

IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
FOURTH DISTRICT

CASE NO: 4D23-1793

Lower Court Case No: 2016CA1353

MEDALIST BUILDING GROUP, LLC, a
Florida Limited Liability Company, JEREMY
D. LEMASTER and JESSICA M. LEMASTER,
his wife, PALM CITY SUNSET, LLC, a Florida
Limited Liability Company, MEDALIST HOMES
LLC, a Florida Limited Liability Company,

Appellants,

vs.

MARTIN COUNTY, FLORIDA,

Appellee.

**INITIAL BRIEF OF APPELLANTS
MEDALIST BUILDING GROUP, LLC, et al**

**ON APPEAL FROM THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 2016CA1353
HONORABLE ELIZABETH METZGER, CIRCUIT JUDGE**

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CERTIFICATE OF INTERESTED PERSONS

Counsel for Appellants certifies that the following individuals and entities, have or may have, an interest in the outcome of this case:

1. William Anderson, Jr. PA, Counsel for Plaintiffs
2. James Bowdish, Mediator
3. Honorable Barbara Bronis, Circuit Judge
4. Jessica Butler, Esq., Appellate Counsel for Defendant
5. P. Christine Deruelle, Esq., Counsel for Plaintiffs
6. Jeremy D. Lemaster
7. Jessica M. Lemaster
8. Carri Leninger, Esq., Appellate Counsel for Defendant
9. Martin County, FL
10. Medalist Bldg. Group, LLC, a Florida LLC
11. Medalist Homes LLC, a Florida LLC
12. Honorable Elizabeth Metzger, Circuit Judge
13. Palm City Sunset, LLC, a Florida LLC
14. Honorable William Roby, Circuit Judge
15. Honorable Gary Sweet, Circuit Judge
16. Richard L. Rosenbaum, Esq., Appellate Counsel for Plaintiffs
17. James Williams, Jr., Esq., Counsel for Defendant

18. Williams, Leininger & Cosby, PA., Counsel for Defendant
19. Philip Wiseberg, Esq., Counsel for Defendant

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PRELIMINARY STATEMENT

The following symbols, abbreviations and references will be utilized throughout this Initial Brief of Appellants:

The term “Appellants” shall refer to the Plaintiffs in the Circuit Court below, Medalist Building Group, LLC, Jeremy Lemaster, Jessica Lemaster, Palm City Sunset, LLC, and Medalist Homes, LLC.

The term “Appellee” shall refer to the Defendant in the Circuit Court below, Martin County, FL.

The Record in this appeal consists of one (1) volume of pleadings contained in pages 1-1548. References thereto shall be indicated by an "R" followed by the appropriate page number (R). Included in the Record is one transcript of proceedings conducted on June 19, 2023, contained in transcript pages 1-21. References to the trial transcript shall be indicated by a “T” followed by the appropriate page number (T).

All emphasis indicated have been supplied by Appellant unless otherwise specified herein.

STATEMENT OF ISSUES

- I. WHETHER THE TOTALITY OF THE CIRCUMSTANCES WARRANTED A CONTINUANCE OF TRIAL BASED UPON THE PLAINTIFFS' COUNSELS' MEDICAL CONDITIONS AND THE INJUSTICE CAUSED BY THE DENIAL OF THE CONTINUANCE?

- II. WHETHER THE TRIAL COURT ABUSED IT'S DISCRETION BY DENYING MOTIONS FOR CONTINUANCE OF TRIAL 13 DAYS AFTER PREDECESSOR COUNSEL WAS ALLOWED TO WITHDRAW BASED UPON EMERGENCY MEDICAL CONDITIONS?

- III. WHETHER THE TRIAL COURT REVERSIBLY ERRED IN FAILING TO APPLY THE *FLEMING* FACTORS AND REFUSING TO CONTINUE THE TRIAL BASED ON THE TOTALITY OF THE CIRCUMSTANCES?

STATEMENT OF THE CASE

On November 19, 2016, the Plaintiffs, Medalist Building Group, LLC (hereinafter referred to as “Medalist Building”), Jeremy Lemaster, Jessica Lemaster (hereinafter referred to as “Lemaster”), Palm City Sunset, LLC (hereinafter referred to as “Sunset”), and Medalist Homes, LLC (hereinafter referred to as “Medalist”) and collectively referred to as “Plaintiffs,” filed a multi-Count Complaint seeking declaratory relief and damages, alleging the Plaintiffs, a local home builder, his wife, and affiliated companies are owners of various parcels of real property in Martin County, FL. In this action, Plaintiffs claimed that they had been damaged by Defendant’s actions, including through the County’s misapplication and/or selective enforcement of the Martin County, Florida Land Development Code (hereinafter referred to as the “Code”) and regulations, negligence, and dissemination of incorrect property-related information upon which Plaintiffs relied, which either (1) prevented Plaintiffs from clearing or building on their properties, or (2) caused the cost of doing so to increase significantly.

Specifically, that Medalist was a residential building company that owed two parcels of property located at 1709 and 1739 SW Sunset Trail, Palm City, FL in Martin County, FL. A single family home was on the property; a parcel of real estate located at 1699 SW Sunset Trail, Palm

City, FL; that Sunset owned three parcels of property in Palm City, FL, each of which had a single family home owned by Sunset; the properties owned by Medalist, Lemaster and Sunset were collectively referred to as “Sunset Trail.” (R 42). Medalist also owned real property located in Stuart, FL (Schooner Oaks) and other properties located at Major Way and Tall Pines in Martin County, FL. (*Id*). Medalist also owned real property on Honey Terrace, Lemaster property located at 899 SW 34th Street, Palm City, FL, 11257 SW 34th Terrace, Palm City, FL, and 1135 SW 34th Terrace, Palm City, FL. The properties owned by Lemaster and Medalist were collectively referred as “The 34th Properties.” (R 43).

In Count I, the Plaintiffs sought declaratory relief wherein the Plaintiffs claimed that as a single family home owner, Sunset was exempted from obtaining “Land Clearing Permits” or submitting “Exotic Vegetation Clearing Plans” prior to removing exotic vegetation from the parcels on which existing homes are located. (R 57). In Count II, the Plaintiffs alleged gross negligence by the Defendant in several respects. In Count III, the Plaintiffs alleged detrimental reliance, claiming that after the Defendant issued a building permit for Schooner Oaks authorizing Medalist to begin building the home, Medalist could not have known the side and rear setbacks restrictions for the Schooner Oaks property since they were not recorded in

the Official Martin County Public Records. In reliance on the Schooner Oaks building permit, Medalist began working on the property, all of which later had to be demolished and redone at substantial cost and effort. (R 62). (R 40-91).

