

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

ADIEL GOREL AND FLCA TROPICAL
HOLDINGS, LLC,

Appellants,

v.

Case No. 5D13-165

THE BANK OF NEW YORK MELLON,
ETC.,

Appellee.

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Opinion filed December 19, 2014

Appeal from the Circuit Court
for Orange County,
Lawrence R. Kirkwood, Judge.

Michael E. Rodriguez, of Foreclosure
Defense Law Firm, PL, Tampa, for
Appellants.

Elizabeth T. Frau and Jeffrey M. Gano, of
Ronald R. Wolfe & Associates, PL,
Tampa, for Appellee.

PER CURIAM.

Adiel Gorel and FLCA Tropical Holdings, LLC appeal the Final Summary Judgment of Mortgage Foreclosure in favor of The Bank of New York Mellon (Bank). Gorel and FLCA contend that Bank failed to establish that it was entitled to summary judgment because it failed to properly refute their affirmative defense alleging Bank's failure to provide them with pre-acceleration notice as required by the terms of the mortgage. We

agree, reverse the summary judgment under review, and remand this case for further proceedings. See Pavolini v. Williams, 915 So. 2d 251, 253 (Fla. 5th DCA 2005) (“[T]he plaintiff must either disprove those defenses by evidence or establish their legal insufficiency. Thus, summary judgment is appropriate only where each affirmative defense has been conclusively refuted on the record.” (citation omitted) (quoting The Race, Inc. v. Lake & River Recreational Props., Inc., 573 So. 2d 409, 410 (Fla. 1st DCA 1991))); see also Haven Fed. Sav. & Loan Ass’n v. Kirian, 579 So. 2d 730, 733 (Fla. 1991) (“A court cannot grant summary judgment where a defendant asserts legally sufficient affirmative defenses that have not been rebutted.”); Gray v. Union Planters Nat’l Bank, 654 So. 2d 1288, 1288 (Fla. 3d DCA 1995) (“[W]here a defendant pleads an affirmative defense and the plaintiff does not by affidavit contradict or deny that defense, the plaintiff is not entitled to a summary judgment.” (quoting Johnson & Kirby, Inc. v. Citizens Nat’l Bank of Ft. Lauderdale, 338 So. 2d 905, 906 (Fla. 3d DCA 1976))).

REVERSED and REMANDED.

SAWAYA, PALMER, and LAMBERT, JJ., concur.