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IN THE EIGHTH JUDICIAL CIRCUIT COURT
IN AND FOR ALACHUA COUNTY, FLORIDA
APPELLATE DIVISION

RAYPLUS4, INC. D/B/A SERVPRO
OF ALACHUA COUNTY WEST,
Appellant,

v.

Case No.: 01-2017-AP-0005
LT No.: 01-2015-CC-2756

CAROLYN WEBBER,
Appellee.

ORDER ON APPEAL

HON. DAVID P. KREIDER, Circuit Judge
HON. DONNA M. KEIM, Circuit Judge
HON. JAMES P. NILON, Circuit Judge

An Appeal from the Alachua County Court, Judge Susan Miller-Jones
For Appellant: David E. Williamson, Esq.
For Appellee: Leonard E. Ireland, Jr., B.C.S.

FILED
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2018 FEB 23 AM 9:31
J.H. "JESS" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL

PER CURIAM.

Appellant seeks review of a final judgment. We find merit in Appellant's argument that the wrong standard was applied when the trial court granted Appellee's motion for involuntary dismissal of Count I of Appellant's Amended Complaint for breach of contract.

"An involuntary dismissal is properly entered only where the evidence considered in the light most favorable to the non-moving party fails to establish a prima facie case." *Wright v. Emory*, 41 So.3d at 292. "A trial judge cannot weigh evidence when ruling on a party's rule 1.420(b) motion for involuntary dismissal after the presentation of the plaintiff's prima facie case...If the plaintiff has submitted competent proof of each element of the cause of action pleaded, an involuntary dismissal is inappropriate." *Ruck Bros. Brick, Inc. v. Kellogg & Kimsey, Inc.*, 668 So.2d 205, 207 (Fla. 2d DCA 1995). *See also Curls v. Tew*, 346 So.2d 1242 (Fla 1st



DCA) (holding that an involuntary dismissal was improper if competent substantial evidence had been introduced, even if the evidence was conflicting).

A review of the record shows that, considered in the light most favorable to the non-moving party, Appellant had presented a prima facie case for a breach of contract cause of action. In granting the motion for involuntary dismissal, the trial court improperly weighed the conflicting evidence. Therefore, we find that the trial court erred by entering judgment in Appellee's favor under the posture of an involuntary dismissal.

Normally, "[w]hen a trial court erroneously grants a motion for involuntary dismissal, the case is remanded for the completion of the trial." *Ruck Bros. Brick, Inc. v. Kellogg & Kimsey, Inc.*, 668 So.2d at 207. However, in this case, the trial court reserved ruling on Appellee's motion for involuntary dismissal until after the bench trial had concluded. Contrary to Appellant's other arguments on appeal, we find that the record contains competent substantial evidence supporting the factual findings of the trial court that led it to conclude Appellant failed to prove its damages. These findings must be presumed correct. *See Holland v. Gross*, 89 So.2d 255, 258 (Fla. 1956). Accordingly, this matter is **REMANDED** for entry of a final judgment consistent with the factual findings previously reached by the trial court.

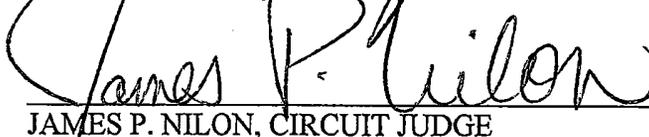
DONE AND ORDERED in Alachua County, Florida, on February 22, 2018.



DAVID P. KREIDER, CIRCUIT JUDGE



DONNA M. KEIM, CIRCUIT JUDGE



JAMES P. NILON, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing was furnished on February 23, 2018 to:

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