

Third District Court of Appeal

State of Florida

Opinion filed August 19, 2020.

No. 3D20-0231
Lower Tribunal No. 19-10452

Raquel L. Cruz,
Appellant,

vs.

Lakeview Loan Servicing, LLC,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Martin Zilber,
Judge.

Catherine A. Riggins, for appellant.

Choice Legal Group, P.A., and Robert R. Edwards (Coral Springs), for
appellee.

Before FERNANDEZ, LINDSEY, and GORDO, JJ.

PER CURIAM.

ON CONFESSION OF ERROR

Appellant Raquel Cruz appeals the lower court's entry of final summary judgment of foreclosure in favor of Appellee Lakeview Loan Servicing, LLC. Upon Lakeview's commendable confession of error, we reverse because Lakeview failed to conclusively refute Cruz' affirmative defenses.

It is well settled that "[i]f a defendant pleads affirmative defenses, the plaintiff moving for summary judgment must either factually refute the affirmative defenses by affidavit or establish their legal insufficiency." See Bryson v. Branch Banking and Tr. Co., 75 So. 3d 783, 786 (Fla. 2d DCA 2011). Lakeview did not do so in this case. "When a party raises affirmative defenses, a summary judgment should not be granted where there are issues of fact raised by the affirmative defenses which have not been effectively factually challenged and refuted." See Toyos v. Helm Bank USA, 187 So. 3d 1287, 1289 (Fla. 4th DCA 2016) (internal quotations and citations omitted). Thus, the lower court's entry of final summary judgment was in error. Accordingly, we vacate the final judgment of foreclosure and remand for further proceedings.

Reversed and remanded.