

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

SOUTHERN MANAGEMENT AND DEVELOPMENT, L.P.,
Appellant,

v.

IAN GARDNER, Assignee from First United Development Corporation,
Appellee.

No. 4D08-769

[October 29, 2008]

SHAHOOD, C.J.

This is an appeal by Southern Management and Development, L.P., from a Final Judgment in favor of Ian Gardner, assignee from First United Development Corporation. As his second issue appellant argues the trial court erred in entering a Final Judgment for the full amount of Gardner's claim without allowing a set-off by the amount awarded appellee in a prior action involving the same subject matter.

As we held in *Jojo's Clubhouse, Inc. v. DBR Asset Management, Inc.*, 860 So. 2d 503, 504 (Fla. 4th DCA 2003):

A motion for set-off is an affirmative defense. *See Kellogg v. Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A.*, 807 So. 2d 669, 670 (Fla. 4th DCA 2001), *review denied*, 828 So. 2d 386 (Fla. 2002). Affirmative defenses are waived if not pled. *See Wolowitz v. Thoroughbred Motors, Inc.*, 765 So. 2d 920, 923 (Fla. 2d DCA 2000); *Goldberger v. Regency Highland Condo. Ass'n*, 452 So. 2d 583, 585 (Fla. 4th DCA 1984).

In that set-off was never pled in this case, we affirm on the authority of *Jojo's Clubhouse*.

We hold the first issue raised was without merit and affirm without discussion.

Affirmed.

FARMER and GROSS, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; David E. French, Judge; L.T. Case No. 502007CA000460 XXXXMBAD.

Wayne Kaplan, Boca Raton, for appellant.

Ian Gardner, Boca Raton, pro se.

Not final until disposition of timely filed motion for rehearing.