A Motion to Dismiss Plaintiffs' Complaint and to Strike Portions of Plaintiffs' Complaint was filed by Defendant, Martin County, FL. (R 92-99). Thereafter, the parties entered into an Agreed Order on the Defendant's Motion to Dismiss. (R 100-101).

An Amended Complaint was thereafter filed by the Plaintiffs. (R 101-156). The Defendant filed a Motion to Dismiss Plaintiffs' Amended Complaint and to strike portions of the Amended Complaint. (R 157-164). A Response was filed on behalf of the Plaintiffs. (R 165-168). A hearing was conducted on the Motion on May 11, 2017, and an Order entered thereafter granting the Motion. (R 169; 170-171).

A Second Amended Complaint followed. (R 172-226). The Second Amended Complaint alleged causes of action for declaratory relief (Count I) (R 189); negligence (Count II) (R 192); and detrimental reliance (Count III) (R 195). On June 6, 2017, the Defendant filed its Answer and Affirmative Defenses. (R 227-247). The Plaintiffs' filed a Reply. (R 248-250).

Discovery ensued. The Plaintiffs filed a Request for Production. (R 251-254). The Defendant filed a Response and Privileged Log. (R 269-272; 257-268). An Amended Response followed. (R 273-275). The Defendant likewise filed a Supplemental Privileged Log. (R 276-280).

On September 24, 2017, the Plaintiffs filed a Motion to Compel Production. (R 281-304). A hearing was conducted on November 9, 2017, and the Plaintiffs' Motion to Compel was granted in part and denied in part. (R 305).

The Plaintiffs' filed a Motion to Amended Second Amended Complaint and a proposed Third Amended Complaint. (R 306-336). A Notice of Withdrawal of the Motion to Amended Third Amended Complaint was subsequently withdrawn by the Plaintiffs. (R 339-340).

The Plaintiffs filed a Second Request for Production of Documents. The Defendant filed a Response to the Request and thereafter an Amended Response to Plaintiffs' Second Request for Production. (R 341-342; 343-344).

Thereafter, the Plaintiffs filed a Motion for Case Management Conference. (R 345-349). A Case Management Conference was conducted (R 350) and reset for the following week.

On April 23, 2018, another Case Management Conference was conducted. (R 355). The Court addressed the Plaintiffs' request for in camera inspection of documents listed on the Defendant's Privilege Log. (R 356-368). Various other scheduling matters were addressed.

On April 24, 2018, the Court entered its Order on Rule 1.200, Fla.R.Civ.P. Pre-Trial Procedure. (R 369-373). An Order was thereafter entered directing pre-trial procedure and setting a Jury Trial date. (R 374-381).

Discovery ensued with the Defendant serving Interrogatories on the Plaintiffs. (R 382; 383-387; 388-390; 391-392; 393-394; 395; 396; 397-398). The Plaintiffs filed a Motion to Compel Production and its Third Request for Production. (R 399-400; 401-404).

A hearing was conducted on May 23, 2018, on Plaintiffs' Request for an In-Camera Inspection of the alleged privileged materials the Defendant failed to produce. (R 405). Thereafter, Martin County filed its objections to the Subpoena *Duces Tecum* for Nicki Van Vonno. (R 406-407) and Shawn McCarthy (R 408-410). The Plaintiffs filed Answers to Interrogatories to Plaintiff, Jeremy Lemaster (R 411-415); Palm City Sunset LLC (R 416-422); Medalist Building Group LLC (R 423-431); and Medalist Homes LLC (R 432-436). The Plaintiffs replied to the Request for Production to Palm City

Sunset LLC (R 437-440); Jeremy Lemaster (R 441-443); Medalist Homes LLC (R 444-446); and Medalist Building Group, LLC (R 447-453). The Defendant filed it's Response to the Plaintiffs' Third Request for Production. (R 454-456).

A hearing was conducted on June 14, 2018, concerning the Plaintiffs' Motion to Compel Discovery. (R 457). Thereafter, an Order was entered on the Plaintiffs' Motion for In-Camera Inspection of Documents listed on Defendant's Privilege Log. (R 458; 460-461).

Thereafter, the Defendant filed it's Second Supplemental Response to Plaintiffs' Request for Production. (R 462-463). The Defendant's Supplemental Production in Response to Plaintiffs' Motion for In-Camera Review was also filed. (R 464-465).

An Agreed Order of Referral to Mediation was thereafter entered and the First Report of Mediator was filed. (R 468-469; 474-475).

Discovery continued with the Defendant filing a Second Request for Production to the Plaintiffs. (R 476-494; 495-513; 514-532; 533-551). The Defendant filed a Notice of Service of Second Set of Interrogatories Medalist Building; Jeremy Lemaster, Jessica Lemaster, Palm City Sunset LLC, and Medalist Homes. (R 533-551; 552-553-554-555; 556-557; 558-559; 560-561).

The Final Report of Mediator was likewise filed. (R 566-567). The Mediator indicated that mediation ended in impasse. (R 566-567).

The Parties filed a Joint Pre-Trial Statement. (R 572-591). Thereafter, the Defendant filed an Amended Trial Witness List. (R 592-595). The Plaintiffs filed their Answers to the Second Set of Interrogatories Propounded by the Defendant. (R 599).

On September 25, 2018, the Parties filed a Joint Motion to Reset Trial to January, 2019. (R 605-607). The Court entered an Order setting trial for the period commencing on October 8, 2018. (R 608-610). Pursuant to a joint request, docket call was reset to December 7, 2018. (R 611).

On October 31, 2018, the Defendant filed a Motion for Temporary Injunction through the conclusion of litigation. (R 646-683). The Plaintiffs filed a Response to the Defendant's Motion for Temporary Injunction. (R 687-692). The Plaintiffs' Motion to Dismiss Motion for Temporary Injunction was granted based upon lack of jurisdiction. (R 778-779).

On November 9, 2018, the Defendant filed a Motion for Summary Judgment. (R 693-764).

The Plaintiffs filed a Response to the Defendant's Motion for Summary Judgment and a Cross Motion for Partial Summary Judgment on Plaintiffs' Declaratory Relief Claims. (R 781-902).

On December 7, 2018, a Docket Call was conducted. The case was placed as backup # 2 for trial. (R 780). The Plaintiffs filed a Response to the Defendant's Motion for Summary Judgment and Cross Motion for Partial Summary Judgment together with the Affidavit of Jeremy Lemaster. (R 781-902; 903-964).

