

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

FLORIBETH RAMIREZ

Appellant,

v.

ATLANTIC ALUMINUM, INC.

Appellee.

APPELLATE DIVISION (CIVIL)

CASE NO.: 502007AP000157XXXXMB

L.T.: 502006CC016227XXXXMBRF

Division: 'AY'

Opinion filed: September 8, 2008

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

For Appellant: Orrin R. Beilly, Esq.; The Law Office of Orrin R. Beilly, P.A., 105 S. Narcissus Ave., Suite 705, West Palm Beach, FL 33401.

For Appellee: G. Joseph Curley, Esq. and Brian M. McPherson, Esq.; Gunster, Yoakley & Stewart, P.A., Phillips Point – Suite 500 East, 777 S. Flagler Dr., West Palm Beach, FL 33401.

Reversed and remanded. (Barkdull, Kelley and Rosenberg, JJ., concur.)

Fla. R. Civ. P. 1.150 contemplates a full evidentiary hearing where the parties have the opportunity to offer evidence on the issue of whether the pleading attacked alleges a cause of action or defense that is false in fact. Furst v. Blackman, 744 So. 2d 1222, 1224 (Fla. 4th DCA 1999). The hearing on a motion to strike a pleading as sham is not for the purpose of trying the issues, but rather serves the purpose of determining whether there are any genuine issues to be tried. Upland Development of Central Florida, Inc. v. Bridge, 910 So. 2d 942, 945 (Fla. 5th DCA 2005). A pleading may be considered sham when its falsity clearly and indisputably appears and is set up in bad faith and without color of fact. Sapienza v. Karland, 154 So. 2d 204, 207 (Fla. 3d

DCA 1963). Here, a question of fact was raised as to the source of the contract reflecting a six-month completion date. Appellant was entitled to an evidentiary hearing on the Verified Motion for Sanctions and to Strike Sham Pleadings. Accordingly, this cause is reversed and remanded for an evidentiary hearing to determine whether Appellant brought the claim in bad faith and whether Appellant should therefore be permitted to amend the complaint. Appellee's motion for attorney's fees is denied.