

--- So.3d ---, 2012 WL 3328702 (Fla.App. 4 Dist.)
(Cite as: 2012 WL 3328702 (Fla.App. 4 Dist.))

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District **Court** of Appeal of Florida,
Fourth District.
FAMSUN INVEST, LLC, Petitioner,
v.
Daniel THERAULT, Respondent.

No. 4D12-1642.
Aug. 15, 2012.

Background: Commercial landlord sued the tenant for eviction and for damages. The County **Court** entered a default judgment awarding possession to the landlord based on the tenant's failure to pay rent into the **court** registry. The Circuit **Court** for the Seventeenth Judicial Circuit, Broward County, [Michael L. Gates, J.](#), reversed and remanded. Landlord filed petition for writ of second-tier certiorari.

Holding: The District **Court** of Appeal held that, because the issue of damages remained pending, county **court's** order awarding landlord possession was not a “final order disposing of the cause” within meaning of rule, providing that the lower tribunal may not render a final order disposing of the cause pending non-final review.

Petition granted; opinion quashed.

West Headnotes

[1] Certiorari 73 🔑0

73 Certiorari

Because the landlord-tenant proceeding in the District **Court** of Appeal sought second-tier review of an appellate decision of the circuit **court**, the

case should have been designated as a petition for writ of certiorari, not a non-final appeal.

[2] Appeal and Error 30 🔑0

30 Appeal and Error

Because the issue of damages remained pending, county **court's** order awarding commercial landlord possession was not a “final order disposing of the cause” within meaning of rule, providing that the lower tribunal may not render a final order disposing of the cause pending non-final review, and thus, circuit **court's** appellate decision, determining that the county **court** should not have entered the default judgment for landlord while non-final appeal was pending, rose to the level of a departure from the essential requirements of law and resulted in a miscarriage of justice. [West's F.S.A. R.App.P.Rule 9.130\(f\)](#).

[3] Appeal and Error 30 🔑0

30 Appeal and Error

Rule, which provides that the lower tribunal may not render a final order disposing of the cause pending non-final review, did not prohibit entry of a default judgment for possession where the commercial tenant failed to abide by an order requiring deposit of rent into the **court** registry. [West's F.S.A. R.App.P.Rule 9.130\(f\)](#).

[4] Landlord and Tenant 233 🔑0

233 Landlord and Tenant

Statute requiring deposit of rent into registry of **court** pending action for possession is designed to protect a commercial landlord from irreparable harm where a tenant holds over during eviction proceedings without paying rent.

[5] Landlord and Tenant 233 🔑0

233 Landlord and Tenant

If commercial tenant lacks resources to pay rent, or from which the landlord may obtain dam-

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ages, the landlord suffers irreparable harm in the loss of rental income and could even be in danger of losing the premises, and to protect against this harm, the law requires payment of rent into the **court** registry. [West's F.S.A. § 83.232](#).

[6] Landlord and Tenant 233

233 Landlord and Tenant

Default under statute, requiring deposit of rent into registry of **court** pending action for possession, determines only the possessory interest and does not resolve a dispute for damages. [West's F.S.A. § 83.232](#).

Petition for writ of certiorari to the Circuit **Court** for the Seventeenth Judicial Circuit, Broward County; [Michael L. Gates](#), Judge; L.T. Case No. 10-44244 12.[Mark J. Abate](#), Fort Lauderdale, for petitioner.

Daniel Therault, Dania, pro se.

PER CURIAM.

*1 Famsun Invest, LLC, a commercial landlord, petitions for a writ of second-tier certiorari from an appellate decision of the circuit **court** which reversed and remanded the county **court's** default judgment. The default judgment entitled the landlord to immediate possession of the property based on the tenant's failure to deposit rent into the **court** registry as ordered by the **court** pursuant to [section 83.232, Florida Statutes \(2012\)](#). We grant the petition.

[1] The commercial landlord sued the tenant in county **court** for eviction and for damages. The county **court**, pursuant to [section 83.232, Florida Statutes](#), entered an order determining the amount of rent to be paid into the **court** registry. The tenant did not comply but appealed that order to the circuit **court**. The circuit **court** then entered an order requiring the tenant to pay rent into the **court** registry or the appeal would be dismissed. The tenant did not comply and then filed a “non-final” appeal ^{FN1}

of that order with this **court**.

