

IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA
THIRD DISTRICT

CARLOS GABRIEL CARUS JR.,
Appellant,

v.

Case No.: **3D23-281**
LT Case No.: 20-117333

GLADYS FIDELIA, ET AL.,
Appellee(s),

_____ /

Appellee’s Motion for Order to Show Cause why this Appeal should not be dismissed for Appellant’s Failure to Timely File his Initial Brief under FLA. R. APP. P. 9.110(f) and this Court’s Order

Appellee, GLADYS FIDELIA (Fidelia), under FLA. R. APP. P. 9.300(a), moves for an order to show cause why this appeal should not be dismissed for Appellant’s, CARLOS GABRIEL CARUS JR.’s (Carus), failure to timely file his Initial Brief under FLA. R. APP. P. 9.110(f) and this Court’s Order, and states:

STATEMENT OF FACTS

1. Six months ago, on February 16, 2023, Carus filed his Notice of Appeal. Ex. A.¹
2. The trial court Clerk submitted the Record to this Court on April 19, 2023. Ex. B.²
3. Carus filed two notices of thirty-day extensions to file his Initial

¹ Exhibit A is a copy of Carus’s Notice of Appeal.

² Exhibit B is a copy of this Court’s online docket as of August 27, 2023.

RECEIVED, 08/28/2023 12:12:21 PM, Clerk, Third District Court of Appeal

Brief on April 27, 2023, and May 30, 2023, and a motion for a thirty-day extension to file his Initial Brief on June 28, 2023. Id.

4. Yet on July 28, 2023, when time expired on Carus's third extension, he neither filed the Initial Brief nor moved for another extension; he moved only to supplement the record. Ex. C.³

5. On August 15, 2023, this Court granted Carus's Motion, declared the items in his Motion part of the Record, and ordered Carus to file his Initial Brief "within ten (10) days" from the Order: Friday, August 25, 2023. Ex. D.

6. Yet Carus has neither filed his Initial Brief nor moved for an extension to comply with this Court's August 15, 2023, Order.

7. Fidelia thus, under FLA. R. APP. P. 9.300(a), moves for an order to show cause why this appeal should not be dismissed because of Carus's failure to timely file his Initial Brief under FLA. R. APP. P. 9.110(f) and this Court's August 15, Order.

SUMMARY OF ARGUMENT

8. Carus filed his Notice of Appeal on February 16, 2023, so under FLA. R. APP. P. 9.110(f), his Initial Brief was due on **May 27, 2023**.

9. At the same time, under FLA. R. APP. P. 9.300(b), Carus's three thirty-day extensions of time prolonged the time he had under FLA. R. APP.

³ Exhibit C is a copy of Carus's Motion to Supplement the Record.

P. 9.110(f) to file his Initial Brief until **July 28, 2023**.

10. But when Carus's Initial Brief was due on July 28, 2023, he neither filed the Initial Brief nor moved for another extension; he moved only to supplement the record.

11. And when this Court granted Carus's Motion to Supplement the Record on August 15, 2023, it declared the requested items part of the Record and ordered Carus to file his Initial Brief by **Friday, August 25, 2023**.

12. Yet Carus has neither filed his Initial Brief nor moved for an extension to comply with this Court's Order.

13. Carus's Initial Brief is therefore untimely under both FLA. R. APP. P. 9.110(f) and this Court's August 15, 2023, Order.

ARGUMENT

I. Carus's Initial Brief is untimely under FLA. R. APP. P. 9.110(f) and this Court's August 15, 2023, Order.

A. Carus's three thirty-day extensions of time prolonged his time under FLA. R. APP. P. 9.110(f) to file his Initial Brief until July 28, 2023.

14. Carus filed his Notice of Appeal on February 16, 2023, so under FLA. R. APP. P. 9.110(f), his Initial Brief was due on **May 27, 2023**. See FLA. R. APP. P. 9.110(f) ("The appellant's initial brief shall be served within 70 days of filing the notice [of appeal].").

