

 KeyCite Yellow Flag - Negative Treatment

Distinguished by [Behar v. Jefferson Nat. Bank at Sunny Isles, Fla.App. 3 Dist., December 29, 1987](#)

366 So.2d 484

District Court of Appeal of Florida, Third District.

Walter Lee ALLS, a minor, by his father
and next friend, Monroe Alls, and
Monroe Alls, Individually, Appellants,
v.

7-ELEVEN FOOD STORES, INC.,
and Crystal Springs Water Company,
a division of Borden, Inc., Appellees.

No. 78-155.

|
Jan. 16, 1979.
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Rehearing Denied Feb. 9, 1979.

Action was brought to recover for personal injuries sustained when glass bottle broke in food store. The Circuit Court, Dade County, Milton A. Friedman, J., granted defendant owner of store summary judgment, and plaintiffs appealed. The District Court of Appeal, Third District, held that circuit court had authority to grant such summary judgment after summary judgment was granted for another defendant on basis of its defense that a plaintiff was a sole proximate cause of the accident, though default judgment had previously been entered against defendant owner, motion to vacate default had been denied and petition for certiorari in regard to default judgment had been denied by Supreme Court.

Affirmed.

West Headnotes (4)

[1] **Judgment**

 Tort Cases in General

228 Judgment

228V On Motion or Summary Proceeding

228k181 Grounds for Summary Judgment

228k181(15) Particular Cases

228k181(33) Tort Cases in General

In action to recover for personal injuries sustained when glass bottle broke in food store, circuit court had authority to grant summary judgment to defendant owner of store after summary judgment was granted to another defendant on basis of its defense that plaintiff was sole proximate cause of the accident, though default judgment had previously been entered against owner, motion to vacate default had been denied and petition for certiorari in regard to default judgment had been denied by Supreme Court.

[8 Cases that cite this headnote](#)

[2]

Judgment

 Operation and Effect of Default

228 Judgment

228IV By Default

228IV(A) Requisites and Validity

228k110 Operation and Effect of Default

228k111 In General

Defaulting defendant may take advantage of a defense which is common to all.

[6 Cases that cite this headnote](#)

[3]

Judgment

 Operation and Effect of Default

228 Judgment

228IV By Default

228IV(A) Requisites and Validity

228k110 Operation and Effect of Default

228k111 In General

Trial judge may enter summary judgment for defaulting defendant when it is apparent that plaintiff can recover no damages against such defendant.

[7 Cases that cite this headnote](#)

[4]

Appeal and Error

 Reasons for Decision

30 Appeal and Error

30XVI Review

30XVI(A) Scope, Standards, and Extent, in General

30k851 Theory and Grounds of Decision of Lower Court

[30k854](#) Reasons for Decision

[30k854\(1\)](#) In General

On appeal, trial court may be regarded as right for any reason which appears in the record.

liability was that the plaintiff was the sole proximate cause of the accident and consequential injuries.

[4 Cases that cite this headnote](#)

Attorneys and Law Firms

*[485](#) R. Fred Lewis, Coconut Grove, for appellants.

Adams & Ward and Amy Shield Levine, Miami, for appellees.

Before PEARSON, HENDRY and BARKDULL, JJ.

Opinion

PER CURIAM.

The appellants seek review of a summary final judgment in favor of 7-Eleven Food Stores, Inc. Suit was filed by the appellants against two separate defendants, 7-Eleven and Crystal Springs Water Company, seeking recovery of damages for personal injuries sustained as the result of a glass bottle break at a 7-Eleven store when the minor appellant picked it up.

7-Eleven failed to timely respond. A default judgment was entered against it. After its motion to vacate default was denied, 7-Eleven sought review up through the Supreme Court of Florida which denied its petition for certiorari. [7-Eleven Food Stores, Inc. v. Alls](#), 308 So.2d 660 (Fla. 3d DCA 1975), certiorari denied 322 So.2d 925 (Fla.1975). While 7-Eleven's appeals were proceeding, the other defendant, Crystal Springs, made a motion for summary judgment which was granted in its favor.¹ Based on that happening, 7-Eleven filed a motion for summary judgment asserting that it too was entitled to summary judgment on the liability defense raised by the other defendant, which was granted.

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The defense of Crystal Springs on the question of

[1] This appeal ensued, the appellants contending that notwithstanding the favorable summary judgment for Crystal Springs,² a default having been entered against 7-Eleven, the trial judge was without authority to thereafter enter a summary judgment in 7-Eleven's favor. We disagree.

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No appeal was taken by the plaintiffs from the summary judgment finding no liability on the part of Crystal Springs.

[2] [3] [4] First, a defaulting defendant may take advantage of a defense which is common to all. [Edwards v. Schilling](#), 14 Fla.Supp. 7 (Fla. 4th Cir. 1959); [47 Am.Jur.2d, Judgments](#), s 1160; 19 Fla.Jur., Judgments *[486](#) and Decrees, s 314 (1978 Supp.); Anno. [78 A.L.R. 938](#); Compare: [Blatch v. Wesley](#), 238 So.2d 308 (Fla. 3d DCA 1970). Second, it would be proper for a trial judge to enter a summary judgment for a defaulting defendant when it is apparent that the plaintiff can recover no damages against the defaulting defendant. [Fields v. Quillian](#), 74 So.2d 230 (Fla.1954); [Andrews v. Goetz](#), 104 So.2d 653 (Fla. 1st DCA 1958); [Nielsen v. City of Sarasota](#), 110 So.2d 417 (Fla. 2d DCA 1959). It is, of

course, a principle of appellate law that a trial court can be right for any reason which appears in the record. [Cohen v. Mohawk](#), 137 So.2d 222 (Fla.1962); [Aetna Insurance Company v. Settembrino](#), 324 So.2d 113 (Fla. 3d DCA 1975); [Board of County Commissioners of Metropolitan Dade County v. Lowas](#), Fla.App., 348 So.2d 13.

Therefore, for the reasons above stated, the summary judgment here under review be and the same is hereby affirmed.

Affirmed.

All Citations

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