

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JANUARY TERM, A.D. 2004

|                          |    |                       |
|--------------------------|----|-----------------------|
| GROUPER FINANCIAL, INC., | ** |                       |
| Appellant,               | ** |                       |
| vs.                      | ** | CASE NO. 3D03-2025    |
| WORLD GYM, NMB, INC.,    | ** | LOWER                 |
| Appellee.                | ** | TRIBUNAL NO. 03-00551 |

Opinion filed May 26, 2004.

An Appeal from a non-final order from the Circuit Court for Dade County, Marc Schumacher, Judge.

Silver, Garvett & Henkel; Hersch & Talisman and Patrice A. Talisman, for appellant.

Zarco Einhorn & Salkowski and Alejandro Brito, for appellee.

Before SCHWARTZ, C.J., and LEVY, J., and COBB, WARREN, Senior Judge.

SCHWARTZ, Chief Judge.

Because the appellee's failure to make a timely payment of rent constituted a clear and material breach of the parties' settlement agreement,<sup>1</sup> the order under review denying the

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<sup>1</sup> The agreement specified that payment was to be made "by cashier's check or wire transfer." Instead, the appellee tenant tendered a

application for a final judgment for removal of tenant and for possession as the agreement also provided, is reversed and the cause remanded with instructions to grant the appellant that relief. See *Sublime, Inc. v. Boardman's, Inc.*, 849 So. 2d 470 (Fla. 4th DCA 2003); *Treasure Coast, Inc. v. Ludlum Construction Co.*, 760 So. 2d 232 (Fla. 4th DCA 2000).

Reversed and remanded.

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simple corporate check which twice bounced.