

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

**BUREAUS INVESTMENT GROUP
NO. 5, LLC**

**APPELLATE DIVISION (CIVIL)
Case No.: 502008AP000025XXXXMB
L.T. No.: 502005CC015510XXXXMB
DIVISION 'AY'**

Appellant,

v.

PEDRO MILIAN,

Appellee.

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Opinion filed: *March 31, 2009*

Appeal from the County Court in and for Palm Beach County, Florida

For Appellant: Richard P. Joblove, Esq., Richard P. Joblove, P.A., 12372 Southwest 82nd Avenue, 1st Floor, Miami, Florida 33156-5223

For Appellee: Phillip T. Crenshaw, Esq., The Crenshaw Law Firm, P.A., 1109 South Congress Avenue, Suite D, West Palm Beach, Florida 33406

REVERSED and REMANDED.

Appellant Bureaus Investment Group No. 5, LLC ("Bureaus Investment") appeals an Order Regarding Notice of Lack of Prosecution ("Order") entered on February 29, 2008 dismissing Bureaus Investment's claim against Appellee Pedro Milian ("Milian") for failure to prosecute. This Court reviews a trial court's order of dismissal for failure to prosecute under the abuse of discretion standard. Johnson v. Maroone Ford LLC, 944 So. 2d 1059, 1060 (Fla. 4th DCA 2006). We find that the trial court erred by dismissing the case.

The dismissal of an action for failure to prosecute is governed by Fla. R. Civ. P. 1.420(e). The Supreme Court of Florida has provided a bright line rule to determine whether a party has

failed to prosecute its case. Wilson v. Salamon, M.D., 923 So. 2d 363 (Fla. 2005). If review of the face of the record reveals any activity by "filings of pleadings, order of court, or otherwise," an action should not be dismissed. Id. at 366. Whether there has been record activity "require[s] only a cursory review of the record by a trial court." Id. at 368; see, e.g., Padron v. Alonso, 970 So. 2d 399, 401 (Fla. 3d DCA 2007) (litigant's filing within 60 days of receiving notice of dismissal constituted record activity).

The record reflects that Bureaus Investment received a notice of dismissal pursuant to Rule 1.420(e) on November 21, 2007. Subsequently, Bureaus Investment filed a Notice of Good Cause on December 7, 2007. Bureaus Investment's filing of the Notice of Good Cause within 60 days immediately following receipt of the notice of dismissal constitutes record activity sufficient to defeat dismissal for failure to prosecute. Accordingly, the trial court's order of dismissal for failure to prosecute is reversed and the case is remanded for reinstatement.

LEWIS, KELLEY and CROW, JJ., concur.