IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502019AP000038CAXXMB
L.T. NO.: 502018SC010694XXXXSB

ROBERT VALENE,
Appellant,

v.

ELYSE STEFEL,
Appellee.
_____/

Opinion filed: September 16, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Marni Bryson

For Appellant: Cory S. Carano, Esq.
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For Appellee: Shari B. Stefel, Esq.
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PER CURIAM.

Appellant, Robert Valene, appeals the trial court's order entering final summary judgment in favor of Appellee, Elyse Stefel. We hold that the trial court erred by denying Appellant's motion seeking relief from deemed admissions before entering summary judgment in favor of Appellee. Therefore, we reverse.

On May 16, 2018, Appellee filed a small claims action against Appellant alleging $5,000.00 in damages for breach of contract. In response, Appellant, through counsel, denied the existence of a contract and also filed a counterclaim alleging that Appellee owed Appellant money for bills from vendors and creditors. Following a pretrial hearing and with leave of court, Appellee

subsequently amended her statement of claim and alleged that she entered into an oral contract with Appellant in which she made Appellant an authorized user of Appellee's credit card and that Appellant breached the oral contract by not repaying the credit card purchases he incurred. Appellee then proffered requests for admissions on Appellant, requesting that Appellant admit the existence of an oral contract and his breach of the contract. Appellant did not respond to the requests by the due date. Although the Florida Rules of Civil Procedure were not invoked under Small Claims Rule 7.020(c), Appellee moved for summary judgment pursuant to Florida Rule of Civil Procedure 1.510 and scheduled a hearing for January 29, 2019.

Less than two weeks before the scheduled summary judgment hearing, Appellee filed a motion to compel discovery. A few days later, Appellant filed a motion to continue the summary judgment hearing to allow Appellant leave to amend his answer and counterclaim and file belated responses to the request for admissions. That same day, although Appellant had yet to file an answer in response to Appellee's amended statement of claim, Appellant filed a motion for leave to amend his answer and counterclaim for the purposes of alleging additional affirmative defenses and seeking additional damages. Shortly thereafter, Appellant also filed a motion for leave to file belated responses and attached his responses to the request for admissions.

Despite Appellant's outstanding motions, the trial court proceeded with the summary judgment hearing as scheduled, emphasizing that Appellant failed to timely respond to the request for admissions. The trial court also stated that it would not consider Appellant's amended answer and discovery responses. It then entered final summary judgment in Appellee's favor.

A party who fails to answer another party's request for admissions within 30 days after service of the request is deemed to have admitted the truth of the matters on the request. Fla. R. Civ. P. 1.370(a). See also Fla. Sm. Cl. R. 7.020(b) (providing that any party represented by an

attorney in a small claims action is subject to discovery pursuant to Florida Rules of Civil Procedure 1.280-1.380 without a court order). However, the court may grant a motion for leave to file belated responses when "the presentation of the merits of the action will be subserved 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." Fla. R. Civ. 1.370(b). Courts favor granting relief from technical admissions "in order to allow disposition on the merits." *United Auto. Ins. Co. v. W. Hollywood Pain & Rehab. Ctr.*, 162 So. 3d 98, 100 (Fla. 4th DCA 2014) (quoting *Ramos v. Growing Together, Inc.*, 672 So. 2d 103, 104 (Fla. 4th DCA 1996)). "The use of admissions obtained through a technicality should not form a basis to preclude adjudication of a legitimate claim." *Id.* (quoting *Sterling v. City of W. Palm Beach*, 595 So. 2d 284, 285 (Fla. 4th DCA 1992)).

After a careful review of the record, it is apparent that the trial court's decision to enter judgment against Appellant was premised on the deemed admissions resulting from Appellant's failure to timely respond. In light of Appellant's pending motion to submit belated responses, we hold that this was error. Although untimely responses are disfavored, the trial court should not have denied leave to file belated responses where Appellant's responses would have promoted the presentation of the merits of the action and where Appellee failed to show prejudice. Fla. R. Civ. P. 1.370(b). Appellant's proposed belated responses contested the existence of the oral contract and the alleged breach. Additionally, Appellee failed to establish how she would be procedurally prejudiced by allowing Appellant to file belated responses. In fact, Appellee desired to decide the case on the merits when she moved the trial court to compel discovery about a week before Appellant sought relief from the technical admissions and the court never entered an order

compelling discovery. Consequently, the deemed admissions should not have precluded Appellant from defending the action on the merits. *United Auto.*, 162 So. 3d at 100.

Based on the foregoing, we hold that the trial court abused its discretion when it entered summary judgment without granting Appellant relief from the technical admissions. Accordingly, we **REVERSE** and **REMAND** with directions to vacate the order granting summary judgment in favor of Appellee. On remand, the court should grant Appellant's motion to amend his answer and counterclaim in accordance with case law liberally favoring leave to amend. *JBJ Inv. of S. Fla., Inc. v. S. Title Grp., Inc.*, 251 So. 3d 173, 180 (Fla. 4th DCA 2018) ("Leave to amend should not be denied unless the privilege has been abused, there is prejudice to the opposing party, or amendment would be futile." (quoting *Fields v. Klein*, 946 So. 2d 119, 121 (Fla. 4th DCA 2007)).

GOODMAN, J. KEYSER, and CURLEY, JJ., concur.