

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

RICHARD KEITH ALAN II,

Appellant,

APPELLATE DIVISION (CIVIL)

Case No.: 502007AP000126XXXXMB

L.T.: 502006SC016093XXXXMB

Division: 'AY'

JERMAINE HARDY and
SANDRA (HARDY) WANSLEY,

Appellees.

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Opinion filed: October 17, 2008

**Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.**

For Appellant: Richard Keith Alan II, Esq., pro se, 301 Clematis Street, Suite 3000, West Palm Beach, FL 33401.

For Appellee: Jermaine Hardy and Sandra (Hardy) Wansley, pro se, 5955 Caribbean Boulevard, West Palm Beach, FL 33407.

REVERSED and REMANDED.

The trial judge did not err in denying Appellant's Motion for Disqualification, as it was not legally sufficient. The trial judge did not abuse her discretion in denying Appellant's Motion for Continuance. Accordingly, the trial judge is affirmed on these two grounds.

A judgment may not be based on an issue that has not been either framed by the pleadings or raised at trial. *Collins v. Bannon*, 774 So. 2d 66, 67 (Fla. 2d DCA 2000). Appellees alleged a count for fraud and a count for breach of contract in their complaint. The final judgment found that there had been no meeting of the minds as to whether the fee paid was non-refundable or not. The parties, however, never pled or litigated that there had been no meeting of

the minds. Defendant insisted the fee was specified as non-refundable. Plaintiffs insisted that this never came up. This was an issue of proof and credibility. The trial court based the final judgment on a basis it raised on its own, without it being suggested and without determining the issue litigated – whether or not the fee was specified to be non-refundable. Accordingly, this cause is reversed and remanded for a new trial.

FINE, STERN and GERBER, JJ., concur.