

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA.

APPELLATE DIVISION (CIVIL)  
Case No.: 502010AP000062XXXXMB  
L.T.: 502009CC008946XXXXMB  
Division: 'AY'

MICHAEL KUPRITZ,

Appellant(s),

v.

CHASE BANK USA N.A.,

Appellee(s).

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Opinion filed: ~~MAY 26~~ 2012

**Appeal from the County Court in and for Palm Beach County,  
Judge Caroline Shepherd.**

For Appellant: Michael Kupritz, *pro se*  
215 Woodsmuir Court  
Palm Beach Gardens, FL 33418

For Appellee: Philip A. Orsi, Esq  
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**PER CURIAM.**

**REVERSED.**

Appellee, Chase Bank USA, N.A. ("Chase"), sued Appellant, Michael Kupritz, for an unpaid balance owed on a revolving credit card account, and Kupritz filed a counterclaim against Chase. On July 6, 2010, the lower court granted Chase's motion to dismiss Kupritz's counterclaim, but the order was not a final order because it did not dispose of the counterclaim. *See Peavy v. Parrish*, 385 So. 2d 1034, 1035 (Fla. 4th DCA 1980); *see also Hoffman v. Hall*, 817

So. 2d 1057, 1058 (Fla. 1st DCA 2002) (stating “an order which merely grants a motion to dismiss but does not actually enter a final judgment is nonfinal and nonappealable”). On July 29, 2010, Kupritz filed a Motion for Leave to Amend the Counterclaim (“Motion to Amend”). The lower court never ruled upon the Motion to Amend. On November 3, 2010, while the counterclaim was still pending, the lower court granted final summary judgment in Chase’s favor.

“Courts have repeatedly held that, where summary judgment is granted for a plaintiff and a counterclaim remains pending, the trial court should stay execution of the judgment pending the resolution of the counterclaim.” *Peterson v. Affordable Homes of Palm Beach, Inc.*, 65 So. 3d 112 (Fla. 4th DCA 2011) (quoting *Tooltrend, Inc. v. C.M.T. Utensili, S.r.l.*, 707 So. 2d 1162, 1162 (Fla. 2d DCA 1998)). There are two ways to deal with a summary judgment motion when there is a pending counterclaim. First, a trial court can enter partial summary judgment for a plaintiff and take evidence on the counterclaim or, alternatively, enter final summary judgment on the complaint but stay its execution pending the resolution of the counterclaim. *Reliance Forwarding Co. v. Nilson Van & Storage*, 387 So. 2d 513, 513 (Fla. 5th DCA 1980). “To allow a plaintiff to recover judgment and have execution while a defendant’s counterclaim remains undisposed of might well result in plaintiff recovering on its claim without the ability to respond should the defendant recover on its counterclaim.” *Davar Corp. v. Tropic Land Imp. Corp.*, 330 So. 2d 482, 483 (Fla. 4th DCA 1976).

On appeal, Kupritz argued that he tried to set the motion for hearing, but it was never heard by the lower court. Chase refuted the allegation that Kupritz tried to set the Motion to Amend for a hearing because there was nothing in the record to support that claim. However, in looking at the record on appeal, Kupritz’s lengthy memorandum in opposition to Chase’s motion for summary judgment does raise the issues of his outstanding Motion to Amend and that a

motion for summary judgment would be premature. Furthermore, Kuprtiz filed an ex-parte letter to the Judge requesting a hearing on the Motion to Amend. The Motion to Amend was never heard or ruled on.

We hold that the County Court erred in prematurely granting final summary judgment in favor of Chase while the counterclaim was still pending. The County Court's Order Granting Final Summary Judgment is **REVERSED** and **REMANDED** for further proceedings.

CROW, COX and MCCARTHY, JJ., concur.