A hearing was conducted on December 20, 2018, and Defendant's Motion for Summary Judgment was granted in part. (R 965-966). The Plaintiffs' Motion for Summary Judgment was rescheduled.

On January 15, 2019, an Order was entered on Defendant's Motion for Summary Judgment and Plaintiffs' Cross Motion for Summary Judgment. The Honorable William Roby, Circuit Judge, denied Final Summary Judgment as to Counts I and II of Plaintiffs' Second Amended Complaint and granted Summary Judgment as to Count III – Detrimental Reliance. (R 970-973). The Defendant, Martin County, filed a Notice of Appeal of a Non-Final Order challenging the dismissal of Count III, the Detrimental Reliance Count. (R 974-979). The Order appealed denied sovereign immunity to Martin County.

Upon the filing of *Martin County, FL v. Medalist Building Group, LLC, et al*, Case No: 4D19-0376 by the County, the trial court entered a 90 day stay and continued the trial.

On March 25, 2019, the Fourth District Court, *sua sponte*, relinquished jurisdiction for entry of an Amended Order which made a specific determination as to whether Appellant was entitled to sovereign immunity as a matter of law.

Defendant, Martin County, filed a Motion for Clarification. (R 1006-1035). The Plaintiffs filed a Response. (R 1036-1066). After conducting a hearing, the Judge reserved ruling. (R 1067). Thereafter, the Court entered an Amended Order on Defendant's Motion for Summary Judgment and Plaintiffs' Cross Motion for Partial Summary Judgment. (R 1074-1080).

On March 13, 2020, the appellate court affirmed the trial court's Order, *per curiam*, and a Mandate issued. (R 1083-1084).

Following issuance of the Mandate, Martin County filed its Response in Opposition to Plaintiffs' Cross Motion for Partial Summary Judgment. (R 1085-1089). A hearing was conducted and ruling reserved. (R 1190).

On October 2, 2020, an Order denying Plaintiffs' Motion for Partial Summary Judgment was entered by the Honorable Gary Sweet, Circuit Judge. (R 1190).

Discovery was again conducted by both Parties. (R 1198-1201; 1202-1204; 1205-1228; 1229-1231; 1232-1233; 1234-1236; 1237-1238). Thereafter, a Notice of Lack of Prosecution was issued by the Court. (R

1239-1241). The Plaintiff, Medalist Building, filed its Notice for Jury Trial. (R 1242-1243). The Court entered an Order acknowledging good cause to avoid dismissal for lack of prosecution. (R 1244-1250).

On November 29, 2022, a Civil Case Management Plan was entered by the Court. (R 1251-1256). Subsequently, an Order Directing Pre-Trial Procedure and Setting Jury Trial was entered. (R 1257-1263). Following Requests for Admissions by both sides, a Notice of Trial Conflict was filed by the Defendant. (R 1284).

On February 3, 2023, an Order was entered requiring submission of Proposed Jury Instructions, Verdict Forms and Up-to-Date Pre-Trial Stipulation by the Honorable Elizabeth Metzger, Circuit Judge. (R 1297-1299). Thereafter, the Defendant again filed a Notice of Trial Conflict. (R 1305).

An Amended Pre-Trial Statement was filed by the Parties on February 9, 2023. (R 1327-1344).

A docket call was conducted on February 10, 2023. (R 1345). Thereafter, on March 7, 2023, Plaintiffs' counsel filed his Motion to Withdraw. (R 1354-1355). Plaintiffs' counsel, William Anderson, Jr., advised the Court that his cardiologist recommended that he no longer

engage in trial work due to his heart health condition, and advised the Court that the Plaintiffs had begun interviewing new counsel. (R 1354).

On March 22, 2023, Judge Metzger entered an Order setting the case for Jury Trial for the trial week commencing on June 19, 2023. (R 1356-1357). As a result of withdrawal of counsel Anderson, the Plaintiffs filed a Motion to Extend the Timeline to Produce Exhibit and Witness List. (1358-1359). Mr. Anderson's Motion to Withdraw was granted on April 21, 2023. (R 1360).

A week later, on April 28, 2023, Plaintiffs' counsel, P. Christine Deruelle, filed a Motion to Withdraw as Counsel. (R 1371-1373). Ms. Deruelle advised the Court that she had appeared earlier with co-counsel, Anderson, and further advised the Court that she had been diagnosed with cancer and had undergone one surgery in January, 2023, with another scheduled for April. (R 1372). She requested permission to withdraw as counsel and that the Plaintiffs be provided "at least 30 days in which to retain new counsel prior to proceeding further in this Action...". (R 1372-1373). A hearing was conducted on counsel's Motion to Withdraw, and an Order was entered on June 5, 2023, specifically stating:

"GRANTED insofar as Ms. Paullette Christine Deruelle shall be permitted to withdraw as counsel for Plaintiff in this matter. Until such time as new counsel appears on Plaintiffs' behalf in

this action, all further pleadings, motions, notices, correspondence, and other documents shall be served directly on Plaintiffs, who confirmation is as follows ...” (R 1377)

On June 13, 2023, a letter was forwarded to Jeremy Lemaster and his wife from Judge Metzger and defense counsel advising that the Medalist case had been set as # 1 for trial beginning on Monday, June 19, 2023. The letter was sent to Jeremy and Jessica Lemaster, as none of the Plaintiffs were, at that juncture, represented by counsel. (R 1385; 1386). The letter informed it’s recipients that all trial exhibits must be pre-marked and the Judge’s office provided with courtesy copies of proposed Jury Instructions and Verdict Forms.

On June 15, 2023, the Defendant, Martin County, FL, filed a Motion to Strike Claims from Count I of the Plaintiffs’ Second Amended Complaint and Motion to Take Judicial Notice. (R 1387-1463). The same date, the Defendant filed a Motion for Entry of Default Final Judgment. (R 1464-1471). The Defendant advised that the Plaintiffs, Jeremy Lemaster and Jessica Lemaster, were now *pro se* litigants and that the three companies, Medalist Building Group LLC, Palm City Sunset, LLC, and Medalist Homes, LLC, were unrepresented companies, justifying a Default Final Judgment. (R 1465).

On June 19, 2023, the case was called for Jury Trial. (R 1516). The proceedings thereafter were transcribed (T 1-21). The Court denied the Plaintiffs' repeated requests for a continuance so they could obtain counsel. The Court entered a Final Order of Dismissal on June 23, 2023. (R 1517-1518).

