

RECEIVED, 07/06/2023 11:13:21 AM, Clerk, Third District Court of Appeal

IN THE CIRCUIT COURT FOR THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2019-009509-CA-01

WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
OF MFRA TRUST 2014-2,

Plaintiff,

vs.

ROBERT FAINE; SFL PROPERTY
HOLDING, LLC; ET AL.,

Defendants.

_____ /

SFL PROPERTY HOLDING LLC
Counter-plaintiff

vs.

WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
FOR MFRA TRUST 2014-2, PLANET
HOME LENDING, LLC,

Counter-defendant, third-party defendant

_____ /

NOTICE OF APPEAL OF FINAL ORDER

NOTICE IS GIVEN that Wilmington Trust, N.A., Not in its Individual Capacity, But Solely as Trustee of MFRA Trust 2014-2, Plaintiff/Appellant, appeals to the Florida Third District Court of Appeal this Court's *Corrected Final Judgment of In Rem Foreclosure*, entered June 6, 2023. [Ex. A.] The judgment is a final order under Florida Rules of Appellate Procedure 9.030(b)(1)(A) and 9.110(a)(1).

NOTICE IS FURTHER GIVEN that Wilmington Trust, N.A., Not in its Individual Capacity, But Solely as Trustee of MFRA Trust 2014-2 filed a timely and authorized motion for rehearing on June 16, 2023 suspending rendition of the *Corrected Final Judgment of In Rem Foreclosure*. Fla. R. App. P. 9.020(h)(1)(B). [Ex. B.] That motion remains pending as of the filing of this notice of appeal.

Respectfully submitted,

ATLAS | SOLOMON, PLLC
*Counsel for Wilmington Trust, N.A., Not in its
Individual Capacity, But Solely as Trustee of
MFRA Trust 2014-2*

By: /s/ Eric M. Levine
Eric M. Levine, Esq.
Florida Bar No. 64357
Eric S. Matthew, Esq.
Florida Bar No. 26539
819 SW Federal Highway, Suite 301
Stuart, FL 34994
Telephone: (772) 247-0157
Facsimile: (772) 419-8067
servicemailbox@atlas-solomon.com
elevine@atlas-solomon.com
eric@atlas-solomon.com

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

I hereby certify that the foregoing is a true and correct copy of the original on file in this office 7-6 AD 2023

CLERK
Circuit and County Courts (SEAL)

Deputy Clerk: W. K. B.
e208836



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via e-mail from the Clerk's E-Portal to: the parties listed on the Service List who have provided e-mail addresses, per Florida Rule of General Practice and Judicial Administration 2.516, and via U.S. Mail to: parties who have not provided an email address this 5th day of July 2023.

ATLAS | SOLOMON, PLLC
*Counsel for Wilmington Trust, N.A., Not in its
Individual Capacity, But Solely as Trustee of
MFRA Trust 2014-2*

By: /s/ Eric M. Levine
Eric M. Levine, Esq.

SERVICE LIST

Wesley B. Colgan, III
Colgan Dominelli Law, PLLC
848 Brickell Ave, Ste 302
Miami, FL 33131
Email: wes@codolaw.com
service@codolaw.com
***Counsel for Defendant SFL Property
Holding, LLC (pending withdrawal order)***

Erik Wesoloski
***Counsel for Defendant SFL Property
Holding, LLC (pending appearance)***
Email: service@wesoloskicarlson.com
erik@wesoloskicarlson.com
gheredia@wesoloskicarlson.com

Dennis Grossman Esq.
6701 Sunset Drive, Suite 104
Miami, FL 33143
Email: dagrossman@aol.com
Counsel for Defendant Robert Faine

The Tower and Executive Residences
Master Association, Inc.
9300 S. Dadeland Blvd., Suite 600
Miami, FL 33156

Unknown Tenant #1 n/k/a
Helen Goldstein
3400 SW 27th Avenue Unit 1805
Miami, FL 33133

Coatings Application & Waterproofing Co.
c/o Incomp Services, Inc.
17888 67 Ct N.
Loxahatchee, FL 33470

