

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Nuce Acoustic Ceilings & Drywall, Inc. v. DeLesline Construction, Inc.

Nuce Acoustic · No. 2D2025-1179 · Decided May 8, 2026

SUMMARY

The Florida Second District Court of Appeal affirmed a final judgment for DeLesline Construction, Inc. after a bench trial in a subcontractor payment dispute. The court held that the trial court did not improperly permit unpleaded affirmative defenses because the evidence concerned general denials and Nuce failed to prove its claims.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Silberman, Judge; Sleet, Judge; Rothstein-Youakim, Judge
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	May 8, 2026
DOCKET	2D2025-1179
DISPOSITION	affirmed
PROCEDURAL POSTURE	Subcontractor appealed a final judgment entered against it after a bench trial and challenged the denial of its motion for summary judgment.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Nuce Acoustic Ceilings & Drywall, Inc. v. DeLesline Construction, Inc.

TOPICS

- contracts
- construction law
- summary judgment
- affirmative defenses
- appellate procedure

PRACTICE AREAS

- contract law
- construction law
- civil procedure
- appellate procedure
- commercial litigation

QUESTIONS PRESENTED

1. Whether the trial court improperly allowed DeLesline to present evidence supporting affirmative defenses that were allegedly not pleaded.
2. Whether the trial court erred in entering final judgment against Nuce after the bench trial.
3. Whether the trial court erred in denying Nuce's motion for summary judgment.

HOLDINGS

1. Although affirmative defenses generally must be pleaded in the answer or separately and are waived if not pleaded, a general denial is not an affirmative defense. The affidavit submitted in opposition to summary judgment did not raise affirmative defenses, and the final judgment was based on Nuce's failure to prove its pleaded claims rather than on unpleaded affirmative defenses.
2. The final judgment in favor of DeLesline is affirmed because Nuce failed to establish reversible error.
3. The denial of Nuce's motion for summary judgment does not warrant reversal.

KEY QUOTATIONS

"There are 'two classes of defensive pleas.'" (2)

"The second 'is one by way of confession and avoidance. All affirmative defenses are pleas by way of confession and avoidance. They admit the allegations of the plea to which they are directed and allege additional facts that avoid the legal effect of the confession.'" (2)

FACTUAL BACKGROUND

Nuce Acoustic Ceilings & Drywall, Inc., a subcontractor, installed drywall for DeLesline Construction, Inc., the general contractor, at a commercial property. Nuce claimed that DeLesline owed \$13,688 plus prejudgment interest for additional work that was not included in an initial letter of intent or contract. Nuce asserted contract and quasi-contract theories, but after a bench trial the county court found that Nuce failed to prove any of its claims.

PROCEDURAL HISTORY

Nuce sued DeLesline for breach of contract, breach of implied-in-fact contract, breach of contract implied-in-law, and unjust enrichment, claiming payment for additional drywall work. The trial court denied Nuce's motion for summary judgment, conducted a bench trial, and entered final judgment for DeLesline after finding that Nuce failed to prove any count. The Second District affirmed.

DISPOSITION

affirmed

CASES CITED

- Paul Gottlieb & Co. v. Alps S. Corp., 985 So. 2d 1, 5 (Fla. 2d DCA 2007)
- Kitchen v. Kitchen, 404 So. 2d 203, 205 (Fla. 2d DCA 1981)

- Moore Meats, Inc. v. Strawn, 313 So. 2d 660, 661-62 (Fla. 1975)

OPINION

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT NUCE ACOUSTIC CEILINGS & DRYWALL, INC., a Florida corporation, Appellant, v. DeLESLINE CONSTRUCTION, INC., Appellee. No. 2D2025-1179 May 8, 2026 Appeal from the County Court for Manatee County; Jacqueline B. Steele and Heather Doyle, Judges. Benjamin Earl Hillard and Amy Cuykendall Jones of Hillard Cuykendall, P.A., Largo, for Appellant.

Jorge Martinez and Peter John Mackey of Mackey Law Group, P.A., Bradenton, for Appellee. SILBERMAN, Judge. Nuce Acoustic Ceilings & Drywall, Inc., appeals the final judgment entered in favor of DeLesline Construction, Inc., following a bench trial.

In this contract dispute, Nuce, a subcontractor, alleged that DeLesline, the general contractor, owed it money after Nuce installed drywall in a commercial property. Nuce sued DeLesline for breach of contract, breach of implied-in-fact contract, breach of contract implied-in-law, and unjust enrichment. Nuce moved for summary judgment and argued that DeLesline owed it \$13,688 plus prejudgment interest after it performed additional work not encompassed in an initial letter of intent/contract.

DeLesline filed an affidavit in opposition to Nuce's motion for summary judgment, and the trial court denied the motion. The case went to trial, and the court entered final judgment against Nuce after finding that Nuce "failed to prove any of the counts in its Complaint by its burden of proof."

On appeal, Nuce challenges both the final judgment and the denial of its motion for summary judgment. We affirm because we find no merit to any of the arguments Nuce raises but write to briefly address the argument that the trial court improperly allowed DeLesline to present evidence at trial in support of unpled affirmative defenses. Nuce argues, correctly, "that affirmative defenses must be pleaded either in the answer or as separate affirmative defenses and, if not pleaded, the issue is deemed waived."

Paul Gottlieb & Co. v. Alps S. Corp., 985 So. 2d 1, 5 (Fla. 2d DCA 2007). But an affirmative defense is different than a general denial. There are "two classes of defensive pleas." Kitchen v. Kitchen, 404 So. 2d 203, 205 (Fla. 2d DCA 1981) (quoting Moore Meats, Inc. v. Strawn, 313 So. 2d 660, 661 (Fla. 1975)).

The first is "a denial of an ultimate fact pleaded in the preceding pleading." *Id.* (quoting Strawn, 313 So. 2d at 661). The second "is one by way of confession and avoidance. All affirmative defenses are pleas by way of confession and avoidance. They admit the allegations of the plea to which they are directed and allege additional facts that avoid the legal effect of the confession."

Id. (quoting Strawn, 313 So. 2d at 661-62). 2 DeLesline's answer to the complaint contained general denials. As the trial court correctly determined, the affidavit submitted in opposition to Nuce's motion for summary judgment did not raise affirmative defenses. Contrary to Nuce's argument, the trial court did not enter final judgment against it based on unpled affirmative defenses but instead concluded that Nuce failed to prove any of the counts raised in its complaint.

Because Nuce has not established reversible error, we affirm the final judgment. Affirmed. SLEET and ROTHSTEIN-YOUAKIM, JJ., Concur. Opinion subject to revision prior to official publication. 3