15. At the same time, Carus's two notices of thirty-day extensions of

time and his one motion for thirty-day extension of time—which this Court granted on June 28, 2023, supra Exhibit B—prolonged the time he had under FLA. R. APP. P. 9.110(f) to file his Initial Brief until **July 28, 2023**. See FLA. R. APP. P. 9.300(b) (“[S]ervice of a motion shall toll the time schedule of any proceeding in the court until disposition of the motion. An order granting an extension of time for any act shall automatically extend the time for all other acts that bear a time relation to it.”).

B. Carus filed no other motions for extension after July 28, 2023; he filed only a motion to supplement the record. And when this Court granted that motion, it gave him until Friday, August 25, 2023, to file his Initial Brief. Yet Carus has neither filed the Initial Brief nor moved for an extension to comply with this Court’s Order.

16. When Carus’s Initial Brief was due on July 28, 2023, he neither filed the Initial Brief nor moved for another extension; he moved only to supplement the record. Supra Ex. C.

17. And when this Court granted Carus’s Motion to Supplement the Record on August 15, 2023, it not only declared the requested items part of the Record but also ordered Carus to file his Initial Brief by **Friday, August 25, 2023**: “Appellant **shall** file the initial brief within ten (10) days from the date of this Order.” Supra Ex. D (emphasis added).

18. Yet Carus has neither filed his Initial Brief nor moved for an extension to comply with this Court’s August 15, 2023, Order.

19. Carus's Initial Brief is thus untimely under both FLA. R. APP. P. 9.110(f) and this Court's August 15, 2023.

Appellee, FIDELIA, asks this Court to **(1)** enter an order to show cause why this appeal should not be dismissed because of Carus's failure to timely file his Notice of Appeal under FLA. R. APP. P. 9.110(f) and this Court's August 15, Order; and **(2)** enter any other relief it considers proper.

/s/ Tyler E. Mesmer

Tyler E. Mesmer, Esquire
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Counsel for Fidelia

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Notice of Appearance was furnished by e-service to Kenzie N. Sadlak, Counsel for Appellant (Defendant and Third-Party Plaintiff in the case below), at knslaw@att.net, and Joel M. Gaulkin, Counsel for Plaintiff in the case below, Cove at Isles at Bayshore HOA, Inc., at joel@algpl.com, filings@algpl.com, and joel@sfillp.com, on this **28th day of August 2023**.

/s/ Tyler E. Mesmer

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tmesmer@taclosinglaw.com
Counsel for Fidelia

IN THE COUNTY COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COVE AT ISLES AT BAYSHORE HOA, INC.,
Plaintiff,

CIVIL DIVISION
CASE NO: 20-011733 CC 05

vs.

TAMARA CARUS, CARLOS GABRIEL CARUS JR., et al
Defendants

CARLOS GABRIEL CARUS JR.,
Third Party Plaintiff

vs.

VRMTG ASSET TRUST and GLADYS FIDELIA,
Third Party Defendants

NOTICE OF APPEAL OF FINAL ORDER

NOTICE IS GIVEN that Defendant, CARLOS GABRIEL CARUS JR, appeals to the Third District Court of Appeal, the following orders of this court, copies of which are attached hereto:

1. Summary Final Judgment For Gladys Fidelia As To Carlos Gabriel Carus Jr.'s Amended Third-Party Complaint rendered October 7, 2022 (DE#197)
2. The non-final Order Denying Carus' Amended Motion For Rehearing of October 7, 2022 Summary Final Judgment For Fidelia rendered January 17, 2023 (DE#244)
3. The non-final Order Granting Third-Party Defendants' Motion For Protective Order rendered June 22, 2022 (DE#134)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 16 day of February, 2023 via email to joel@algpl.com and filings@algpl.com for Joel Gaulkin, Esq., Association Law Group, PL, PO Box 311059, Miami, FL 33231; to tmesmer@taclosinglaw.com for Tyler E. Mesmer, Esq., Topouzis & Associates, PC, 100 SE 2 St, Suite 2000, Miami, FL 33131.