A Notice of Appeal was timely filed by the Plaintiffs. (R 1525-1527). This appeal timely ensues.

STATEMENT OF THE FACTS

A. Concise Statement of Facts

Plaintiffs, a local home builder, his wife, and affiliated companies are owners of various parcels of real property in Martin County, FL. In the action below, Plaintiffs claimed that they had been damaged by Defendant's actions, including through the County's misapplication and/or selective enforcement of the Martin County, Florida Land Development Code (hereinafter referred to as the "Code") and regulations, negligence, and dissemination of incorrect property-related information upon which Plaintiffs relied, which either (1) prevented Plaintiffs from clearing or building on their properties, or (2) caused the cost of doing so to increase significantly. (R 572-573).

B. Trial

This cause came on for trial before the Honorable Elizabeth Metzger, Circuit Judge, on June 19, 2023. (T 1-21). At that time, Jeremy Lemaster appeared unrepresented by counsel, but speaking for his three companies, his wife and himself. (T 3). The Court noted from the outset that this “is a very old case.” (T 3). The Court noted that no attorney had not entered an appearance on behalf of corporate entities, “so as a matter of law they cannot proceed.” (T 3). The Court stated “Mr. Lemaster, I know you’ve been given many, many opportunities¹ to engage an attorney to represent those corporate entities.” Thus the Court refused to allow Lemaster to speak on behalf of the corporate entities. (T 4). The Court advised that

“... the proper thing to do if we don’t have a corporate entity representative at trial is a dismissal with prejudice. That’s what happens.” (T 4).

Mr. Lemaster, speaking on behalf of all of the Plaintiffs, explained that although he had two attorneys representing the corporations and individuals, due to the circumstances, he needed additional time to retain counsel. He had previously advised the Court that he was in the process of retaining counsel to replace those who had recently been allowed to

¹ Those “opportunities” were not elaborated on by the Court and are not reflected in the Record on Appeal.

withdraw because of medical matters. The Judge advised that once an attorney entered Notice of Appearance, she would entertain any appropriate motions. (T 6).

After Mr. Anderson withdrew, Ms. Deruelle had “some health issues” and advised that the Plaintiffs would be retaining new counsel who would enter a Notice of Appearance, but more time was needed. (T 6). Since a lawyer was not present on behalf of the corporate entities, and since none had entered a Notice of Appearance and requested a continuance, the Court entered an Order dismissing the case with prejudice, citing the fact that the case “is around seven years old...” (T 7). Addressing the individual Plaintiffs, the Court questioned Mr. Lemaster whether he was ready to proceed. Lemaster advised that he was not there to represent himself, had no desire to represent himself, and that they intended to retain counsel. He advised that he had another attorney in line to take over representation, Stephen McDonald, but that counsel had surgery and had a damaged vocal cord and without at least 30 days to prepare for trial, he could not put in an appearance. (T 8).

The Court noted that an email came to her Judicial Assistant indicating that Attorney McDonald might be entering a Notice of Appearance.

The Court allowed the Defendant's counsel to make a factual record. Counsel advised the Court that Ms. Deruelle was counsel of record in the case at the April 20th hearing and that Ms. Deruelle expected to file a Motion to Withdraw due to her illness. (T 9). Defense counsel advised that he heard nothing from any lawyer until June 7th, when he was contacted by Stephen McDonald. The Court recalled that name being mentioned to her at the hearing on the last counsel's Motion to Withdraw. (T 10). The Judge looked up Mr. McDonald on the Florida Bar website because she wasn't familiar with him. Defendant's counsel advised that Mr. McDonald called him on March 7th, and represented that he was going to "make an appearance." He advised the Defendant's counsel that he had a problem with his voice due to recent surgery and asked that a deposition scheduled by the Defendant prior to trial be postponed. The Defendant's counsel advised that he would not cancel the deposition and would not agree to a continuance of trial. (T 11).

According to Attorney Williams, Mr. McDonald was unaware that trial was scheduled for June 19th when he spoke to him and indicated that he probably would not be appearing under that circumstance. (T 11). Defense counsel advised that he and Mr. McDonald "had some back and forth" and on June 14th, Mr. McDonald indicated that he believed his client had found

another lawyer, Lou Lozeau. (T 11). However, Jeremy Lemaster was told that Mr. Lozeau was on vacation out of the country, returning June 29th, but would not enter an appearance unless the Defendant agreed to a continuance of the trial. Counsel advised that the Defendant could not agree. (T 11).

The Court reiterated its ruling with regards to the corporate entities, citing that “this case is one of the oldest in this division and it has been well known since Mr. Anderson indicated that he had some medical issues that would not allow him to try this case, that the corporate entities must be represented by Florida counsel.” (T 12). The Court noted that the case was set for trial and that if someone made an appearance, the Court would entertain a Motion for Continuance. That did not happen. No motion for continuance was filed. The Court dismissed the Plaintiff corporate entities with prejudice “for failure to be in a position to go forward in a properly noticed trial.” (T 13). The Judge asked Mr. Lemaster whether he was ready to pick a Jury. He advised that he was not, and again asked for a continuance. Lemaster contended that the Court did not allow him to speak. (T 14). Mr. Lemaster moved for a continuance under the “circumstances of our previous attorney’s health issues and withdrawal that you have allowed him to get out of the case and my third attorney that had

surgery...” (T 15). The fourth attorney that was willing to take the case was out of the country, but needed a continuance so that attorney would have time to review the whole file.

Defendant, Martin County, objected to a continuance. Defense counsel argued that:

“We’ve been litigating this case for over six and a half years now. It’s been set for trial on five different occasions. There has been extensive discovery on both sides.” (T 16).

Defense counsel alleged that Martin County would be prejudiced in that they spent “an extraordinary amount of money and time on this issue and had an extraordinary amount of disruption in their office, causing him to “stringently object to a continuance at this time.” (T 16).

The Court noted the age of the case and found that no good cause was shown on the Plaintiffs’ side for another continuance. The Court found that ordering a continuance would be prejudicial to the Defendant and “not appropriate under the circumstances.” (T 18). The Court denied the continuance and asked whether Mr. Lemaster was ready to pick a Jury as a *pro se* party. (T 18). Lemaster indicated he was not. He again asked for a continuance until he and the other Plaintiffs could obtain counsel, which was denied. The Court entered an Order dismissing the case with prejudice. (T 19).

