

Third District Court of Appeal

State of Florida

Opinion filed October 26, 2022.
Not final until disposition of timely filed motion for rehearing.

No. 3D22-1462
Lower Tribunal No. 19-20017

Michael Pulwer, et al.,
Petitioners,

vs.

Pearl Brothers, LLC, et al.,
Respondents.

A Case of Original Jurisdiction – Mandamus.

Simon, Schindler & Sandberg, LLP, and Roger J. Schindler; Law Offices of Kent Harrison Robbins, P.A., and Kent Harrison Robbins, for petitioners.

Carlson & Associates, P.A., and Curtis Carlson, and Joseph Muzaurieta, for respondents.

Before EMAS, LINDSEY, and BOKOR, JJ.

PER CURIAM.

Petitioners Michael Pulwer and 7020 NW 72nd Avenue, LLC, (Defendants below), seek mandamus relief from an order denying their Motion to Strike Uniform Trial Order Setting Cause for Jury Trial. Petitioners argue trial was set in violation of Florida Rule of Civil Procedure 1.440 because the action is not yet at issue. An action is at issue and ready to be set for trial “after any motions directed to the last pleading served have been disposed of or, if no such motions are served, 20 days after service of the last pleading.” Fla. R. Civ. P. 1.440(a). Here, there are two pending motions to dismiss directed at the operative complaint. Accordingly, the order setting the cause for jury trial was entered in violation of Rule 1.440.

Because we are bound by Lu-deca, Inc. v. Alignment & Condition Monitoring, Inc., 276 So. 3d 475 (Fla. 3d DCA 2019), we are compelled to grant the Petition for Writ of Mandamus and quash the trial court’s order setting the cause for trial. See also Gawker Media, LLC v. Bollea, 170 So. 3d 125, 130 (Fla. 2d DCA 2015) (“Indeed, a trial court’s obligation to hew strictly to [Rule 1.440’s] terms is so well established that it may be enforced by a writ of mandamus compelling the court to strike a noncompliant notice for trial or to remove a case from the trial docket.”).

Petition granted.¹

¹ We withhold issuance of the formal writ because we are confident the lower court will comply.