KENZIE N. SADLAK, PA
Attorney for Defendant
PO Box 971635
Miami, FL 33197-1635
Tel. (305) 987-4151
knslaw@att.net

By: _____


Kenzie N. Sadlak
Florida Bar No. 618241

Exhibit "A"

**IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-011733-CC-05

SECTION: CC01

JUDGE: Michael Barket

COVE AT ISLES AT BAYSHORE HOMEOWNERS ASSOCIATION INC (THE)

Plaintiff(s) / Petitioner(s)

vs.

TAMARA CARUS et al

Defendant(s) / Respondent(s)

**SUMMARY FINAL JUDGMENT FOR GLADYS FIDELIA AS TO CARLOS GABRIEL
CARUS JR.'S AMENDED THIRD-PARTY COMPLAINT1**

THIS CAUSE having come before this Court on **September 13, 2022**, on Third-Party Defendant's, GLADYS FIDELIA's (FIDELIA),^[2] Motion for Summary Final Judgment Against Third-Party Plaintiff, CARLOS GABRIEL CARUS JR. (CARUS); FIDELIA's Request to Take Judicial Notice of Villas of Windmill Point II Property Owners' Ass'n v. Nationstar Mortgage, LLC, 229 So. 3d 822 (Fla. 4th DCA 2017), review denied, 2018 WL 2059527 (Fla. May 2, 2018); FIDELIA's Motion to Enforce June 22, 2022 Protective Order and to Quash CARUS's Notice of Taking FIDELIA's Deposition or for Second Protective Order; CARUS's Motion to Continue Hearing on FIDELIA's Motion for Summary Final Judgment; and CARUS's Motion to Compel Discovery and Motion for Contempt/Sanctions Against FIDELIA, and this Court having reviewed the Motions, the Responses, the court file, the applicable law, and having had the benefit of a hearing and oral argument of the parties, and being otherwise fully advised in the premises, this Court finds:

Findings of Fact

1. The property that is the subject of this case is real property in Miami-Dade County, Florida, commonly known as **8900 SW 226 Terrace, Cutler Bay, FL 33190-1706** (Subject Property).

2. VRMTG's predecessor-in-interest sued to foreclose the first mortgage lien on the Subject Property against CARUS in Ditech Financial LLC F/K/A Green Tree Servicing LLC v. Tamara Carus, et al., No. 2016-005505-CA-01 (Fla. 11th Cir. Ct. 2016) (Foreclosure Action).
3. The Defendant/Third-Party Plaintiff and Plaintiff here, CARUS and COVE, were joined as defendants in the Foreclosure Action.
4. After VRMTG was assigned the subject loan documents, the trial court in the Foreclosure Action, under Fla. R. Civ. P. 1.260(c), substituted VRMTG in place of the initial plaintiff.
5. The trial court in the Foreclosure Action then rendered a final judgment of foreclosure for VRMTG, and as relevant here, against CARUS and COVE.
6. VRMTG was then the high bidder at the foreclosure sale that was held under paragraph 4 of final judgment of foreclosure, so it was issued the certificate of sale on November 6, 2020, and the certificate of title to the Subject Property on February 2, 2021 in the Foreclosure Action.
7. After it took title to the Subject Property in the Foreclosure Action, and so that it could sell the Subject Property to FIDELIA, VRMTG, under § 720.30851, Fla. Stat., made a written request to COVE for an estoppel certificate adjusted to comply with the Safe Harbor Provision of § 720.3085(2)(c).
8. On March 9, 2021, COVE issued an estoppel certificate to VRMTG for \$794.14, an amount adjusted to comply with the Safe Harbor Provision of § 720.3085(2)(c).
9. On April 1, 2022, after it timely paid COVE the amount stated on the March 9, 2021 estoppel certificate – and brought its account with COVE current – VRMTG completed its sale and conveyance of the Subject Property to FIDELIA, a bona-fide third-party purchaser.

