

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

Jorge Alvarez, Jr. v. Gonzalo Gamba

319 So. 3d 724 (Fla. 3d DCA 2025) · No. No. 3D24-0633; Lower Tribunal No. 22-25904-CC-25 · Decided June 18, 2025

SUMMARY

The Florida Third District Court of Appeal affirmed final summary judgment for condominium buyers in a breach-of-contract and unjust-enrichment action arising from a failed residential-unit sale. The court held that the buyers’ statutory right to void the agreement continued until closing and that the sellers’ failure to respond to the summary judgment motion permitted the trial court to treat the asserted facts as undisputed. The court dismissed as premature the portion of the appeal concerning attorney’s-fee entitlement.

CASE DETAILS

COURT	Third District Court of Appeal of Florida
WRITING FOR THE COURT	EMAS, J.; SCALES, J.; GOODEN, J.
JURISDICTION	Florida Third District Court of Appeal
DECIDED	June 18, 2025
DOCKET	No. 3D24-0633; Lower Tribunal No. 22-25904-CC-25
DISPOSITION	other
PROCEDURAL POSTURE	Sellers appealed a final summary judgment entered for Buyers in an action alleging breach of contract and unjust enrichment arising from a failed condominium sale. Sellers did not respond to Buyers' summary judgment motion or submit opposing evidence.
STANDARD OF REVIEW	De novo review of the grant of summary judgment.
PRECEDENTIAL VALUE	published
PARTIES	Jorge Alvarez, Jr., et al. v. Gonzalo Gamba, et al.

TOPICS

- summary judgment
- breach of contract
- contracts
- statutory interpretation
- appellate jurisdiction

PRACTICE AREAS

- contract law
- real estate law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly granted summary judgment for the Buyers on the Sellers' claims arising from the failed condominium transaction.
2. Whether the appellate court had jurisdiction to review the trial court's determination that the Buyers were entitled to attorney's fees when the amount of fees had not yet been fixed.

HOLDINGS

1. The trial court properly granted summary judgment in favor of the Buyers and entered final summary judgment.
2. The court lacked jurisdiction to review the portion of the summary judgment determining entitlement to attorney's fees because the trial court had not fixed the amount of fees; that portion of the appeal was dismissed as premature and without prejudice.

KEY QUOTATIONS

“BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING” (at 2)

“Specifically, it is incumbent upon the nonmoving party to come forward with evidentiary material demonstrating that a genuine issue of fact exists as to an element necessary for the non-movant to prevail at trial.” (at 2-3)

FACTUAL BACKGROUND

The parties entered into a contract for the sale and purchase of a residential condominium unit in Miami. The transaction failed, and the Sellers sued the Buyers for breach of contract and unjust enrichment. The Buyers moved for summary judgment, but the Sellers filed no response or evidence in opposition.

PROCEDURAL HISTORY

Jorge and Diana Alvarez sued Gonzalo and Cira Gamba after the failed residential condominium transaction. The Buyers moved for summary judgment, and the Sellers filed neither a response nor opposing evidence. The County Court for Miami-Dade County granted summary judgment for the Buyers and later denied rehearing. The Third District affirmed the final summary judgment but dismissed as premature the portion of the appeal concerning attorney-fee entitlement because the amount of fees had not been fixed.

DISPOSITION

other

REMAND INSTRUCTIONS

The attorney-fee issue was dismissed without prejudice to seeking appellate review after the trial court enters a final order determining both entitlement to attorney's fees and the amount.

CASES CITED

- Priority Med. Ctrs., LLC v. Allstate Ins. Co., 319 So. 3d 724, 726 (Fla. 3d DCA 2021)
- Volusia Cnty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000)
- Bydalek v. Saenz, 368 So. 3d 508, 511 (Fla. 3d DCA 2023)
- Aria on the Bay Condo. Ass'n, Inc. v. Bayshore Plaza I, LLC, 394 So. 3d 95, 96 (Fla. 3d DCA 2024)
- Lloyd S. Meisels, P.A. v. Dobrofsky, 341 So. 3d 1131, 1136 (Fla. 4th DCA 2022)
- Acosta v. Tower Hill Signature Ins. Co., 245 So. 3d 882, 883 (Fla. 3d DCA 2018)
- Diaz v. Citizens Prop. Ins. Corp., 227 So. 3d 735, 736-37 (Fla. 3d DCA 2017)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed June 18, 2025. Not final until disposition of timely filed motion for rehearing. _____ No. 3D24-0633 Lower Tribunal No. 22-25904-CC-25 _____ Jorge Alvarez, Jr., et al., Appellants, vs. Gonzalo Gamba, et al., Appellees. An Appeal from the County Court for Miami-Dade County, Patricia Marino Pedraza, Judge.

