

Third District Court of Appeal

State of Florida

Opinion filed August 26, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-1868
Lower Tribunal No. 14-26490-CA-01

Piero Salussolia, P.A.,
Appellant/Cross-Appellee,

vs.

Gianni Nunnari, et al.,
Appellees/Cross-Appellants.

An Appeal from the Circuit Court for Miami-Dade County, Vivianne del Rio, Judge.

Armstrong Teasdale LLP, and Glen H. Waldman and Richard G. Cole, III, for appellant/cross-appellee.

Todd R. Friedman, P.A., and Todd Friedman, for appellees/cross-appellants.

Before SCALES, C.J., and LOBREE and BOKOR, JJ.

BOKOR, J.

Piero Salussolia, P.A., the plaintiff below, appeals the trial court's order denying his motion to withdraw technical admissions deemed admitted due to his failure to timely respond to requests for admissions and granting summary judgment in favor of the defendant, Gianni Nunnari, based on those admissions. Nunnari cross-appeals to challenge a subsequent order purporting to dismiss the case with prejudice following entry of final summary judgment in Nunnari's favor on his counterclaim. For the reasons that follow, we affirm the issues on appeal and reverse as to the cross-appeal to permit entry of final judgment in favor of Nunnari on the counterclaim.

Florida Rule of Civil Procedure 1.370(b)(2) provides a trial court with discretion to permit withdrawal or amendment of an admission "when the presentation of the merits of the action will be subverted by it and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits." We review such ruling for abuse of discretion. See Clemens v. Namnum, 233 So. 3d 1146, 1148 (Fla. 4th DCA 2017). Although "[t]he liberal standard for relief under this rule reflects the strong preference that genuinely disputed claims be decided upon their merits rather than technical rules of default," Pennymac Corp. v. Labeau, 180 So. 3d 1216, 1219 (Fla. 3d DCA

2015), based on the facts of this case we conclude that the trial court did not abuse its discretion in denying the motion for relief.

We have held many times that summary judgment and dismissal are inappropriate when based solely on technical admissions obtained through a failure to timely answer a request for admissions when a disputed issue of fact exists. See, e.g., Ruiz v. De Varona, 785 So. 2d 508, 509 (Fla. 3d DCA 2000) (“[D]ismissal based solely on the failure to timely answer a request for admissions would be inappropriate when the pleadings make clear the opposing party’s position *and the existence of disputed facts*.” (emphasis added)); Sher v. Liberty Mut. Ins. Co., 557 So. 2d 638, 639 (Fla. 3d DCA 1990) (reversing summary judgment where “*circumstances presented an issue of material fact for decision*, and the withdrawal of the technical admissions and acceptance of the belated response would serve to facilitate the presentation of the case on its evidentiary merits” (quotation omitted; emphasis added)); Wells Fargo Bank, N.A., v. Donaldson, 165 So. 3d 40, 42 (Fla. 3d DCA 2015) (“Here, like in Sher and Ruiz, the record supports the denial of Wells Fargo’s technical admissions. The allegations contained in the verified complaint contradicted the technical admissions.”). But the record here reflects no evidence of disputed issues of fact.

Here, the technical admissions included numerous facts directly relevant to liability under the contract at issue, including admitting non-performance and issuance of disputed payments. Salussolia's verified response to the motion for summary judgment sought to withdraw the admissions and contained allegations directly contradicting the admissions. But the verified motion cited to no record evidence, merely relying on the signature of the corporate counsel for Salussolia at the end of the filing that "under penalty of perjury . . . the facts stated in [the foregoing document] are true *to the best of my knowledge and belief*." (emphasis added). And stating something is true to the best of one's knowledge and belief is not providing admissible evidence that creates a triable issue of fact. See, e.g., Thompson v. Citizens Nat'l Bank of Leesburg, Fla., 433 So. 2d 32, 33 (Fla. 5th DCA 1983) ("An affidavit based on information and belief rather than personal knowledge is not admissible into evidence and should not be considered by the trial court on a motion for summary judgment.").

Furthermore, the complaint dates to October 2014, based on an agreement executed in February 2011. We will not recount in detail the actions between 2014 and the filing of the requests for admission in 2023, other than to say that a charitable description would be that prior counsel did not diligently prosecute this matter. Based on the record, the belated effort

to withdraw admissions—in 2025—after the filing of summary judgment and the inability to cite any admissible evidence supporting such withdrawal or showing a genuine issue of material fact supports the trial court’s decision. As our sister court explained, “[w]hile decisions on the merits are preferred, there is a point at which the opposing party is prejudiced by a tardy request for relief from admissions. We think this is such a case.” Asset Mgmt. Consultants of Va., Inc. v. City of Tamarac, 913 So. 2d 1179, 1181 (Fla. 4th DCA 2005) (noting also that other than proposed answers to the technical admissions, “there is nothing in this record . . . showing evidence that would contradict the technical admissions”); see also Pennymac Corp., 180 So. 3d at 1220 n.2 (explaining that the “test of reasonableness” of the trial court’s discretionary decision “requires a determination of whether there is logic and justification for the result” (quotations omitted)); cf. Sher, 557 So. 2d at 639 (“Here, the record is replete with evidence contradicting the admissions created by Sher’s failure to file a timely response.”). We therefore affirm as to the issues on appeal.

On cross-appeal, Nunnari explains that the trial court’s final judgment dismissing the case with prejudice inadvertently failed to reflect the entry of final summary judgment in Nunnari’s favor. We accordingly reverse in part

to allow the trial court to enter an amended final judgment reflecting its granting of final summary judgment in Nunnari's favor on the counterclaim.

Affirmed in part, reversed in part, and remanded.