

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ALS MAXIM, LLC,
Appellant,

v.

**SUCCESS INNOCENT, IRLANDE INNOCENT and
LANTANA HOMES HOMEOWNERS ASSOCIATION,**
Appellees.

No. 4D15-1610

[July 20, 2016]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Richard Oftedal, Judge; L.T. Case No. 50-2014-CA-015372XXXXMB .

Heidi J. Bassett and Robert R. Edwards of Robertson Anschutz & Schneid, P.L., Boca Raton, for appellant.

Brian Korte of Korte & Wortman, P.A., West Palm Beach, for appellee, Success Innocent.

PER CURIAM.

We reverse the order dismissing the foreclosure complaint, entered on appellee's motion to dismiss. The rationale for granting the motion was that the affirmative defense of res judicata barred the complaint. Res judicata is an affirmative defense that ordinarily must be pleaded "in an answer or similar pleading." *Palmer v. McCallion*, 645 So. 2d 131, 133 (Fla. 4th DCA 1994); *see also* Fla. R. Civ. P. 1.110(d). "If the face of the complaint contains allegations which demonstrate the existence of an affirmative defense, then such a defense may be considered on a motion to dismiss." *Papa John's Int'l, Inc. v. Cosentino*, 916 So. 2d 977, 983 (Fla. 4th DCA 2005). The complaint in this case does not facially demonstrate the application of that affirmative defense, so dismissal on that basis was not proper.

GROSS, MAY and KLINGENSMITH, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.