Gonzalez Law Offices, P.A., and Anthony Gonzalez and Dennis S. Klein, for appellants. Albert D. Rey, P.A., and Albert D. Rey, for appellees. Before EMAS, SCALES and GOODEN, JJ. EMAS, J. Following a failed transaction for the sale and purchase of a residential condominium unit in Miami, Jorge and Diana Alvarez (Sellers) filed suit against Gonzalo and Cira Gamba (Buyers) for breach of contract and unjust enrichment.

Buyers eventually filed a motion for summary judgment, and Sellers filed no response nor any evidence in opposition to Buyers' summary judgment motion. Following a hearing, the trial court granted Buyers' motion and thereafter entered final summary judgment in favor of Buyers. Sellers sought rehearing, which the trial court denied, and this appeal followed.

1 Upon our de novo review, Priority Med. Ctrs., LLC v. Allstate Ins. Co., 319 So. 3d 724, 726 (Fla. 3d DCA 2021) (citing Volusia Cnty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126 (Fla. 2000)), we hold that the trial court properly granted summary judgment in favor of Buyers, and affirm the trial court's entry of final summary judgment. See § 718.503(2)(d)2., Fla. Stat. 1 The Sellers also challenge that portion of the trial court's order finding the Buyers are entitled to attorney's fees.

However, that aspect of the summary judgment is neither final nor appealable, and we are without jurisdiction to review it, because the trial court determined only entitlement to (but not the amount of) attorney's fees.

We therefore dismiss as premature this portion of the appeal, without prejudice to seek review as may be appropriate after rendition of a final order that both determines entitlement and fixes the

amount. See *Acosta v. Tower Hill Signature Ins. Co.*, 245 So. 3d 882, 883 (Fla. 3d DCA 2018) (“[W]e are without jurisdiction to address the portion of the appeal relating to attorney's fees.... because no amount has been fixed by the trial court and the part of the final judgment that finds entitlement thereto is not ripe for our review.”) (quoting *Diaz v. Citizens Prop.*

Ins. Corp., 227 So. 3d 735, 736-37 (Fla. 3d DCA 2017)). 2 (2022) (requiring contracts for sale of a residential unit to include certain terms and provisions, including the provision contained in the instant contract); *Bydalek v. Saenz*, 368 So. 3d 508, 511 (Fla. 3d DCA 2023) (interpreting the final sentence contained in section 718.503(2)(d)2. and in the contract—“BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING”—to mean a buyer’s right to void the agreement does not terminate until closing actually occurs, regardless of the closing date set forth in the contract); see also *Aria on the Bay Condo*.

Ass'n, Inc. v. Bayshore Plaza I, LLC, 394 So. 3d 95, 96 (Fla. 3d DCA 2024) (“Under the new [summary judgment] standard, once the moving party satisfies [the] initial burden [of proof], the burden then shifts to the nonmoving party to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

Specifically, it is incumbent upon the nonmoving party to come forward with evidentiary material demonstrating that a genuine issue of fact exists as to an element necessary for the non-movant to prevail at trial.”) (quotation omitted); *Lloyd S. Meisels, P.A. v. Dobrofsky*, 341 So. 3d 1131, 1136 (Fla. 4th DCA 2022) (“Because the defendants failed to file a response with their supporting factual position, as required under the amended rule, the trial court was permitted to consider the facts set forth in the plaintiff's motion for 3 summary judgment as ‘undisputed for purposes of the motion.’”) (quoting Fla. R. Civ.

P. 1.510(e)(2) (“If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by rule 1.510(c), the court may... consider the fact undisputed for purposes of the motion.”)). Affirmed in part and dismissed in part. 4