Conclusions of Law

10. In deciding whether summary final judgment for FIDELIA is proper, this Court must apply the amended Fla. R. Civ. P. 1.510, which uses the “federal summary judgment standard” to determine the existence of a genuine issue of material fact. Compare Lloyd S. Meisels, P.A. v. Dobrofsky, 341

So. 3d 1131, 1134 (Fla. 4th DCA 2022) (“The amendment became effective on May 1, 2021, and ‘govern[s] the adjudication of any summary judgment motion **decided on or after that date, including in pending cases.**”) (emphasis in original; citation omitted), and id. (“In applying the amended rule, ‘the correct test for the existence of a genuine factual dispute is whether ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’”) (citation omitted).^[3]

11. The underlying case here is an action by COVE against CARUS for only the unpaid amounts that accrued **before** VRMTG took title to the Subject Property in the Foreclosure Action, and were **not** part of VRMTG’s \$794.14 § 720.3085(2)(c) Safe Harbor amount.
12. CARUS’s amended third-party complaint is an action against FIDELIA, the person who purchased the Subject Property from VRMTG.^[4]
13. CARUS’s action against FIDELIA makes two interrelated legal arguments: **First**, CARUS argues that, under § 720.30851(3), COVE “waived” the right to seek any other amounts from CARUS when it issued the estoppel certificate to VRMTG; and **second**, CARUS argues that, under § 720.3085(2)(b), FIDELIA is “jointly and severally” liable with CARUS for the unpaid amounts that accrued before VRMTG took title to the Subject Property in the Foreclosure Action. This Court will address these arguments in turn.
14. As for CARUS’s **first argument** – that, under § 720.30851(3), COVE “waived” the right to seek any other amounts from CARUS when it issued the estoppel certificate to VRMTG – § 720.30851(3) provides that an association waives the right to collect any amounts not stated on an estoppel certificate from any person (or that person’s successors or assigns) who relies on the estoppel certificate in good faith: “An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person’s successors and assigns.”
15. Based on the facts here, this Court finds that CARUS could not have “relie[d]” “in good faith” on the estoppel certificate that COVE issued to VRMTG because **(1)** CARUS was not entitled to Safe Harbor; **(2)** VRMTG – not CARUS – requested the estoppel certificate from COVE; **(3)** the estoppel certificate was not issued to CARUS – it was issued to VRMTG, upon VRMTG’s written request to

COVE; and **(4)** the amounts stated on the estoppel certificate were adjusted to reflect VRMTG's entitlement to Safe Harbor (VRMTG's § 720.3085(2)(c) cap on amounts that accrued before it took title, and the amounts that had accrued after it took title in the Foreclosure Action).

16. Thus, this Court finds that CARUS's **first argument** lacks merit because, under the plain language of § 720.3085(3), COVE "waived" **only** its right to seek amounts not stated in the estoppel certificate from VRMTG and VRMTG's "successors and assigns" – as relevant here, FIDELIA. [\[5\]](#)

17. CARUS's **second argument** – that, under § 720.3085(2)(b), FIDELIA is "jointly and severally" liable with CARUS for the unpaid amounts that accrued before VRMTG took title to the Subject Property in the Foreclosure Action – improperly reads § 720.3085(2)(b) at the exclusion of § 720.3085(2)(c).

18. That is, when FIDELIA purchased the Subject Property from VRMTG – who was entitled to Safe Harbor – FIDELIA was "jointly and severally liable" for only the amounts that VRMTG owed.