SUMMARY OF ARGUMENT

Although a ruling on a Motion for Continuance is treated with a relatively high degree of deference, the Court accords even greater deterrence to continuance Orders than is required of other discretionary rulings. In this case, the Plaintiffs had the same two counsel for over six years of these proceedings. As trial approached, lead counsel was forced to withdraw because of a heart condition and then, thirteen days prior to trial, co-counsel was allowed to withdraw based upon emergency medical conditions. In the thirteen days, the Plaintiffs contacted at least two attorneys who seemed willing to accept the case, but would not when informed that the County objected and that the Court would not rule on a continuance motion until a Notice of Appearance had been filed. One local attorney was also consulted but was unavailable during the scheduled trial period because of a vacation.

In this case, the Judge abused her discretion by denying the Motion for Continuance. The Court seemingly gave special consideration to “the age of the case” rather than the factors required, including: (1) whether the Movant suffers injustice from denial of the motion; (2) whether the underlying cause for the motion was unforeseen by the Movant and

whether the motion is based on dilatory tactics; and (3) whether prejudice and injustice will befall the opposing party if the motion is granted.

These factors, oftentimes termed the *Fleming*² factors, are easily met by the Plaintiffs' situation. The denial of the continuance created a huge injustice for the Plaintiffs. They expended considerable time, energy, and monies in pursuing their claims, attempting mediation, conducting discovery, and preparing for trial. On the contrary, the County suffered no real injustice, merely an inconvenience. Second, Lemaster's request for a continuance was unforeseeable and not the result of dilatory practices. None of the Plaintiffs had any way of knowing of their counsels' medical situations, nor knowing that each attorney even had a medical situation. As soon as Ms. Deruelle was permitted to withdraw, Jeremy Lemaster used his best efforts to obtain counsel, and in no way engaged in dilatory practices. Finally, other than inconvenience, there is no real evidence that the County would suffer prejudice as a result of a continuance. As a result, the Order of Dismissal at issue should be reversed and this matter remanded for trial.

² *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998).

ARGUMENTS

I. **CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES, THE TRIAL COURT ABUSED IT'S DISCRETION IN DENYING THE PLAINTIFFS' MOTIONS FOR CONTINUANCE OF TRIAL**

Standard of Review

A motion for continuance is addressed to the sound judicial discretion of the trial court and absent abuse of that discretion the court's decision will not be reversed on appeal." *Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991). But "when undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error." *Id.*

The denial of a motion to continue is reviewed under the abuse of discretion standard. *SSJ Mercy Health Sys., Inc. v. Posey*, 756 So. 2d 177, 179 (Fla. 4th DCA 2000). "[W]hen undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error." *Id.* (quoting *Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991)).

"A ruling on a Motion for Continuance is treated with a relatively high degree of deference, even among other kinds of discretionary actions." See *Shanz Teaching Hospital & Clinics, Inc v. Dunn*, 977 So.2d 594, 599 (Fla. 1st DCA 2007). Accordingly, the Court accords "even greater

deterrence to continuance Orders than is required of other discretionary rulings.” See *Id.* In light of the highly deferential standard, “a reversal for failure to grant a Motion for Continuance would be justified only in very rare situations.” *Id.*

“The trial court’s determination of a Motion for Continuance is within [its] discretion and the Court’s ruling thereon will not be disturbed ‘unless a palpable abuse of discretion is demonstrated.’” *Garner v. Langford*, 55 So.3d 711, 714 (Fla. 1st DCA 2011); *Robinson v. State*, 561 So.2d 419, 420 (Fla. 1st DCA 1990) quoting *Smith v. State*, 525 So.2d 477, 479 (Fla. 1st DCA 1988). A decision to grant or deny a Motion for Continuance is a matter resting within the sound discretion of the Court.

As set forth in *Garner*:

Courts also recognize, however, “cases in which the appellate court will have no alternative but to reverse, because the injustice caused by the denial of the motion outweighs the judicial policy of deferring to the trial judge.” *Id.*; *Silverman v. Millner*, 514 So.2d 77 (Fla. 3rd DCA 1987) [acknowledging that “[s]pecial circumstances sometimes exist ... in which the denial of a Motion for Continuance creates and injustice for the Movant.” An appellate court considers certain factors in determining whether a trial court has abused its discretion by denying a Motion to Continue.

The appellate court reviews the trial court's denial of a Motion for Continuance of Trial for an abuse of discretion. *Reese v. Reese*, 2023 Fla. App. LEXIS 3241 (6th Cir. 2023), citing *Mejias v. Shelborne Ocean Beach Hotel Condominium, Inc.*, 78 So.3d 17 (Fla. 3rd DCA 2011).

Argument

The Court considers certain factors in making that determination, including: 1) whether the movant suffers injustice from denial of the motion; 2) whether the underlying cause for the motion was unforeseen by the movant and whether the motion is based on dilatory tactics; and 3) whether prejudice and injustice will befall the opposing party if the motion is granted. *Cole v. Heritage Cmty., Inc.*, 838 So. 2d 1237 (Fla. 5th DCA 2003); *Florida Fruit & Vegetable Ass'n v. Wells*, 755 So. 2d 828 (Fla. 5th DCA 2000); see also *Peiman v. Peiman*, 829 So. 2d 307 (Fla. 5th DCA 2002).

At bar, the Circuit Judge abused it's discretion in refusing to allow a continuance of trial to enable the Plaintiffs to obtain counsel to represent them following emergency medical circumstances. Rather than analyzing the totality of the circumstances, the Court focused on one primary factor; the age of the case. Yet, the Court failed to properly assess this factor which poisoned "the totality of the circumstances" analysis that the Court

was required to apply in order to rule on the continuance motions. At no time did the Plaintiffs act in a dilatory manner, always wanting to have their day in court so they could prevail.

Although trial courts are endowed with rather broad discretion in deciding whether to grant or deny a motion for continuance, *Onett v. Ahola*, 780 So. 2d 979 (Fla. 5th DCA 2001), the exercise of that discretion is not absolute. *Id.* [Emphasis added] The appellate court is charged with the task of reviewing a court's decision on a continuance motion and setting it aside if it determines the trial court abused its discretion. *Id.*

Courts have established that the following facts should be considered in determining whether or not a motion to continue should be granted: (1) whether the denial of a continuance creates an injustice for the movant; (2) whether the cause for the request was unforeseeable by the movant and not for delay; and (3) whether the opposing party would suffer prejudice or inconvenience as a result of the continuance. *Posey*, 756 So. 2d at 179.

