

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 2015AP000066CAXXMB
L.T. NO.: 2015CC003388XXXXMBRL

DANIEL SMITH,
Appellant,

v.

ALAN NOWAK,
Appellee.

Opinion filed: March 3, 2017

Appeal from the County Court in and for Palm Beach County,
Judge Robert Panse

For Appellant: Adriana C. Clamens, Esq.
100 S. Olive Avenue
West Palm Beach, FL 33401
service@myhlaw.com

For Appellee: Jeffrey M. Siskind, Esq.
525 S. Flagler Dr., Suite 500
West Palm Beach, FL 33401
jeffsiskind@msn.com

PER CURIAM

This is an appeal of a final order of writ of possession (“Order”), which was entered to enforce a settlement agreement between Appellant, Daniel Smith (“Tenant”) and Appellee, Alan Nowak (“Landlord”). Tenant argues that the trial court erred by not holding an evidentiary hearing before entering the Order. We agree, and reverse.

Landlord filed suit against Tenant for eviction. The parties entered into a stipulated settlement agreement (“Agreement”) in which Tenant was required to vacate the subject property by May 31, 2015. The Agreement provided that in the event Tenant breached the Agreement:

[Landlord] shall be entitled to a Final Judgment for Eviction and Damages 1 business day[] after filing with the Court, and service of a copy on [Tenant], of [Landlord's] Affidavit of Non-Payment, **if [Tenant] fail(s) to file any legally cognizable objection to [Landlord's] Affidavit of Non-Payment within that time.**

(emphasis added) In accordance with the Agreement, Landlord filed an Affidavit of Non-Compliance with Stipulated Settlement, alleging that Tenant failed to vacate the property by May 31, 2015. Tenant filed a verified objection stating that he vacated the premises on May 28, 2015. Tenant stated that he was unable to deliver the keys to Landlord and therefore left them with Amanda Mitchell, who was also residing at the property. Without holding an evidentiary hearing, the trial court entered a Final Order of Writ of Possession ("Order"), from which Tenant filed the instant appeal.

Tenant contends that the trial court erred in entering its Order against Tenant without first holding an evidentiary hearing on whether a breach of the Agreement occurred. Specifically, Tenant argues that because he filed a timely written objection to Landlord's claim that he failed to vacate the premises, an immediate entry of a Writ of Possession was not authorized under the Agreement.

A trial court should hold an evidentiary hearing on a motion to enforce a settlement agreement when "facts . . . necessary to support the purported settlement [are] in dispute." *Gollobith v. Ferrell*, 84 So. 3d 1095, 1096 (Fla. 2d DCA 2012). "Settlement agreements are governed by the same legal principles applied to other contracts." *Woodfield Plaza, LTD. v. Stiles Constr. Co.*, 687 So. 2d 856, 857 (Fla. 4th DCA 1997). When a contract is unambiguous, "contractual language should be given its plain and ordinary meaning, and read in the context of the document as a whole." *Discover Prop. & Cas. Ins. Co. v. Beach Cars of West Palm, Inc.*, 929 So. 2d 729, 732 (Fla. 4th DCA 2006). A contract is ambiguous "only when it is of uncertain

meaning, and may be fairly understood in more ways than one.” *Friedman v. Virginia Metal Prods. Corp.*, 56 So. 2d 515, 517 (Fla. 1952).

The Agreement is unambiguous. Under its plain meaning, Landlord was not automatically entitled to a writ of possession if Tenant filed a legally cognizable objection. Landlord alleged that Tenant was still in possession of the property; Tenant alleged that he had vacated the property but left his keys with Amanda Mitchell. Landlord’s affidavit makes no mention of Amanda Mitchell and simply states that Tenant was still in possession of the property. Therefore, Tenant’s objection could be entirely false if Landlord meant that he observed Tenant in physical possession of the property. Alternatively, both the Landlord’s affidavit and the Tenant’s objection could be true if Amanda Mitchell is an unknown tenant. Additional evidence is needed to support a finding that Tenant failed to vacate the property by returning the keys to Ms. Mitchell, because Landlord’s affidavit and the Tenant’s objection cannot be reconciled. *See Gollobith*, 84 So. 3d at 1096 (holding that an evidentiary hearing was required to resolve the conflicting factual allegations of both parties before the court could enforce settlement agreement).

Because the trial court erred in not holding an evidentiary hearing, we **REVERSE** the lower court’s Final Order of Writ of Possession and **REMAND** the case for an evidentiary hearing to determine whether the Agreement was breached.

HAFELE, OFTEDAL, and ROWE, JJ., concur.




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Opinion/Decision Filed: March 3, 2017

Appeal from County Court in and for Palm Beach
County, Florida;
Judge Robert Panse

Appealed: August 12, 2015

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	DISSENTING:	CONCURRING SPECIALLY:
 2/24/17	With Opinion	With/Without Opinion
_____ J.	_____ J.	_____ J.
 3/1/17		
_____ J.	_____ J.	_____ J.
 3/2/17		
_____ J.	_____ J.	_____ J.