19. In Villas of Windmill Point II Property Owners' Ass'n v. Nationstar Mortgage, LLC, 229 So. 3d 822 (Fla. 4th DCA 2017), [\[6\]](#) review denied, 2018 WL 2059527 (Fla. May 2, 2018), the court construed the interplay between §§ 720.3085(2)(b) and (2)(c) and held that, while Fannie Mae was not entitled to Safe Harbor, Fannie Mae did "indirectly benefit" from Safe Harbor because it took title to the subject property from CitiMortgage – who was entitled to Safe Harbor – and it was therefore "jointly and severally liable" with CitiMortgage for only what CitiMortgage owed:

CitiMortgage qualified for the safe harbor provision . . . [t]hus, when Fannie Mae acquired title to the property from CitiMortgage, it became jointly and severally liable [under § 720.3085(2)(b)] with CitiMortgage for all unpaid assessments owed by CitiMortgage at the time of transfer of title. In sum, CitiMortgage qualified for the safe harbor provision of section 720.3085(2)(c), and Fannie Mae is jointly and severally liable with CitiMortgage for all unpaid assessments that came due up to the time of transfer of title to Fannie Mae.

Id. at 824.

20. Here, it is undisputed that **(1)** VRMTG was entitled to Safe Harbor under § 720.3085(2)(c); **(2)**

VRMTG brought its account with COVE current before it sold the Subject Property to FIDELIA; and
(3) FIDELIA purchased the Subject Property from VRMTG.

21. Also when VRMTG paid COVE the amount stated on estoppel certificate, FIDELIA's account with COVE started with a "zero balance". See Catalina W. Homeowners Ass'n v. Fed. Nat'l Mortg. Ass'n, 188 So. 3d 76, 80 (Fla. 3d DCA 2016) ("To the extent the Associations are required to itemize payments pursuant to section 720.3085(3)(b), the line item entries for interest accrued, administrative fees, and attorney fees and costs, presumably would be zero dollars, as the Associations have not and are not entitled to receive payments for those items under the safe harbor provision.").
22. Thus, this Court finds that CARUS's **second argument** lacks merit because, as in Villas, FIDELIA cannot be liable for any of CARUS's unpaid amounts that accrued before VRMTG took title to the Subject Property in the Foreclosure Action.
23. This Court therefore finds that there are no genuine issues of material fact remaining as to CARUS's Amended Third-Party Complaint and FIDELIA is entitled to Summary Final Judgment.
24. And this Court's resolution of the dispositive legal issues in CARUS's Amended Third-Party Complaint makes Summary Final Judgment for FIDELIA proper even if CARUS has discovery pending. See Barco Holdings, LLC v. Terminal Inv. Corp., 967 So. 2d 281, 289 (Fla. 3d DCA 2007) ("Summary judgment may be granted, even though discovery has not been completed, when the future discovery will not create a disputed issue of material fact."); Crespo v. Fla. Entm't Dir. Sup. Org., Inc., 674 So. 2d 154, 155 (Fla. 3d DCA 1996) ("A trial court has the discretion to deny a continuance of a summary judgment hearing where the outstanding discovery items are immaterial to the dispositive issues in the case." (citing Amjad Munim M.D., P.A. v. Azar, 648 So.2d 145, 151 (Fla. 4th DCA 1994); Colby v. Ellis, 562 So. 2d 356, 357 (Fla. 2d DCA 1990))).

THEREFORE, IT IS ORDERED AND ADJUDGED:

25. FIDELIA's Motion for Summary Final Judgment is **GRANTED**.
26. Summary Final Judgment is entered for FIDELIA.
27. CARUS's Amended Third-Party Complaint is **DISMISSED WITH PREJUDICE**.

28. CARUS's Motion to Continue Hearing on FIDELIA's Motion for Summary Final Judgment is **DENIED**.

29. CARUS's Motion to Compel Discovery and Motion for Contempt/Sanctions against FIDELIA is **DENIED**.

30. This Court retains jurisdiction to determine FIDELIA's entitlement to, and if necessary, amount of, prevailing party attorney's fees and costs under § 720.305(1) and COVE's Declaration.

31. The parties shall schedule an evidentiary hearing on FIDELIA's Motion for Sanctions and Attorney's Fees, under § 57.105(1)-(2) if the parties cannot resolve the dispute.