All this said, the record shows that both of the Plaintiffs' counsel were stricken with a life-threatening medical condition that necessitated their withdrawal immediately prior to trial. Ms. Deruelle's withdrawal was a mere thirteen days before trial. Lemaster's inability to obtain counsel "at the eleventh hour" warranted a continuance. See *Silverman v. Millner*, 514 So.

2d 77 (Fla. 3d DCA 1987) (explaining that sudden and unforeseeable stroke of employer on the day before trial necessitated continuance); see generally Philip J. Padovano, Continuation, 5 Fla. Prac., Civil Practice § 15:9 (2016-2017 ed.) ("[T]here are situations in which a motion for continuance must be granted in order to avoid an injustice. For example, the trial court may be required to continue a trial if a party, a material witness or an attorney is unable to attend as a result of an illness or physical condition."). *Fla. Gas Transmission Co., LLC v. City of Tallahassee*, 230 So. 3d at 917-918.

As this court stated in *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998), factors to be considered in determining whether the trial court abused its discretion in denying a motion for continuance include whether the denial of the continuance creates an injustice for the movant; whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance.

Here, no pre-trial Motion for Continuance was filed in writing by the Plaintiffs under Rule 2.545(e), Florida Rules of General Practice and Judicial Administration. Instead, the continuance requests were made at

trial, and thus not governed by the Rule. Here, the requests for continuance were justified, if not required, in that the corporate entity Plaintiffs could not proceed without counsel and the individuals desired representation. The Plaintiffs initiated and pursued this matter a long time also, had expended monies for litigation and were looking forward to establishing their claims.

The core focus on the age of the case in support of the denial of the continuance requests was, simply put, incorrect. The major delays in this case were discovery conducted by both parties and the County's unliteral appeal of a non-final Order, which took over a year to complete. However, no one mentioned, and this Court did not consider that the majority of the pre-trial delay in the case was due to the Defendant. For example, over a year elapsed while Martin County, FL's unsuccessfully appealed an interlocutory Order. (R 974-979; 1083-1084). Further, the Defendant had filed two Notice of Conflicts indicating it's unavailability to proceed to trial on two occasions. The Plaintiffs filed none, although they had joined in at least two joint continuance requests. The Plaintiffs had complied with all Court Orders along the way, and had insured that timely Joint Pre-Trial Stipulations and Witness and Exhibit Lists were filed with the Court.

"[W]hen undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure

to grant a continuance is reversible error." *Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991). However, "cases involving illness of counsel or a party do not mandate reversal in all circumstances." *Krock v. Rozinsky*, 78 So. 3d 38, 41 (Fla. 4th DCA 2012). Instead, additional specific factors should be considered, including: "(1) the length of the requested continuance; (2) whether the counsel who becomes unavailable for trial has associates adequately prepared to try the case; (3) whether other continuances have been requested and granted; (4) the inconvenience to all involved in the trial; and (5) any other unique circumstances." *Myers v. Siegel*, 920 So. 2d 1241, 1243 (Fla. 5th DCA 2006). *Belkova v. Deer Run Prop. Owners' Ass'n*, 2023 Fla. App. LEXIS 5933, *11-12 (Fla. 4th DCA 2023).

Extraordinary circumstances prompted the Plaintiffs' counsel to withdraw unexpectedly for medical reasons in this case. Their first counsel, Anderson, had been lead counsel throughout the proceedings from the filing of the Complaint through the Amended Complaint and Second Amended Complaint, through the bulk of discovery, and preparation for trial. Attorney Anderson was forced to move to withdraw after his cardiologist recommended he no longer engage in trial practice because of a heart condition which became known in March, 2023. (R 1354-1355).

Anderson was permitted to withdraw nearly a month later, on April 21, 2023. (R 1360). His associate, who was not lead attorney in the case, assumed the role as sole counsel for the three corporate entities and two individuals after Anderson's withdrawal and quickly learned that she too had emergency health problems, having been diagnosed with cancer and already undergoing one surgery. A week after Anderson's withdrawal, P. Christine Deruelle filed her Motion to Withdraw, which was quickly granted. (R 1371-1373; 1376; 1377-1378; 1379-1380). Counsel was permitted to withdraw thirteen days before trial, and it was requested that the Plaintiffs be allowed 30 days or more to retain substitute counsel. (r 1372-1373).

Thereafter, it is not as if the Plaintiffs did not continue their quest to obtain trial counsel. First, an experienced attorney, Stephen McDonald, was contacted. Attorney McDonald reached out to opposing counsel on more than one occasion to discuss taking over the Plaintiffs' representation. Attorney McDonald also contacted the Court's chambers and the Judge even researched his profile. After speaking to Defendant's counsel, without an agreement of a brief continuance to get "up to speed," counsel could not take on the case, especially in light of his own medical problems. That did not stop the Plaintiffs from still attempting to arrange for a new counsel to try the case. Next, a local lawyer was contacted to try the

case, but apparently that lawyer was out town and without a continuance, could not enter a Notice of Appearance at such a late date.

In considering the “totality of the circumstances,” the Court stated that the Defendant would be prejudiced by a continuance and that a Jury had already been summoned for the June 19th docket. That statement was incorrect. The Defendant claimed prejudice would result from a continuance of trial, but any prejudice was speculative, at best, and non-existent otherwise. The Appellants contend the prejudice to the County is the ordinary “prejudice” of any case when a matter cannot be resolved as scheduled. The Defendant’s attorneys, representing Martin County, were not. The County was “not going anywhere” and would be in the same position to try the case after a brief continuance so the Plaintiffs could obtain counsel. Their witnesses and exhibits would not be lost or unavailable. Simply put, there would be no prejudice to the County if a continuance was granted to allow the Plaintiffs to retain counsel and counsel to be prepared for trial. See *Courtney v. Central Trust Co.*, 112 Fla. 298, 150 So. 276 (1933) (holding it was an abuse of discretion to deny a motion for continuance on grounds the attorney could not adequately prepare for trial due to his wife's illness); *Quinton v. Horvath*, 690 So. 2d 755 (Fla. 3d DCA 1997) (granting certiorari relief where lead attorney was

taken seriously ill shortly before trial was scheduled, trial was continued, then lead attorney's associate was taken seriously ill shortly before the rescheduled trial date, both attorneys were precluded from participating in the litigation, and the court denied the party's motion for another continuance, in light of complexity of litigation and amount of preparation required); *Thompson v. General Motors Corp.*, 439 So. 2d 1012 (Fla. 2d DCA 1983) (quashing order denying continuance of trial after two prior postponements, on the grounds of the plaintiff's counsel's sudden ill health, which became critical about two weeks prior to trial, where a new attorney could not possibly be prepared by the trial date). Reversal and remand for trial is warranted.

