

# DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

## Pedro Realty, Inc. v. Silva

392 So. 2d 1005 (Fla. Dist. Ct. App. 1981) · No. No. 80-2166 · Decided January 21, 1981

### SUMMARY

The Florida Third District Court of Appeal holds that an order denying a motion to vacate a default is appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv) because it determines liability in favor of a party seeking affirmative relief. The court denies the motion to dismiss the appeal and distinguishes decisions concerning orders granting motions to vacate defaults. Judge Schwartz dissents, concluding that the order is not within the rule's limited category of appealable non-final orders.

### CASE DETAILS

|                       |                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | District Court of Appeal of Florida, Third District                                                                                                   |
| WRITING FOR THE COURT | Daniel S. Pearson; Schwartz; Baskin                                                                                                                   |
| JURISDICTION          | Florida                                                                                                                                               |
| DECIDED               | January 21, 1981                                                                                                                                      |
| DOCKET                | No. 80-2166                                                                                                                                           |
| DISPOSITION           | other                                                                                                                                                 |
| PROCEDURAL POSTURE    | Appellant sought review of an order denying its motion to vacate a default. Appellees moved to dismiss the appeal for lack of appellate jurisdiction. |
| STANDARD OF REVIEW    | De novo determination of appellate jurisdiction and appealability under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).                       |
| PRECEDENTIAL VALUE    | Published precedential opinion                                                                                                                        |
| PARTIES               | Pedro Realty, Inc. v. Jesus M. Silva, Olga Silva                                                                                                      |

### TOPICS

- interlocutory appeal
- default
- appellate procedure
- motions to dismiss
- civil procedure

### PRACTICE AREAS

- civil procedure
- appellate procedure
- default practice

## QUESTIONS PRESENTED

1. Whether an order denying a motion to vacate a default is appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

## HOLDINGS

1. An order denying a motion to vacate a default is appealable under Rule 9.130(a)(3)(C)(iv) because it determines liability in favor of a party seeking affirmative relief.

## KEY QUOTATIONS

*“We hold that such an order, because it determines liability in favor of a party seeking affirmative relief, satisfies the jurisdictional requisites of this rule and is appealable.”* (1006)

*“The motion to dismiss the appeal is denied.”* (1006)

## FACTUAL BACKGROUND

A default had been entered against the defendant, and the defendant moved to vacate it. The motion to vacate was denied. The resulting order determined that the defendant could not set aside the default and was challenged on interlocutory appeal.

## PROCEDURAL HISTORY

The lower court entered a default and later denied a motion to vacate it. Pedro Realty appealed the denial, and the appellees moved to dismiss the appeal. The District Court of Appeal denied the motion to dismiss, holding that the order was appealable under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv).

## DISPOSITION

other

## CASES CITED

- Caribbean Agencies, Inc. v. Agri-Export, Inc., 384 So. 2d 281 (Fla. 4th DCA 1980)
- Overholser v. Overstreet, 383 So. 2d 953 (Fla. 3d DCA 1980)
- Yates v. Roller Skating Rinks, Inc., 379 So. 2d 1333 (Fla. 5th DCA 1980)
- Praet v. Martinez, 367 So. 2d 657 (Fla. 3d DCA 1979)
- Moody v. Moody, 371 So. 2d 553 (Fla. 2d DCA 1979)

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