The following day, the circuit **court** dismissed the appeal, and the county **court** entered a default judgment awarding possession to the landlord based on the tenant's failure to pay rent into the **court** registry. This **court** later affirmed the “non-final appeal” that had been filed in this **court**. Subsequently, the circuit **court** entered the opinion at issue in which it determined that the county **court** should not have entered the default judgment while a “non-final appeal” was pending in this **court**.

[2][3] The circuit **court** reversed based on [Florida Rule of Appellate Procedure 9.130\(f\)](#) which provides that “the lower tribunal may not render a final order disposing of the cause pending [non-final] review.” The circuit **court's** ruling is incorrect. ^{FN2} The county **court's** order awarding the landlord possession was not a “final order disposing of the cause” within the meaning of the rule because the issue of damages remained pending. Further, given the purpose of the statute at issue, we hold that [rule 9.130\(f\)](#) does not prohibit entry of a default judgment for possession where the commercial tenant fails to abide by an order requiring deposit of rent into the **court** registry.

[4][5][6] [Section 83.232](#) is designed to protect a commercial landlord from irreparable harm where a tenant holds over during eviction proceedings without paying rent. If the tenant lacks resources to pay rent, or from which the landlord may obtain damages, the landlord suffers irreparable harm in the loss of rental income and could even be in danger of losing the premises. ^{FN3} To protect against this harm, the statute requires payment of rent into the **court** registry and provides:

Failure of the tenant to pay the rent into the **court** registry pursuant to **court** order shall be deemed an absolute waiver of the tenant's defenses. In such case, *the landlord is entitled to an immediate default for possession without further notice or hearing thereon.*

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§ 83.232(5), Fla. Stat. (2012) (emphasis added). A default under this statute determines only the possessory interest and does not resolve a dispute for damages. *Premici v. United Growth Props., L.P.*, 648 So.2d 1241 (Fla. 5th DCA 1995). This **court** has observed:

*2 Where the tenant has not paid the rent into the registry of the **court** in accordance with **court** order and the statute, the landlord is entitled to a writ of possession without further hearing. The trial **court** exercises no discretion, and the landlord is entitled to the issuance of the writ of possession as a matter of right.

Poal Wk Taft, LLC v. Johnson Med. Ctr. Corp., 45 So.3d 37, 38 (Fla. 4th DCA 2010) (holding that no equitable exception to the statute exists).

Although second-tier review is narrow in scope and the standard is stringent, *see Custer*, 62 So.3d at 1092–93, we conclude that the circuit **court's** appellate decision in this case rises to the level of a departure from the essential requirements of law and results in a miscarriage of justice. The **court's** holding, which sets precedent controlling county **court** cases, would permit commercial tenants to frustrate the purposes of section 83.232. Tenants could file frivolous appeals of non-final orders which, pursuant to the circuit **court's** holding, would prevent commercial landlords from obtaining the remedy of immediate possession and the protection afforded by the statute.

Accordingly, the petition is granted, and the circuit **court's** opinion is quashed. The landlord shall be entitled to immediate possession.

Petition granted; opinion quashed.

HAZOURI, DAMOORGIAN and GERBER, JJ.,
 concur.

FN1. Because the proceeding in this **court** sought second-tier review of an appellate decision of the circuit **court**, the case should have been designated as a petition

for writ of certiorari, not a non-final appeal. *See Custer Med. Ctr. v. United Auto. Ins. Co.*, 62 So.3d 1086 (Fla.2010).

FN2. Technically, because the “non-final appeal” to this **court** should have been a petition for second-tier certiorari, rule 9.130 should not have applied.

FN3. The statute provides: “If the landlord is in actual danger of loss of the premises or other hardship resulting from the loss of rental income from the premises, the landlord may apply to the **court** for disbursement of all or part of the funds so held in the **court** registry.” § 83.232(1), Fla. Stat. (2012).

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