A. The Denial of the Continuance Created an Injustice for the Plaintiffs

The first factor considered under the *Fleming* analysis is “whether the denial of the continuance creates an injustice for the Movant. 710 So.2d at 605. An injustice can be found when an unfavorable outcome appears to be due to the Litigant’s limited litigation skill and where the Litigant was unrepresented through no fault of his own. See *Id.* at 604.

Here, the denial of the Plaintiffs’ request for a continuance created the utmost injustice – dismissal. After spending a great deal of time and

energy, let alone tens of thousands of dollars, the Plaintiffs lost their right to trial because of their attorneys' illnesses. The equity tilts towards the Appellants. The Defendant was represented by counsel.

B. The Request for Continuance Was Unforeseeable and Not the Result of Dilatory Practices

The second factor considered under the *Fleming* analysis is “whether the cause of the request for continuance was unforeseeable by the Movant and not the result of dilatory practices.” 710 So.2d at 603. While it is true that the Plaintiffs knew they would need an attorney when Anderson withdrew, they thought that Ms. Deruelle would continue on since she too had signed on the pleadings and been involved since the inception of the case. When she became ill and was allowed to withdraw thirteen days before the trial, the Plaintiffs were not dilatory as the Record shows that they were trying to seek new counsel.

The law is well settled that a party is not dilatory when he tries but is unable to secure counsel within thirty days. See *Jeancharles v. Dept. of Revenue*, 273 So.3d 1006, 1011 (Fla. 4th DCA 2019); *Pelman v. Pelman*, 829 So.2d 307 (Fla. 5th DCA 2002). *Pelman* is similar to the situation at bar. In *Pelman*, the husband's attorney withdrew one month before the dissolution trial. The husband did not move for a continuance until the eve

of trial. *Id.* at 309. In his Motion for Continuance, the Mr. Pelman explained that he had attempted to retain three attorneys, one of whom declined representation just three days before the hearing and another who agreed to represent him but needed sixty days to prepare. *Id.* The husband's Motion for a 60 Day Continuance was denied. *Id.*

Analyzing the second *Fleming* factor, the Court in *Pelman* agreed that 30 days before trial, the husband knew that he needed an attorney; however, the Court found that he was not dilatory when he attempted, on three occasions, to hire an attorney. The Court in *Pelman* found that “the fact that one of the attorneys agreed to represent the former husband, but could not do so unless the case was continued, tends to demonstrate that the former husband was not requesting the continuance merely for delay.” *Jeancharles* at 1011.

Thus, the second prong of *Fleming* supports the Appellants' position.

C. There is no Evidence that the County Would Suffer Prejudice or Inconvenience as a Result of the Continuance

The third and final *Fleming* factor is “whether the opposing party would suffer prejudice or inconvenience as a result of a continuance.” 710 So.2d at 603.

Although the County argues that it would suffer prejudice and inconvenience, the courts have found that while it may be inconvenient and sometimes costly to appear for a hearing that is continued, finding the third *Fleming* factor is established where the Record did not suggest prejudice or injustice would have befallen the opposing party. *Jeancharles* at 1112.

The court routinely analyzes the three factors under the totality of the circumstances when considering a Motion for Continuance. See *Fleming v. Fleming*, 710 So.2d 601, 603 (Fla. 4th DCA 1998); *Hogan v. Aloia*, 257 So.3d 479, 482, 485 (Fla. 4th DCA 2018). Followed by *Yaris v. Hartley*, 128 So.3d 825, 828 (Fla. 4th DCA 2013).

The majority of cases finding that the trial court abused its discretion in denying a movant's motion for continuance either involve situations where the movant's attorney withdraws on the day of or a couple days before trial and a continuance is denied, or where counsel or a key witness becomes ill before trial preventing an adequate presentation of the case. See *Castellanos v. K-Mart Store*, 632 So. 2d 1057, 1058 (Fla. 3d DCA 1994)(holding that trial court abused its discretion in denying movant's motion for continuance after allowing movant's counsel to withdraw on the day of trial); *Jean*, 596 So. 2d at 1247; *Castle Club Corp. v. Liberty Intern., Inc.*, 598 So. 2d 263, 264 (Fla. 3d DCA 1992); Ziegler,

590 So. 2d at 1067; *Tsavaris*, 244 So. 2d at 452-53.
Fleming v. Fleming, 710 So. 2d 601, 603, (Fla. 4th DCA 1998).

In *Fleming*, although almost two months elapsed between the date Former Wife's attorney undertook representation of Former Wife and the final hearing date, the appellate court concluded that the trial court abused its discretion in denying Former Wife's motion for continuance based upon the unique circumstances of this case. The Court held:

We are mindful of the trial court's broad discretion in these matters and are loathe to interfere with such discretion, but the denial of Former Wife's motion for continuance created an injustice in this case. Accordingly, we reverse and remand for proceedings consistent with this opinion. *Id.* at 603-604

Fleming v. Fleming, 710 So. 2d 601 (Fla. 4th DCA 1998), sets forth factors we should consider in determining whether discretion has been abused. Those factors include "whether the denial of the continuance creates an injustice for the movant; whether the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance." *Id.* at 603.

Factors to be considered in determining whether the trial court abused its discretion in denying the motion for continuance include whether the denial of the continuance creates an injustice for the movant; whether

the cause of the request for continuance was unforeseeable by the movant and not the result of dilatory practices; and whether the opposing party would suffer any prejudice or inconvenience as a result of a continuance. *Fleming, Id.* at 603. Although *Fleming* was a divorce case, appellate courts apply the *Fleming* factors when determining whether it was an abuse of discretion for an ALJ to deny a timely request for a continuance in a proceeding to determine a parent's child support obligation. See *Harris v. Dep't of Revenue ex rel. Insixiengmay*, 191 So. 3d 921, 924 (Fla. 2d DCA 2016).

In *Jeancharles*, the request for a continuance was made so the father could attempt to secure affordable counsel. The father had a right to be represented by counsel, at his own expense, at the hearing. Judicial protection of the right to counsel "ensures continued public confidence in our system of justice." *Myers*, 920 So. 2d at 1243; *Jeancharles v. Dep't of Revenue*, 273 So. 3d 1006, 1009-1010, (Fla. 4th DCA 2019).

