

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JULY TERM 2011

HELPING HAND PRIVATE FOUNDATION, INC.,

Appellant,

v.

Case No. 5D10-4402

OCEAN PALMS BEACH CLUB, INC.,

Appellee.

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Opinion filed September 30, 2011

Appeal from the Circuit Court
for Volusia County,
Terrence R. Perkins, Judge.

Frederick C. Kramer, of The Kramer Law
Firm, P.A., Marco Island, for Appellant.

No Appearance for Appellee.

PER CURIAM.

Helping Hand Private Foundation appeals from a summary final judgment entered in a lien foreclosure action filed by Ocean Palms Beach Club. We reverse.

Summary judgment cannot be granted unless the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, conclusively show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See Fla. R. Civ. P. 1.510(c); *Alejandre v. Deutsche Bank Trust Co. Americas*, 44 So. 3d 1288, 1289 (Fla. 4th DCA

2010). Where, as in the instant case, affirmative defenses are raised, the movant has the burden of either disproving them or establishing their legal insufficiency. See *O'Brien v. Fed. Trust Bank, F.S.B.*, 727 So. 2d 296, 298 (Fla. 5th DCA 1999); *Fla. Dep't of Agric. v. Go Bungee, Inc.*, 678 So. 2d 920, 921 (Fla. 5th DCA 1996). Here, Ocean Palms did neither. The sole summary judgment evidence relied upon by Ocean Palms was an affidavit executed by its president, Edward Polonsky. The affidavit's conclusory recitation of the amount of monies due and owing on the filed liens was insufficient to refute Helping Hand's asserted defenses. See *Frost v. Regions Bank*, 15 So. 3d 905 (Fla. 4th DCA 2009).

REVERSED and REMANDED.

TORPY, LAWSON and EVANDER, JJ., concur.