Barry Blaxberg, Esq.
Blaxberg, Grayson, Kukoff & Forteza, P.A.
25 SE 2nd Avenue, Suite 730
Miami, Florida 33131
Email: barry.blaxberg@blaxfray.com
blaxberg.assistant@blaxgray.com
***Counsel for Defendant The Tower Residences
Condominium Association of Coconut Grove, Inc.***

JP Morgan Chase Bank, N.A.
1200 South Pine Island Road
Plantation, FL 33324

State of Florida
Department of Revenue Bldg. 1
2450 Shumard Oak Blvd.
Tallahassee, FL 32399

Unknown Tenant #2 n/k/a Bratt Goldstein
3400 SW 27th Avenue Unit 1805
Miami, FL 33133

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

CASE NO: 2019-009509-CA-01

SECTION: CA04

JUDGE: Carlos Guzman

WILMINGTON TRUST NATIONAL ASSOCIATION

Plaintiff(s)

vs.

ROBERT FAINE et al

Defendant(s)

_____ /

CORRECTED FINAL JUDGMENT OF IN REM FORECLOSURE

THIS ACTION was heard before the Court on March 23, 2023 on Plaintiff's Motion for Summary Final Judgment (the "Motion"). On May 12, 2023, a Final Judgment of In Rem Foreclosure was entered. On May 22, 2023, the Court heard Defendant SFL Property Holding LLC's Motion for Rehearing wherein Defendant agreed to waive its right to have the judgment set aside based on *Martins v. PNC*, 170 So.3d 932 (Fla. 5d DCA 2015) provided the judgment was conformed to the relief sought in the Plaintiff's Complaint. On the evidence presented, the Court finds as follows:

1. The Final Judgment of In Rem Foreclosure entered on May 12, 2023 is hereby vacated and replaced with this Corrected Final Judgment of In Rem Foreclosure
2. Plaintiff's Motion evidenced a *prima facie* case for foreclosure: possession of an original blank-indorsed note at case inception and possession at the time of the final judgment hearing, compliance with conditions precedent, acceleration and damages.
3. **IT IS ORDERED AND ADJUDGED** that: final judgment of foreclosure is **GRANTED** in favor of Plaintiff and against Defendants.
4. **Amounts Due.** The Plaintiff, Wilmington Trust, National Association, not in its individual capacity, but solely as Trustee for MFRA Trust 2014-2, c/o Planet Home Lending, LLC, whose address is 321 Research Parkway, Meriden CT 06450 is due:

Principal Amount:	\$443,506.98
Interest on note and mortgage from 05/01/14 – 08/15/22:	\$142,073.26

Per Diem of \$47.08 from 08/16/22 – 03/23/23:	\$10,357.60
Escrow Advances:	\$99,807.20
Property Taxes: <ul style="list-style-type: none"> • 2022: \$(1,618.39) • 2021: \$16,183.86 • 2021: \$(1,147.94) • 2020: \$16,223.09 • 2019: \$16,598.62 • 2018: \$19,456.63 • 2017: \$(211.19) • 2016: \$20,274.25 • 2016: \$(1,694.13) • 2015: \$16,996.08 • 2015: \$(1,253.68) 	
Late Charges:	\$0
Property Inspections:	\$0
Attorney's Fees:	RESERVED
Court Costs:	RESERVED
TOTAL:	\$695,745.04

5. **Interest.** The grand total amount referenced in Paragraph 4 shall bear interest from the date

of this Order forward at the prevailing legal rate of interest.

