

## Coronavirus No Excuse for Day-Late Rent by Business Facing Eviction, Appeals Court Rules

A Deerfield Beach boat upholstery business facing eviction won in trial court based on coronavirus defenses but lost on appeal.

by Lidia Dinkova

A Deerfield Beach boat upholstery and cover business is still fighting eviction after an appellate court shot down its claim that the coronavirus pandemic played a role in a day-late rent payment.

The Cove & Deerfield Beach LLC, controlled by New York's Bruscas family, filed the commercial eviction lawsuit in January against Hector Alicea and R Fast Inc., an affiliate of his Rfast Canvas.

Rfast occupies a unit in a two-story, seafoam-colored building steps from the Intracoastal Waterway at 201 SE 15th Terrace. The Broward County Property Appraiser's office lists 14-34 31 Avenue LLC as the owner, which has the same New York address as Cove & Deerfield.

As the suit progressed, the court ordered Alicea to deposit \$848 for rent in the court registry on the first of each month. When the clerk's office acknowledged receiving

the July payment a day later, Cove & Deerfield said it was entitled to a final judgment for eviction by default because the late payment violated the court order.

The Fourth District Court of Appeal agreed with Cove & Deerfield and reversed Broward Circuit Judge Carlos Rodriguez, ordering the trial court to enter the default and writ of possession.

"We recognize the result is harsh. But the reason for failing to tender payment on the first day of the month is not relevant," Judge Jeffrey Kuntz wrote in the Nov. 25 opinion. "When a tenant fails to tender payment on or before the deadline, the court must issue a default for possession."

Judges Martha Warner and Robert Gross concurred.

Under state law, Rodriguez had no discretion on a late payment, only allowing an eviction judgment, the panel said.

**Rodriguez in August denied Cove & Deerfield's request, noting Ali-**



Evan Berger, Shareholder, Becker & Poliakoff

**cea mailed his rent** June 29 and there's no proof the clerk of court received the money late. He noted the Florida Supreme Court has issued pandemic-related administrative orders that put courts under a public health emergency.

Broward closed its courthouses to all but essential services in March, and the clerk's office is in the courthouse. In the early months of the

pandemic, essential court functions were prioritized. Rodriguez said the registry wasn't one of them.

The appellate panel said the court registry was open July 1, "so the pandemic-related administrative orders do not affect the result in this case." Also, Alicea presented no evidence the clerk received the funds on time and deposited them late.

Alicea's attorney, Robert Bissonnette in Fort Lauderdale, is fighting to keep Rfast in place.

Bissonnette said he asked the panel for a rehearing because it "overlooked" several factors involving how the pandemic affected the July payment.

Bissonnette's legal assistant at the time was COVID-19 positive, and he has underlying health conditions, so he opened his office only for essential matters.

He said he received Alicea's rent payment June 29 and mailed it to the court registry the same day — and it likely was received July 1 but not deposited by the registry until the following day.

"Intra-city mail from my office to the courthouse (normally) does not take more than two days, so the rent payment should have been received by the clerk timely by July 1," Bissonnette said by email. The appellate court decision "ignores the exigent circumstances" and made him "a guarantor of mail delivery by the USPS and of the clerk's posting of the rent that was most likely received on July 1, 2020, but posted the following day."

Alicea's lease was for a second-floor unit, but he relocated to the

first floor after tenants complained his industrial sewing machines were disruptive, court filings say. Bissonnette asked to allow Alicea to return to his original unit.

"This case is a travesty no matter how you look at it," Bissonnette added.

Cove & Deerfield's attorney, Becker shareholder Evan Berger in Fort Lauderdale, said the pandemic has impacted everyone but played no role in the late payment.

"COVID-19 didn't preclude for any reason the tenant from timely complying with the court order. The clerk of court was open for regular business on July 1 and had been for over a month, so you can't create a COVID reason for not doing something. It's not because it was impossible because the clerk was closed," Berger said.

Alicea had been dropping off checks at his attorney's office while the courts were closed.

Once courts reopened in late May, he was supposed to take the rent to the registry directly, Berger said. Yet, he still took the July payment to his attorney. From there, the rent wasn't mailed overnight, couriered or taken in person to the registry, he added.

The case is important to show the pandemic can't be a knee-jerk defense for violating court orders, he added.

"The longstanding law in Florida is even if the rent is one day late, the court has no discretion other than enter a default and a writ of possession for the premises and has no discretion to listen to the reason why it was late," Berger said.

Cove & Deerfield sued to evict after sending Alicea a 15-day notice of tenancy termination in November 2019. Berger said the landlord's main reason was to end the business's month-to-month tenancy, but Alicea also stopped paying rent and often was late when he received a notice.

**In a countersuit, Rfast and Alicea said they signed a five-year lease** in 2014 and timely sought to renew the lease for another five years. They lodged a fraud upon the court count against Cove & Deerfield for omitting Alicea's renewal letter from its complaint.

Cove & Deerfield responded to the renewal notice with a ground-floor lease at a higher monthly rent of \$1,250 and then "bootstrapped and manufactured an eviction claim," according to a counterclaim filed in March.

The tenant said both the unit number and rent were material changes to the lease. After Alicea confirmed in an affidavit he moved to the first floor, an amended counterclaim filed in July listed only the higher rent as a material change.

The eviction suit was filed in county court and moved to circuit court since the counterclaim sought over \$30,000 in damages.

*Lidia Dinkova covers South Florida real estate for the Daily Business Review. Contact her at [LDinkova@alm.com](mailto:LDinkova@alm.com) or 305-347-6665. On Twitter @LidiaDinkova*