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L-R: Randall Burks, an appellate attorney in the Boca Raton office of Schwartz Sladkus Reich Greenberg Atlas LLP, Ed Guedes, the Miami-based Partner at Weiss Serota Helfman Cole + Bierman and chair of the law firm's appellate practice group and Bob Jarvis, law professor at Nova Southeastern University and court expert. Courtesy Photos

In Reversing Case, State Appellate Court Refers Matter to Florida Rules Committee

"I am surprised that it hasn't been brought to light previously," said Bob Jarvis, a law professor at Nova Southeastern University and court expert not involved in the matter

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Litigation

Tommaso Baronio

What You Need to Know

- The appeals court reversed and remanded a small claims case from the Miami-Dade County Court involving an agreement to sell used kitchen cabinets and countertops.
- The case has been referred to the Florida Bar's Small Claims Rules Committee to clarify the rules to avoid similar issues in the future.
- The decision highlights the challenges faced by self-represented litigants and aims to make the small claims process fairer.

Florida's Third District Court of Appeal reversed and remanded an action from the Miami-Dade County Court involving a sales dispute in which the judges also referred the matter to the state's small claims rules committee.

And in the case, the plaintiff, Arlene Hanna sued the defendants, Diego and Maria Hemelberg, claiming they allegedly breached an agreement to sell her used kitchen cabinets and countertops.

Miami-Dade County Judge Christopher Green dismissed Hanna's claim, saying there was no valid contract between the parties, based on Florida's statute of frauds, which requires certain contracts to be in writing to be enforceable, according to the appellate court opinion.

After the dismissal, Hanna filed a motion arguing that the trial court had misapplied the statute of frauds. However, she filed it under the wrong rule, Florida Rule of Civil Procedure 1.540, which only allows for very limited reasons to vacate a judgment, such as fraud or newly discovered evidence.

The trial court denied Hanna's motion because it did not meet the criteria. Her motion should have been treated under Florida Small Claims Rule 7.180, which is more applicable to small claims cases like hers.

"When you're dealing with a participant in the legal proceedings that don't have a lawyer, they try to do the best they can," said Ed Guedes, a Miami-based partner at Weiss Serota Helfman Cole + Bierman. "And sometimes they cite the wrong rule because they just don't have enough experience and they are basically relying on existing cases from other courts."

In an opinion entered Wednesday, the Third DCA reversed the trial court's decision and sent the case back, instructing the trial court to reconsider Hanna's motion under Rule 7.180. The Third DCA also instructed the Florida Bar's Small Claims Rules Committee to consider clarifying the rules to avoid similar issues in the future.

Guedes, who is not involved in the matter, said the committee should clarify the rules subsequent to Rules 7.180 to make it

more explicit that a party may file a motion for rehearing under that rule. Still, he noted that the majority of county court small claims cases are handled by nonlawyers, so it will probably not impact that many attorneys.

Bob Jarvis, a law professor at Nova Southeastern University College of Law and court expert not involved in the matter, agreed with the state appellate court ruling.

“I am surprised that it hasn’t been brought to light previously,” Jarvis said. “But I am sure that the Small Claims Rules Committee will jump on this, and the Supreme Court will approve the change because there’s really no way to argue against the change. The rules need to be clear. And as I say, it’s tripping up people.”

Randall Burks, an appellate attorney in the Boca Raton office of Schwartz Sladkus Reich Greenberg Atlas who is not involved in the case, went further, saying that it would be best to eliminate the inconsistency between Rules 7.190 and 7.180, where one rule mentions “rehearing” but the other does not.

Burks said, “Clarifying this issue would also eliminate the need for small claims courts to engage in the legal fiction of treating a ‘motion for rehearing’ as a ‘motion for new trial’ even where there was no trial.”