6. **Lien on Property.** Plaintiff holds a lien for the grand total sum specified in Paragraph 4 herein. The lien of the Plaintiff is superior in dignity to any right, title, interest or claim of the Defendants, Robert Faine; SFL Property Holding, LLC; The Tower and Executive Residences Master Association, Inc.; The Tower Residences Condominium Association Of Coconut Grove, Inc.; JP Morgan Chase Bank, N.A.; State of Florida Department of Revenue; Coatings Application and Waterproofing Co., Unknown Tenant #1 N/K/A Helen Goldstein; Unknown Tenant #2 N/K/A Bratt Goldstein, any and all unknown parties claiming by, through, under and against the named individual defendant(s) who are not known to be dead or alive, whether unknown parties may claim an interest as spouses, heirs, devisees, grantees, or other claimants, and the property will be sold free and clear of all claims of the Defendants. The Plaintiff's lien is determined to be a first mortgage lien. The Plaintiff's lien encumbers the subject property located in Miami-Dade County, Florida and described as:

CONDOMINIUM UNIT 1805, OF THE TOWER RESIDENCES, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF, AS RECORDED OCTOBER 9, 2001, UNDER CLERK'S FILE NO. 01R550490 IN OFFICIAL RECORDS BOOK 19943, AT PAGE 4300, OF THE PUBLIC RECORDS OF MIAMI DADE COUNTY, FLORIDA

PROPERTY ADDRESS: 3400 SW 27th Ave., Unit 1805, Miami, FL 33133

7. **Sale of Property.** If the grand total amount with interest at the rate described in Paragraph 5 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Courts shall sell the subject property at public sale. Pursuant to Administrative Order 09-18, the Clerk of the Courts for the Eleventh Judicial Circuit is authorized to conduct on-line public auctions of real property in lieu of on-site auctions. The Clerk of the Courts shall conduct the sale, online at www.miamidade.realforeclose.com commencing at **9:00 A.M.** on **September 22, 2023** to the highest bidder for cash.
8. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full. The Clerk shall receive the service charged imposed in Section 45.031, Florida Statutes, for services in making, recording, and certifying the sale and title that shall be assessed as costs.

9. **Right of Redemption.** On filing of the Certificate of Sale, defendant's right of redemption as proscribed by Florida Statutes, Section 45.0315 shall be terminated. Redemption shall not be allowed by any party or non-party until plaintiff exhausts its rights to add fees, costs, and/or other additional amounts due and owing to the judgment, including additional escrows advanced prior to entry of judgment.

10. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs; second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 6 from this date to the date of the sale. During the sixty (60) days after the Clerk issues the certificate of disbursements, the Clerk shall hold the surplus pending further Order of this Court.

11. **Right of Possession.** Upon filing of the Certificate of Title, defendant and all persons claiming under or against defendant since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser at sale shall be let into possession of the property.

12. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession. Jurisdiction of this action is also retained to permit the filing of supplemental complaints for the foreclosure of junior lienholders, motions to compel redemption, motions to determine additional amounts owed (including additional escrows advanced, interest, and attorneys' fees/costs), motions to determine amounts of assessments owed, and all other foreclosure of lien proceedings by plaintiff or a subsequent owner of the subject property.

13. **Additional Findings.** Further, in the event that the Plaintiff takes title to the subject property at the foreclosure sale, its liability to the Defendants, The Tower and Executive Residences Master Association, Inc. and The Tower Residents Condominium Association of Coconut Grove, Inc., as either the first mortgagee, its successor or assignee, is limited by Florida Statute, Sections 720.3085 or 718.116.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIEN HOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN SIXTY (60) DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS. IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (305) 375-5943), WITHIN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 6th day of June, 2023.

2019-009509-CA-01 06-06-2023 11:49 AM 

2019-009509-CA-01 06-06-2023 11:49 AM

Hon. Carlos Guzman

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

Adam G. Schwartz, adam@atlas-solomon.com
Adam G. Schwartz, servicemailbox@atlas-solomon.com
Adam G. Schwartz, dorothy@atlas-solomon.com
Edward Proenza, edward.proenza@blaxgray.com
Edward Proenza, proenza.Assistant@blaxgray.com
Eric S. Matthew, eric@atlas-solomon.com
Eric S. Matthew, servicemailbox@atlas-solomon.com
Eric S. Matthew, dorothy@atlas-solomon.com
Erik D Wesoloski, erik@wesoloskicarlson.com
Erik D Wesoloski, service@wesoloskicarlson.com
Erik D Wesoloski, gheredia@wesoloskicarlson.com
Ian B Blaxberg, barry.blaxberg@blaxgray.com
Ian B Blaxberg, blaxberg.assistant@blaxgray.com
Karena Joy Mattingly, kmattingly@beckerlawyers.com
Karena Joy Mattingly, Cofoservicemail@beckerlawyers.com
Karena Joy Mattingly, COFOEfile@beckerlawyers.com
Reena Sanders, rsanders@kelleykronenberg.com
Wesley B Colgan III, service@codolaw.com
Wesley B Colgan III, wes@codolaw.com
Wesley B Colgan III, paralegal@codolaw.com

