NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

KEITH HARRINGTON,

Appellant,

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ANTHONY L. TOLAR,

Appellee.

Case No. 2D14-4768

Opinion filed June 12, 2015.

Appeal from the Circuit Court for Polk County; John Radabaugh, Judge.

Stephen R. Senn of Peterson & Myers, P.A., Lakeland; and J. Phillip Short and Ariana Gonzalez of Florida Rural Legal Services, Inc., Lakeland, for Appellant.

Dixie Brady and Daniel F. Pilka of Pilka & Associates, P.A., Brandon, for Appellee.

BLACK, Judge.

Keith Harrington challenges the final summary judgment of foreclosure

entered in favor of Anthony Tolar. Because the contract does not contain an

acceleration clause, the trial court erroneously accelerated the balance due. See

<u>Adkinson v. Nyberg</u>, 344 So. 2d 614, 615-16 (Fla. 2d DCA 1977). At oral argument, Mr. Tolar conceded error.

Accordingly, we reverse and remand with directions to vacate the final summary judgment of foreclosure and to consider a renewed motion for summary judgment, consistent with this opinion. On remand Mr. Tolar may amend his pleading to claim any sums then due under the contract, and Mr. Harrington may appropriately amend his answer. Any judgment shall be subject to the contract terms and Mr. Harrington's right to redeem under section 45.0315, Florida Statutes (2014).

Reversed and remanded.

NORTHCUTT and KELLY, JJ., Concur.