

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

BLUEWATER, INC. and **ANTHONY SCOTT WALKER,**
Appellants,

v.

CENTER STREET LENDING FUND IV SPE, LLC,
Appellee.

No. 4D18-3152

[November 21, 2018]

Appeal of non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy, III, and Michael L. Gates, Judges; L.T. Case Nos. CACE-15-016505 12 and CACE-16-005839 12.

Gary Barcus, Pembroke Pines, for appellants.

No appearance for appellee.

PER CURIAM.

We summarily affirm the trial court's order requiring sequestration of rents under section 697.07(4), Florida Statutes (2018). The statute allows sequestration of rents 'notwithstanding any asserted defenses or counterclaims of the mortgagor.' *Id.* (emphasis supplied). "In ruling on a motion to sequester rents, a court should refrain from conclusively ruling on affirmative defenses." *Tidewater Estates Co-Op, Inc. v. U.S. Bank Nat. Ass'n*, 83 So. 3d 912 (Fla. 4th DCA 2012). Usury is an affirmative defense. *Cerrito v. Kovitch*, 423 So. 2d 1008, 1010 (Fla. 4th DCA 1982), *approved*, 457 So. 2d 1021 (Fla. 1984). The trial court did not abuse its discretion.

Affirmed.

GERBER, C.J., WARNER and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.