Physically Served:

IN THE CIRCUIT COURT FOR THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 2019-009509-CA-01

WILMINGTON TRUST, NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY, BUT SOLELY AS TRUSTEE
OF MFRA TRUST 2014-2,

Plaintiff,

vs.

ROBERT FAINE; SFL PROPERTY
HOLDING, LLC; ET AL.,

Defendants.

_____ /

SFL PROPERTY HOLDING LLC
Counter-plaintiff

vs.

WILMINGTON TRUST, NATIONAL
ASSOCIATION, PLANET HOME
LENDING, LLC,

Counter-defendant, third-party defendant

_____ /

MOTION FOR REHEARING OF “CORRECTED” FINAL JUDGMENT

The Court properly granted Plaintiff’s motion for summary judgment on May 12, 2023, and entered judgment in the amount of \$795,919.83.

Defendant moved for rehearing and, without citation to fact or law, asked the Court to remove 2010-2014 and 2017 taxes, late charges, and property inspections from the judgment. Defendant then submitted via Courtmap a “corrected” judgment deleting these line items, reducing the amount owed by \$100,000. The Court signed the “corrected” judgment. This was error.

Plaintiff pled and proved entitlement to all amounts owed that were included in the May 12, 2023 final judgment. Defendant did not cite *any* evidence in its rehearing motion, let alone evidence justifying the reduction of over \$100,000.00 from the judgment. The only legal argument raised—that the judgment should conform to the pleadings—is demonstrably false and refuted by controlling precedent. The Court violated Plaintiff’s due process by considering it. The Court should vacate the “corrected” final judgment and reinstate the May 12, 2023 final judgment.¹

I. BACKGROUND

A. **The operative complaint pled damages (including taxes, late charges, inspections).**

In the complaint, Plaintiff alleged the following damages are owed:

Plaintiff is owed the principal sum of \$443,506.98 plus outstanding and accrued interest from May 1, 2014, **late charges**, attorney’s fees and costs, and all expenses incurred in preparation of the title search for ascertaining necessary parties to the action, as well as other potential charges as provided in the loan documents, including, but not limited to, **any sums advanced, or to be advanced, by Plaintiff for the payment of taxes** or insurance or other expenses to protect Plaintiff’s security interest ...

(Am. Compl. ¶ 15.) Plaintiff’s wherefore clause asks for the following amounts due:

“... the sum due to Plaintiff under the Note and Mortgage ... sums advanced by Plaintiff to protect its security interest ...including but not limited to payment of ... taxes”

(*Id.* ¶ wherefore clause (b).) Clearly, Plaintiff requested taxes, late charges, and “any sums advanced to protect its security interest (*i.e.* inspections) in the operative pleading.

B. **Plaintiff proved damages.**

Plaintiff’s summary judgment affidavit confirmed the following amounts were due:

¹ Plaintiff has pending motions to amend the final judgment to add 2022 taxes (which Plaintiff paid after moving for summary judgment) and to add prevailing party fees and costs. This motion does not touch on those issues. Plaintiff does not waive any arguments for relief under those separate motions to add 2022 taxes and fees/costs to the judgment. This rehearing motion solely concerns the improper striking of 2010-2014 and 2017 property taxes, late charges, and property inspections.

