in *Carus* the service was on a natural person, while, here, the person served was a limited liability limited partnership.⁹ That partnership is a person under Florida law and is listed in AIM's return of service.

A finding that AIM's return of service is invalid would bless this professional litigator's¹⁰, astute at gaming the system, attempts to avoid service. See App. at 260, 262. Cases are legion finding service is proper when the served party is evading service. See

⁹ *But see York Communications, Inc. v. The Furst Grp., Inc.*, 724 So. 2d 678, 679 (Fla. 4th DCA 1999). This case is distinguishable from *York* because service here was on the entity person, while service in *York* was on the registered agent's employee without any evidence that the registered agent was absent. The service issue in *York* was not that the return listed a John Doe as the person served.

¹⁰ See, e.g., Cases 3D16-1803, *Miami Dade College v. Nader+Museu I, LLLP*; 3D17-149, *Nader+Museu I, LLLP v. Miami Dade College*; 3D18-1631, *Nader+Museu I, LLLP v. Miami Dade College*; 3D19-1427, *Nader+Museu I, LLLP v. Miami Dade College*; 3D20-663, *Miami Dade College v. Nader+Museu I, LLLP*; 3D20-1014, *Miami Dade College v. Nader+Museu I, LLLP*; 3D21-1440, *Miami Dade College v. Nader+Museu I, LLLP*; 18-40723-CA-01, *Miami Dade College v. Nader+Museu I, LLLP*; 16-20317-CA-01, *Nader+Museu I, LLLP v. Miami Dade College*; 16-18355-CA-01, *Nader+Museu I, LLP v. Miami Dade College*; 16-11270-CA-01, *Lascelle v. Nader*; 13-39757-CA-01, *Martinez Celaya Inc. v. Nader*. All cases involve Appellant, its principal Gary Nader, or Nader's business, Gary Nader Corporation, or some combination of the three.

Becker v. Becker, 343 So. 3d 153, 155 (Fla. 3d DCA 2022) (evading service); *Palamara v. World Class Yacht, Inc.*, 824 So. 2d 194, 194-95 (Fla. 4th DCA 2002) (running away from process server); *Dowd Shipping v. Lee*, 354 So. 2d 1252, 1252 (Fla. 4th DCA 1978) (locked gate); *Lieberman v. Commercial Natl. Bank of Broward Cty.*, 256 So. 2d 63, 63-64 (Fla. 4th DCA 1971) (running into house to avoid process server). In all these cases, dropped service or service by the only alternative practicable means under the circumstances caused by the person served's evasive conduct, the courts found service was proper.

Allowing a party being served to avoid service by simply refusing to give the process server their name will encourage the type of gamesmanship that is the hallmark of this appeal. Any natural person being served could merely refuse to give or confirm their name to the process server if such evasion rendered a return of service invalid. Any entity could instruct its registered agent and employees to always refuse to give their names to process servers frustrating a plaintiff's ability to bring them into court. Such unprincipled behavior, if it rendered service invalid, would frustrate Floridian's access to courts, and could lead to process servers {00752154}

responding by inventing or guessing names so that returns will pass muster.

For example, in this case had Mr. Rubi not honestly included in the return that Gary Nader's personal assistant refused to give his name, the return of service would be facially valid because John Doe is a real person. Alison Leigh Cowan, *Meet John Doe. No, really*, N.Y. Times, July 29, 2009.¹¹¹² The Court should not encourage the facilitation of evading service of process by anyone who simply and cunningly withholds their name.

This case, where the person who ultimately needed notice was fully aware of the lawsuit, reinforces why this Court should not permit service gamesmanship. Appellant does not argue that it did not have notice about the lawsuit. Gary Nader, the ultimate individual behind Appellant, its general partner, and sole

¹¹ <https://archive.nytimes.com/cityroom.blogs.nytimes.com/2009/07/29/a-name-only-a-lawyer-could-love/> (last accessed Oct. 26, 2023).

¹² Ironically, the fictitious moniker "John Doe" is routinely used in cases where an individual's true name is known but privacy concerns make it desirable to deliberately conceal the individual's true identity. *See, e.g., Doe v. Hillsborough Cnty. Hosp. Auth.*, 816 So. 2d 262, 262 (Fla. 2d DCA 2002) (fictitious name John Doe used to conceal AIDS patient's identity).

shareholder of Gary Nader Corporation was fully aware of the lawsuit. Appellants moved to quash service the day before Gary Nader's response to the complaint was due. *See App.* at 7, 29. Gary Nader and Gary Nader Corporation are not challenging service on appeal because they agreed to, and were, served by mail in addition to being served by the process server. Gary Nader, as the only individual directing any activities relating to Appellant, has no basis to claim ignorance of this action and is erroneously attempting to exploit a hyper-technicality to find a lacuna to frustrate AIM's claims that, in effect, are against him.

Even if Appellant were not a party below, it still would be treated as a party for material purposes. *Lewis v. Nical of Palm Beach, Inc.*, 959 So. 2d 745, 749 (Fla. 4th DCA 2007) (injunction); *Zikofsky v. Mktg. 10, Inc.*, 904 So. 2d 520, 526 (Fla. 4th DCA 2005) (collateral estoppel); *Visoly v. Sec. Pac. Credit Corp.*, 768 So. 2d 482, 489 (Fla. 3d DCA 200) (attorney's fees). "Parties include, not only those whose names appear upon the record, but all others who participate in the litigation by employing counsel, or by contributing towards the expenses thereof, or who, in any manner, have such control thereof as to be entitled to direct the course of [the] {00752154}

proceedings....” *Visoly*, 768 So. 2d at 489 (quoting *Largo v. Blanco*, 521 So. 2d 299, 300 (Fla. 3d DCA 1988)). And if Gary Nader was not a party below, he still would be a “party” as understood in Florida jurisprudence because he was the guiding hand behind the litigation for which he hired SKB to undertake and he was the leading object of such litigation. *Al Booth’s, Inc. v. Boyd-Scarp Enterprises, Inc.*, 518 So. 2d 422, 423-24 (Fla. 5th DCA 1988) (an oral guarantee contract providing a direct benefit to the guarantor is a direct contract between the obligee and the guarantor and is not a guarantee because the guarantor is the “leading object” of the guarantee, recognizing substance over form).

Here, Appellant is an insolvent entity. *Miami Dade Coll. v. Nader + Museu I, LLLP*, 3D20-1014, 2023 WL 6852277, at *2 (Fla. 3d DCA Oct. 18, 2023) (holding that not offsetting judgments where Nader+Museu, the Appellant here, is insolvent and at the same time was seeking to execute on a judgment against the same party would create an absurd result). Because Appellant is insolvent and has been inactive for years, App. at 73, AIM is seeking to pierce its corporate veil and to hold Gary Nader responsible for Appellant’s debts. Gary Nader is trying to keep Appellant out of this case to {00752154}

prevent that possibility. This Court should not reward Appellant's and Gary Nader's manipulation of the court system and find that AIM's service and return are proper and valid and that the trial court properly denied Appellant's motion.

CONCLUSION

For all these reasons, the Court should affirm the trial court's Order denying Appellant's motion to quash.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed and served via the Florida Courts E-Filing Portal on October 31, 2023, to all counsel of record, including David Winker, dwinker@dwrlc.com.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitations set forth in Rules 9.045 and 9.210 of the Florida Rules of Appellate Procedure. This Answer Brief is in 14-point Bookman Old Style Font and does not exceed 13,000 words.

By: /s/ Yosef Kudan