Timely attempting to obtain affordable legal assistance can be "good cause" within the meaning of Rule 28-106.201, Fla.R.Admin.P. Yet, denial of a motion for a continuance is not an abuse of discretion simply because a party is compelled to appear in a legal proceeding without representation. See *Hogan v. Aloia*, 257 So. 3d 479, 482 (Fla. 4th DCA

2018) (applying *Fleming* factors and finding trial court did not abuse its discretion when it denied the wife's motion for a continuance after she failed to pay her attorney for several months and he withdrew); *Lee v. Lee*, 751 So. 2d 741, 743 (Fla. 1st DCA 2000) (applying *Fleming* factors and finding trial court did not abuse its discretion when it denied the husband's motion for a continuance where he ably represented himself after discharging attorneys because he could not afford them). In those cases, appellate courts are still required to apply the *Fleming* factors to protect the integrity of the proceeding.

Special circumstances sometimes exist, however, in which the denial of a motion for continuance creates an injustice for the movant. In these circumstances, this court's obligation to rectify the injustice outweighs its policy of not disturbing a trial court's ruling on a continuance, . . . in particular, in cases where the opposing party would suffer no injury or great inconvenience as a result of a continuance. *Silverman v. Millner*, 514 So. 2d 77, 78 (Fla. 3d DCA 1987) (internal citations omitted).

Applying the *Fleming* factors to this case, the Appellants maintain the trial court abused its discretion in dismissing the case.

Lemaster argues herein that the trial court abused its discretion in denying the Plaintiffs' motions for continuance because both of their

attorneys were rendered physically incapacitated. Entry of the default would have deprived the Plaintiffs of the counsel of choice and their day in court. The dismissal had the same effect. Lemaster contends. Because trial procedure is based on the adversary system, which our jurisprudence recognizes to be the best means of arriving at a just and legal result in controversies between citizens, the courts generally recognize that an individual has the right to counsel of his or her choice. Although the right to counsel is not absolute in a civil proceeding, see *Kiriakidis v. Kiriakidis*, 855 So. 2d 208, 212 (Fla. 4th DCA 2003); *Onett*, 780 So. 2d at 980 (citing *State v. Weeks*, 166 So. 2d 892 (Fla. 1964)), judicial protection of that right ensures continued public confidence in our system of justice.

This court and others have previously held that "where the physical or mental condition of either counsel or client prevents the fair and adequate presentation of a case, the refusal to grant a continuance is reversible error." *Florida Fruit & Vegetable Ass'n*, 755 So. 2d at 829; see also *Citrin v. De Venny*, 833 So. 2d 871, 872 (Fla. 4th DCA 2003); *SSJ Mercy Health Sys., Inc. v. Posey*, 756 So. 2d 177, 179 (Fla. 4th DCA 2000); *Lopez v. Lopez*, 689 So. 2d 1218 (Fla. 5th DCA 1997); *Ziegler v. Klein*, 590 So. 2d 1066 (Fla. 4th DCA 1991). This genre of cases does not, however, establish an absolute rule of reversal when

a motion for continuance based on such grounds is denied. Rather, these cases recognize that in addition to the three general factors previously mentioned, the realities of our adversary system of justice require consideration of more specific factors, which include: (1) the length of the requested continuance; (2) whether the counsel who becomes unavailable for trial has associates adequately prepared to try the case; (3) whether other continuances have been requested and granted; (4) the inconvenience to all involved in the trial; and (5) any other unique circumstances. Consideration of these factors allows the courts to balance the protection of the client's right to counsel of his or her choice with the general interest in the prompt and efficient administration of justice, which includes an opposing party's right to prompt resolution of the issues involved in the proceedings.

Consideration of all of the factors set forth herein warrants the inevitable conclusion that the trial court abused its discretion in denying the motions for continuance. Lemaster was denied his Due Process right to prosecute the suit, thus creating an injustice. The cause of the continuance, the sudden onset of the illness of lead counsel, was unexpected and unforeseen.

As set forth by the Fifth District in *Myers*:

“While the rule of judicial discretion in granting or denying motions for continuance maintains its vitality, strict adherence to that rule may sometimes bring about unfair and unjust results. Hence, as a component of that rule, appellate courts may in circumstances where that discretion has been abused, correct the injustice by reversal of the trial court's decision. This is one of those instances. It is readily apparent to us that the interests of justice in this case required that both parties be given the opportunity to be fairly heard and to be represented by counsel well informed on the facts and the pertinent law. Denial of the emergency motion for continuance and entry of the default judgment, which effectively deprived Myers of her counsel of choice and her day in court, certainly did not further the interests of justice in this case. While we fully appreciate the trial court's need to control its docket, sympathize with the trial court's frustration in the face of counsels' failure to appear, and acknowledge Siegel's desire to bring the underlying litigation to closure, we conclude that denial of the motion was an abuse of discretion and entry of the default judgment, although an appropriate sanction in certain circumstances, was unwarranted in this case. *Myers v. Siegel*, 920 So. 2d 1241, 1244-1245, 2006 Fla. App. LEXIS 2477, *9-10, 31 Fla. L. Weekly D 617.

Reversal and remand for a trial is warranted.

CONCLUSION

Based upon the foregoing grounds and authority, the Appellants, Medalist Building Group, LLC, Jeremy Lemaster, Jessica Lemaster, Palm City Sunset, LLC, and Medalist Homes, LLC, respectfully request this Honorable Court enter an Order reversing the Circuit Court Order under review and remanding this matter for a trial on the merits and such other and further relief as this Court deems just and appropriate.

**CERTIFICATE OF COMPLIANCE WITH RULE 9.045, FLA. R. APP. P.;
FLORIDA RULE OF JUDICIAL ADMINISTRATION RULE 2.520(a) AND
FLA. JUDICIAL ADMIN. RULE 2.520**

Pursuant to Rule 9.045, Florida Rules of Appellate Procedure. Florida Rule of Judicial Administration Rule 2.520(a) and Florida Judicial Administration Rule 2.520, the Appellant certifies that this Initial Brief of Appellant is typed in 14 point, Arial.

This document complies with the type-volume limit of Rule 9.045, Fla.R.App.P. because, excluding the parts of the document exempted by Rule 9.045, Fla.R.App.P. this document contains 8646 words from the Preliminary Statement to Conclusion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **NOVEMBER 27, 2023**, the foregoing has been filed via E-Portal Filing with all interested parties.

Respectfully submitted,

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