

Third District Court of Appeal

State of Florida

Opinion filed August 12, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1777
Lower Tribunal No. 17-583

Zur Investments, LLC, et al.,
Appellants,

vs.

Anat Zur Auslander,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig,
Judge.

The Carlin Law Firm, PLLC, and Justin C. Carlin (Fort Lauderdale), for
appellants.

Mauricio J. Ejenbaum, P.A., and Mauricio J. Ejenbaum, for appellee.

Before LOGUE, HENDON and GORDO, JJ.

GORDO, J.

Zur Investments, LLC (“ZUI”), Hanna Zur and Vered Zur Panzer appeal the trial court’s order granting final summary judgment in favor of Anat Zur Auslander in an action to inspect the books of ZUI, a dissolved limited liability company. The court entered the unelaborated order before Appellants had served an answer to the third amended complaint or asserted any affirmative defenses, and while a motion to dismiss and a motion to enforce settlement agreement were pending before it. At this stage, Auslander’s “burden to show the absence of any genuine issue of material fact was extremely high.” St. Tropez II, LLC v. Adlerov, 50 So. 3d 40, 41 (Fla. 3d DCA 2010) (quoting W. Fla. Cmty. Builders, Inc. v. Mitchell, 528 So. 2d 979, 980 (Fla. 2d DCA 1988)). “When a trial court has for consideration a plaintiff’s motion for summary judgment before the defendant has answered, the summary judgment should not be granted unless it is clear that an issue of material fact can not be presented.” Beach Higher Power Corp. v. Granados, 717 So. 2d 563, 565 (Fla. 3d DCA 1998) (quoting Olin’s, Inc. v. Avis Rental Car Sys. of Fla., Inc., 105 So. 2d 497, 498 (Fla. 3d DCA 1958)). “[T]he movant must demonstrate conclusively and to a certainty from the record that the defendant cannot plead or otherwise raise a genuine issue of material fact.” Hodkin v. Ledbetter, 487 So. 2d 1214, 1217 (Fla. 4th DCA 1986)). See Howell v. Ed Bebb, Inc., 35 So. 3d 167, 168 (Fla. 2d DCA 2010). Based on the record before us, Auslander failed to satisfy this heightened burden of establishing conclusively and to a certainty that Appellants could not plead

or otherwise raise a genuine issue of material fact. We, therefore, vacate the trial court's final judgment and remand for further proceedings consistent with this opinion.

Reversed and remanded.