[1] Plaintiff, COVE AT ISLES AT BAYSHORE HOA, INC., will be referred to in this Final Judgment as "COVE".

[2] Before this hearing, CARUS, under Fla. R. Civ. P. 1.250(b), dropped and dismissed with prejudice from this case the other Third-Party Defendant, VRMTG ASSET TRUST (VRMTG), in the manner provided for by Fla. R. Civ. P. 1.420(a)(1).

[3] Under the "federal summary judgment standard," "[a] factual dispute is 'material' if it would affect the outcome of the suit under the governing law, and 'genuine' if a reasonable trier of fact could return judgment for the non-moving party." Micosukee Tribe of Indians of Fla. v. United States, 516 F.3d 1235, 1243 (11th Cir. 2008) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)).

[4] See supra note 2 ("Before this hearing, CARUS, under Fla. R. Civ. P. 1.250(b), dropped and dismissed with prejudice from this case the other Third-Party Defendant, VRMTG, in the manner provided for by Fla. R. Civ. P. 1.420(a)(1).").

[5] Because CARUS's **first argument** fails, his **second argument**, at least arguably, also fails. Yet this Court will still address CARUS's **second argument**.

[6] Villas is binding on all circuit and county courts in Florida because it is the only appellate decision, to date, to address this issue: The interplay between §§ 720.3085(2)(b) and (2)(c). See Pardo v. State, 596 So. 2d 665, 666 (Fla. 1992) ("In the absence of interdistrict conflict, district court decisions bind all Florida trial courts." (quoting Weiman v. McHaffie, 470 So. 2d 682, 684 (Fla. 1985))); see also id. ("[W]e note that the district court erred in commenting that decisions of other district courts of appeal were not binding on the trial court."); State v. Hayes, 333 So. 2d 51, 53 (Fla. 4th DCA 1976) ("The proper hierarchy of decisional holdings would demand that in the event the only case on point on a district court level is from a district other than the one in which the trial court is located, the trial court be required to follow that decision.") (citations omitted).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 7th day of October, 2022.

2020-011733-CC-05 10-07-2022 9:31 AM

2020-011733-CC-05 10-07-2022 9:31 AM

Hon. Michael Barket

COUNTY COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Joel Martin Gaulkin, joel@algpl.com

Joel Martin Gaulkin, filings@algpl.com

Joel Martin Gaulkin, joel@sflfp.com

Kenzie N. Sadlak, knslaw@att.net

Tyler E. Mesmer, tmesmer@taclosinglaw.com

Physically Served:

IN THE COUNTY COURT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COVE AT ISLES AT BAYSHORE HOA, INC.,

CIVIL DIVISION
CASE NO: 20-011733 CC 05

Plaintiff,

vs.

TAMARA CARUS, CARLOS GABRIEL CARUS JR., et al

Defendants

FILED FOR RECORD
2023 JAN 17 PM 3:03
CLERK OF COUNTY COURTS
MIAMI-DADE COUNTY, FLA.
CIVIL #75

CARLOS GABRIEL CARUS JR.,

Third-Party Plaintiff

vs.

