

County Civil Court: CIVIL PROCEDURE – Pleading – The trial court properly granted relief when the defendant perpetuated a fraud on the court. Affirmed. *Balogh Enterprises, Inc. v. Billy E. Humphries*, No. 2012-AP-000006-WS, (Fla. 6th Cir.App.Ct. June 24, 2013).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

**BALOGH ENTERPRISES, INC.,
d/b/a A SOD FARMS OF PASCO,
Appellant,**

**UCN: 512012AP000006XXXXWS
Appeal No: 2012-AP-000006-WS
L.T. No: 11-SC-000923-WS**

v.

**BILLY E. HUMPHRIES,
RUTH HUMPHRIES**

Appellees.

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On appeal from County Court

Honorable Paul E. Firmani and
Honorable Anne Wansboro

Ramy N. Fares, Esquire
for Appellant

Billy E. Humphries and
Ruth Humphries, Pro Se
for Appellees

ORDER AND OPINION

Appellant challenges the trial court’s order amending the final judgment and the amended final judgment. At issue is whether the trial court erred in ruling that an individual who appeared as representing a defunct entity, filed a counterclaim on behalf of that defunct entity, and presented the matter at trial before the trial judge had perpetuated a fraud on the court for which relief should be granted. We find that the trial court properly granted relief as set forth below.

FACTUAL BACKGROUND

On May 5, 2011, Appellees filed a statement of claim against Sod Farms of Pasco in the amount of \$2,500 for issues arising from Appellant's sod installation. Appellant filed a counter-claim for labor and materials in the amount of \$385.20 on July 11, 2011. A final hearing was held on August 11, 2011 before Judge Firmani. In the August 26, 2011 final judgment, Appellees were awarded \$1,892.06 and Appellant was ordered to complete a Fact Information Sheet within 45 days.

The Fact Information Sheet indicated that Sod Farms was a dissolved corporation. In response, Appellees filed a motion stating that they believed Appellant was acting fraudulently. The motion stated that their small claim suit was brought against Sod Farms, the court process proceeded with Frank Balogh acting as Sod Farm's registered agent, Sod Farms is currently open for business, yet the Fact Information Sheet states that Sod Farms is dissolved and lists a non-existent taxpayer identification number with no income or assets.

On October 20, 2011, Judge Firmani entered an order stating that the named defendant was Sod Farms of Pasco, which was represented and defended by Frank Balogh. At the final hearing, the court considered Balogh's counter-claim and found for the plaintiffs. After the hearing, the defendant filed a fact information sheet where it indicated that the corporation had been dissolved. Since the defendant chose to "lay in the weeds" and not divulge this information to either the plaintiffs or the court, the court considered the defendant's actions sufficient for allegation of fraud on the court, which warranted setting aside the final judgment. Plaintiffs were allowed to amend their Statement of Claim to amend the name of the corporation. On October 26, 2011, Appellees filed an amended statement of claim to reflect the defendant from being listed as Sod Enterprises to A Sod Enterprises. On November 2, 2011, a notice of recusal and order of reassignment was entered.

Another final hearing was held before Judge Wansboro on February 27, 2012. The Amended Final Judgment entered on March 27, 2012 also found for Appellees in the amount of \$1,891.62. Appellant filed a timely notice of appeal on April 9, 2012.

LAW AND ANALYSIS

The trial court properly granted relief since Appellant perpetuated a fraud upon the court. Appellant appeared as representing a defunct entity, filed a counterclaim on behalf of that defunct entity, and presented the matter at trial before the trial court. Pursuant to Florida Rule of Civil Procedure 1.540(b)(3), the court may relieve a party from a final judgment or order based on fraud, misrepresentation, or other misconduct of an adverse party. It is therefore,

ORDERED AND ADJUDGED that the trial court's judgment is hereby AFFIRMED.

DONE AND ORDERED in Chambers, at New Port Richey, Pasco County, Florida this 24th day of June 2013.

Original order entered on June 24, 2013 by Circuit Judges W. Lowell Bray, Jr., Shawn Crane, and Linda H. Babb.

Copies to:
Ramy N. Fares, Esquire
Billy E. Humphries