

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

CASE NO:07-008654-CI-008

MICHAEL HENDERSON and APPEAL NO. 07-0050AP-88A ✓
MARTHA HENDERSON, his wife,
Appellant(s)

and

SANDERS CONSTRUCTION, INC.,
Appellee(s).

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CIVIL COURT RECORDS DEPT.
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CLERK OF CIRCUIT COURT

ORDER

THIS CAUSE is on review of a Partial Summary Judgment rendered August 31, 2007 in an arbitration proceeding. Appellants filed their Notice of Appeal and Initial Brief through Lynn E. Hanshaw, Esquire. There has been no appearance by Appellee.

The facts are clear. Appellee defaulted under a Residential Building Agreement and Appellants sued for damages arising from breach of contract. As required by the contract, the dispute went to arbitration. On August 28, 2007, as a result of the Pre-Arbitration Conference held on August 24, 2007, the panel through its Chief Arbitrator issued its Pre-Arbitration Conference Stipulation and Order which, among other things, required that dispositive motions be filed by the "cut off date" of August 29, 2007. This date was for "making the motion", whatever that means. On August 30, 2007, a Motion for Partial Summary Judgment Defective Construction Claim was filed by Appellee with the panel and showed a date of service by mail of August 29,

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2007. Whether that sufficed as having been “made” on August 29, 2007 is not important to a resolution of this appeal. We reverse on two grounds.

Even if the Motion for Partial Summary Judgment was timely, Appellants were certainly denied procedural due process. There is absolutely nothing in the Florida Rules of Civil Procedure which would allow this motion to be heard and ruled on two days after it is served. But even more fundamental, the second ground for reversal is lack of jurisdiction. Even the arbitration panel knew there had been no claim filed for defective construction as evidenced by its Order on Respondent/Counter - Petitioner’s Motion in Limine rendered September 4, 2007. That Order states in paragraph 1 thereof as a finding that the claims asserted by Appellants “are not claims for defective construction”. Clearly, the panel was without jurisdiction to enter judgment on a non-claim five days earlier. Thus, this cause is reversed and remanded for further appropriate proceedings in accordance with this opinion.

IT IS SO ORDERED.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County Florida, this 6 day of ~~September~~, 2008.
OCTOBER

Original opinion entered by Circuit Judges John A. Schaefer, George M. Jirotko, & George W. Greer.