VRMTG ASSET TRUST and GLADYS FIDELIA,

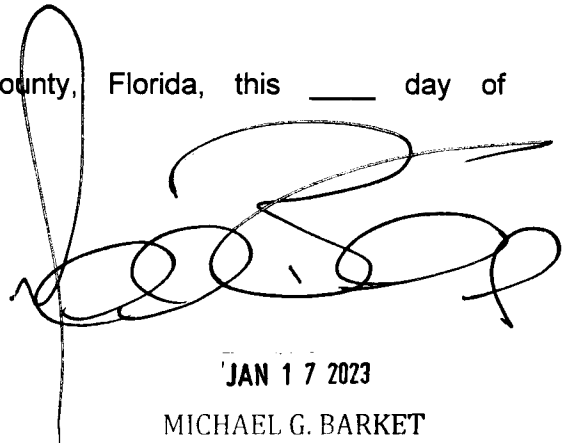
Third-Party Defendants

**ORDER DENYING CARUS'S AMENDED MOTION FOR REHEARING OF OCTOBER 7, 2022
SUMMARY FINAL JUDGMENT FOR FIDELIA**

THIS CAUSE having come before this Court on the Third-Party Plaintiff's, CARLOS GABRIEL CARUS JR.'s (CARUS), Amended Motion for Rehearing of the October 7, 2022 Summary Final Judgment for the Third-Party Defendant, GLADYS FIDELIA (FIDELIA), and this Court having reviewed CARUS's Amended Motion, FIDELIA's Response, the court file, the applicable law, and having had the benefit of a hearing and oral argument of the parties on December 6, 2022, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED:**

1. CARUS's Amended Motion for Rehearing is **DENIED**.

DONE AND ORDERED in Miami-Dade County, Florida, this ____ day of _____ 2022.



JAN 17 2023
MICHAEL G. BARKET
County Court Judge

**IN THE COUNTY COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-011733-CC-05

SECTION: CC01

JUDGE: Michael Barket

COVE AT ISLES AT BAYSHORE HOMEOWNERS ASSOCIATION INC (THE)

Plaintiff(s) / Petitioner(s)

vs.

TAMARA CARUS et al


Defendant(s) / Respondent(s)

**ORDER GRANTING THIRD-PARTY DEFENDANTS' MOTION FOR PROTECTIVE
ORDER**

THIS MATTER, having come before this Court, on **June 6, 2022**, on Third-Party Defendants,' VRMTG ASSET TRUST and GLADYS FIDELIA's (THIRD-PARTY DEFENDANTS), Motion for Protective Order against Third-Party Plaintiff's, CARLOS GABRIEL CARUS JR.'s (CARUS), Request for Production served on THIRD-PARTY DEFENDANTS, and the Court having reviewed the Motion, the court file, the applicable law, and having had the benefit of a hearing and oral argument of the parties, it is hereby **ORDERED AND ADJUDGED**:

1. THIRD-PARTY DEFENDANTS' Motion for Protective Order against CARUS is hereby **GRANTED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 22nd day of June, 2022.

2020-011733-CC-05 06-22-2022 8:57 AM


2020-011733-CC-05 06-22-2022 8:57 AM

Hon. Michael Barket

COUNTY COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Jerry Santos, filings@algpl.com

Joel Martin Gaulkin, joel@algpl.com

Joel Martin Gaulkin, filings@algpl.com

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Kenzie N. Sadlak, knslaw@att.net

Tyler E. Mesmer, attymesmer@gmail.com

Tyler E. Mesmer, tmesmer@taclosinglaw.com

Tyler E. Mesmer, satkins@virtualparalegalsfl.com

Physically Served:

Florida Third District Court of Appeal Docket

Case Docket

Case Number: 3D23-0281

Final County Civil Other Notice from Dade County

CARLOS GABRIEL CARUS JR., vs. GLADYS FIDELIA, et al.,

Lower Tribunal Case(s):20-11733 CC

8/27/2023 10:49:09 PM

Date Docketed	Description	Filed By	Notes
02/17/2023	Notice of Appeal Filed	Kenzie N. Sadlak 618241	RELATED CASE: 21-2035
02/17/2023	Acknowledgment Letter		Acknowledgment of new case with attachments. **The \$300 filing fee for an appeal is due.
02/17/2023	Notice of Transmittal--NOA	Miami-Dade Clerk	
02/20/2023	Notice of Appearance	Tyler E. Mesmer 78329	
02/20/2023	Order to pay filing fee-civil w/atty (OR14B)		This is to notify counsel for Appellant that the filing and prosecution of a notice of appeal in this Court is not acceptable without compliance with the Florida Rules of Appellate Procedure. Therefore, this appeal will be dismissed unless the required three hundred dollar (\$300.00) fee is paid to the Clerk of the Court on or before March 2, 2023.
02/21/2023	Case Filing Fee Paid Through Portal		
04/19/2023	Record on Appeal	Miami-Dade Clerk	
04/27/2023	Notice of Agreed Extension of Time	Kenzie N. Sadlak 618241	
04/27/2023	Recognizing Agreed		IB-30 days to 05/29/2023

