

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

HENRY D. FRIEDMAN,
Appellant,

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2014-AP-000076-CAXXMB
L.T. NO: 2014-SC-004324-XXXXNB

v.

KIRK BIELSKI,
Appellee.

Opinion filed: JUN - 8 2016

Appeal from the County Court in and for Palm Beach County,
Judge Laura Johnson

For Appellant: Henry Friedman, *pro se*
19055 Talon Way
Jupiter, FL 33458

For Appellee: Kirk Bielski, *pro se*
454 Dover Road
Tequesta, FL 33469

PER CURIAM.

The issue before this Court is whether the trial court erred by dismissing Plaintiff/Appellant Henry Friedman's ("Friedman") action against Defendant/Appellee Kirk

Bielski ("Bielski") on the ground that service of the initial process was improper. We find that service on Bielski in his individual capacity was proper and that Bielski was properly named as the defendant. Therefore, we reverse the final judgment and remand for further proceedings.

This dispute arose from a contract for the cleaning and staining of grout in Friedman's home ("Contract"). The Contract lists the parties as Friedman and "Kirk Bielski DBA Conscientious Floor Cleaning." Friedman filed a small claims action against "Kirk Bielski DBA Conscientious Cleaning" for breach of contract and initial process was effected on Bielski at 454 Dover Road, Tequesta, Florida.¹ "Kirk Bielski DBA Conscientious Cleaning" filed a counterclaim.

At a pre-trial conference, Bielski orally moved to dismiss the case, claiming that Friedman was required to serve initial process on Bielski's business entity, Conscientious Cleaning,² not Bielski individually. The trial court offered Friedman time to amend his Amended Complaint³ and to serve the business entity Conscientious Cleaning. Friedman did not amend the Amended Complaint, nor did he serve the business entity Conscientious Cleaning. At the final hearing, Bielski renewed his motion to dismiss, which the trial court granted. In granting Bielski's motion, the trial court found: (1) the business entity Conscientious Floor Cleaning was not properly served with process, relying on *Seymour v. Panchita, Inc.*, 28 So. 3d 194 (Fla. 3d DCA 2010) and; (2) the agreement was made between Friedman and Conscientious

¹ The address on the return of service matches the address of Bielski d/b/a Conscientious Floor Cleaning listed in the Contract.

² From the records submitted, it is unclear whether the business entity Conscientious Floor Cleaning is a corporation. Additionally, while the Contract lists the company's name as "Conscientious Floor Cleaning," the trial court's final order dismissing this matter indicated that Bielski's corporation is "Conscientious Cleaning, d/b/a Conscientious Floor Cleaning."

³ The matter was heard in small claims court, therefore the correct pleading is a statement of claim rather than a complaint.

Floor Cleaning, not Friedman and Bielski, individually. Following the entry of the order of dismissal, Friedman timely filed the instant appeal. Based upon its reasoning in the final order of dismissal, the trial court considered both whether there was proper service and whether Bielski was the proper party to defend against the suit. Each issue will be addressed in turn.

Service on a Sole Proprietorship

The initial question before this Court is whether the named defendant in this case, “Kirk Bielski DBA Conscientious Cleaning,” was properly served by serving Bielski, individually. “Kirk Bielski DBA Conscientious Cleaning” signifies that Kirk Bielski, an individual, is doing business as a sole proprietorship under the fictitious name Conscientious Cleaning. In Florida, a sole proprietorship may operate as a business under a fictitious name, which is any name under which a person transacts business in this state, other than the person’s legal name. § 865.09(2)(a), Fla. Stat. (2014). Service is effectuated on a sole proprietorship when the individual owner is personally served. *See* § 48.031(2)(b), Fla. Stat. (2014).

The service effectuated on Bielski, in his individual capacity, was proper. *See* § 48.031, Fla. Stat. (2014) (authorizing service of process upon individuals). The trial court’s reliance on *Seymour v. Panchita*, 28 So. 3d 194 (Fla. 3d DCA 2010) is misplaced, as the defendant in this case was a sole proprietorship, not a corporation. *C.f. Seymour*, 28 So. 3d 194 (holding that a summons issued to a corporation’s registered agent in the agent’s individual capacity is improper service of process on the corporation). Because “Kirk Bielski d/b/a Conscientious Floor Cleaning,” a sole proprietorship, is the defendant named in the statement of claim, it was proper for Bielski to be individually served.

Parties to a Contract

As the named defendant was properly served, the next issue this Court must address is

whether, upon review of the Contract, the named defendant is the proper defendant. At the outset, a party's intent to execute an agreement in his or her individual or corporate capacity is ascertained from the content of the agreement and the signature placed on it. *See Manufacturers' Leasing, Ltd. v. Florida Development & Attractions, Inc.*, 330 So. 2d 171, 172 (Fla. 4th DCA 1976) (citing *Falsten Realty Co. v. Kirksey*, 137 So. 267, 270 (Fla. 1931)) (liability is ascertained "from a reading of the whole instrument"); *see also Babbitt Electronics, Inc. v. Amar*, 570 So. 2d 359, 359 (Fla. 4th DCA 1990). When a business entity is a party to a contract, the status of the signor—for example, an agent or an office of a corporation or a fictitious business entity — must be disclosed. *See Roth v. Nautical Engineering Corp.*, 654 So. 2d 978, 979 (Fla. 4th DCA 1995) (holding that an individual who represents himself as a corporate entity who is not actually a corporate entity cannot hide behind the principals of agency to limit individual liability); *see also Pittman v. Roberts*, 122 So. 2d 333, 334 (Fla. 2d DCA 1960). Liability for failure to adequately disclose the existence of a principal when signing a contract on his or her behalf falls on the party contracting on behalf of the principal. *Robinson & St. John Advertising and Public Relations, Inc.*, 557 So. 2d at 908.

In the present matter, nothing in the contract indicates that Bielski signed as an agent for a corporation. Had Bielski represented a corporation, his signature line would have indicated "as agent of" or "on behalf of." Rather, Bielski entered into the Contract with Friedman as a sole proprietorship as indicated by executing the Contract in his own name. While the lower court found that "Conscientious Cleaning d/b/a Conscientious Floor Cleaning" was a corporation and the proper defendant in this matter, nothing in the record on appeal supports that conclusion.

By representing himself as "Kirk Bielski DBA Conscientious Floor Cleaning," Bielski signified that he was doing business in his individual capacity, under a fictitious name.

Therefore, Bielski was the proper defendant and it was error to dismiss Friedman's statement of claim against him.

We **REVERSE** the decision of the lower court and **REMAND** for further proceedings consistent with this opinion.

OFTEDAL, COLIN, and J. KEYSER, JJ. concur.

DATE CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
	With Opinion	With/Without Opinion
<u>R20 6/7/16</u>		
<u>mk 6/8/16</u> J.	J.	J.
<u>JBK 6-8-16</u> J.	J.	J.
J.	J.	J.