Exhibit "B"

	Extension of Time		
05/30/2023	Notice of Agreed Extension of Time	Kenzie N. Sadlak 618241	
05/31/2023	Recognizing Agreed Extension of Time		IB-30 days to 06/28/2023
06/28/2023	Mot. for Extension of time to file Initial Brief	Kenzie N. Sadlak 618241	
06/29/2023	Clerk's notice granting eot (CLKEX)		IB-30 days to 07/28/2023
07/28/2023	Motion to Supplement the Record	Kenzie N. Sadlak 618241	
07/28/2023	Transcripts	Kenzie N. Sadlak 618241	
07/28/2023	Transcripts	Kenzie N. Sadlak 618241	
07/28/2023	Transcripts	Kenzie N. Sadlak 618241	
08/15/2023	Mot to Supplement Rec w/attachment Granted (OG13)		Appellant's Motion to Supplement the Record, filed on July 28, 2023, is granted, and the record on appeal is supplemented to include the transcripts that are filed separately.

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF
FLORIDA, THIRD DISTRICT**

CARLOS CARUS, JR.,

Appellant
vs.

Case No. 3D23-0281
Lower Court Case No.
20-11733 CC 05

GLADYS FIDELIA,

Appellee

MOTION TO SUPPLEMENT THE RECORD

Pursuant to Rule 9.200(f), 9.300(a), and 9.300(b), of the Florida Rules of Appellate Procedure, the Appellant, CARLOS CARUS, JR, moves the Court for an order supplementing the record on appeal. In support of this motion, Appellant respectfully states as follows:

1. The record on appeal is missing pertinent trial court transcripts of proceedings in this case which are integral to the issues in this appeal and are important for the Court to consider in evaluating the merits.

2. Said pertinent trial court transcripts of proceedings requested to be included in the record on appeal are:

a. Hearing transcript of proceedings on 6/6/22

b. Hearing transcript of proceedings on 9/13/22

c. Hearing transcript of proceedings on 12/6/22

3. It is appropriate to supplement the Record with these trial court transcripts pursuant to Rule 9.200(f)(1) & (2) of the Florida Rules of Appellate Procedure, which provides that “[i]f there is an error or omission in the record, the parties by stipulation . . . or the court may correct the record...”

WHEREFORE, Appellant respectfully requests that the Court enter an order supplementing the Record on Appeal with the above referenced trial court transcripts of proceedings.

Respectfully submitted,

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By: /s/ Kenzie N. Sadlak
Kenzie N. Sadlak
Florida Bar No. 618241

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2023, a true and correct copy of the foregoing was served via email to tmesmer@taclosinglaw.com for Tyler E. Mesmer, Esq., Topouzis & Associates, PC, 100 SE 2 St, Suite 2000, Miami, FL 33131

/s/ Kenzie N. Sadlak
Kenzie N. Sadlak

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
AUGUST 15, 2023

CARLOS GABRIEL CARUS JR.,
Appellant(s)/Petitioner(s),
vs.
GLADYS FIDELIA, et al.,
Appellee(s)/Respondent(s),

CASE NO.: 3D23-0281

L.T. NO.: 20-11733 CC

Appellant's Motion to Supplement the Record, filed on July 28, 2023, is granted, and the record on appeal is supplemented to include the transcripts that are filed separately. Appellant shall file the initial brief within ten (10) days from the date of this Order.

A True Copy
ATTEST

CLERK
DISTRICT COURT OF APPEAL
THIRD DISTRICT

cc: Joel M. Gaulkin Kenzie N. Sadlak Tyler E. Mesmer

ts

Exhibit "D"