Unpaid principal:	\$443,506.98
Interest from 05/01/14 through 08/15/22:	\$142,073.26
Escrow Advances	\$193,233.41
Property Taxes	
• 2022: \$(1,618.39)	
• 2021: \$16,183.86	
• 2021: \$(1,147.94)	
• 2020: \$16,223.09	
• 2019: \$16,598.62	
• 2018: \$19,456.63	
• 2017: \$19,678.44	
• 2017: \$(211.19)	
• 2016: \$20,274.25	
• 2016: \$(1,694.13)	
• 2015: \$16,996.08	
• 2015: \$(1,253.68)	
• 2014: \$15,512.25	
• 2014: \$(3,368.75)	
• 2013: \$13,523.29	
• 2012: \$16,860.66	
• 2010-11: \$31,220.32	
Late charges:	\$5,924.83
Property Inspections:	\$823.75
GRAND TOTAL	\$785,562.23

(Plaintiff's MSJ Affidavit ¶ 10.) The affidavit cited to properly authenticated business records substantiating total taxes of \$193,233.41 and late charges in the amount of \$5,924.83:

MSP® Explorer: Payoff Calculation Totals (PAY4/PG1)

5/7-1 PLANET HOME LENDING

Loan Number: [REDACTED] Borrower Name: FAINE, ROBERT

FAI4 [REDACTED] AS-OF 08/15/22 PAYOFF CALCULATION TOTALS 08/01/22 09:53:37

NAME R FAINE CONTACT NAME PLANET HOME LENDING

PRINCIPAL BALANCE	443,506.98	-----	RATE CHANGES	-----
INTEREST 08/15/22	142,073.26	INT FROM	RATE	AMOUNT
PRO RATA MIP/PMI	.00	05/01/14 *	3.12500	134,900.08
ESCROW ADVANCE	193,233.41	03/01/22	3.25000	1,201.16
ESCROW BALANCE	.00	04/01/22	3.37500	1,247.36
SUSPENSE BALANCE	.00	05/01/22	3.50000	1,293.56
HUD BALANCE	.00	06/01/22	3.62500	1,339.76
REPLACEMENT RESERVE	.00	07/01/22	3.87500	2,091.34
RESTRICTED ESCROW	.00	08/15/22		
TOTAL-FEES	10.00			
ACCUM LATE CHARGES	5,924.83			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	.00			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00	TOTAL INTEREST		142,073.26
CR LIFE/ORIG FEE RBATE	.00	TOTAL TO PAYOFF		840,247.46
RECOVERABLE BALANCE	55,498.98	NUMBER OF COPIES: 1 PRESS PF1 TO FAX		
		TOTAL PAGE 2		.00

(Plaintiff's MSJ at pg. 58.) Plaintiff affixed additional business records breaking down year by year charges for taxes, late charges, and dates of property inspections. (*Id.* pg. 41-59).

C. Court properly entered final judgment on May 12, 2023.

Plaintiff sought \$785,562.23 at summary judgment. The motion was filed in September and accounted for interest through August 15, 2022. When the Court granted summary judgment, it added per diem interest from August 16, 2022 to March 23, 2023 (the date of the MSJ hearing), which totaled \$10,357,60—the final judgment reflected a total amount owed of \$795,919.83.

Defendant did not timely respond to summary judgment or submit opposition evidence pursuant to Fla. R. Civ. P. 1.510(c)(5) (20 days before the hearing).² Even the untimely opposition did not include any evidence refuting the amounts owed.

D. Defendant filed 1.530 Motion for Rehearing on May 16, 2023.

Defendant raised one rehearing argument at issue, which Plaintiff screen grabs directly from Defendant’s brief so there is no confusion about the lack of citation:

Plaintiff listed in its proposed final judgment (which the Court signed) almost \$100,000 in property taxes it is not entitled to collect, property inspection fees for inspections that never occurred and late fees that do not exist. Defendant has a due process right to contest the damages sought and for this additional reason, summary judgment must be reversed or at least amended using the damages schedule attached hereto as Exhibit A.

(Defendant’s Motion for Rehearing at ¶ 6.) No case law. No evidence taxes are uncollectable. No explanation *which* taxes are supposedly uncollectable. No evidence refuting amounts owed for inspections. No evidence late charges were improper. Just empty rhetoric.

Defendant affixed a proposed “corrected” final judgment to its rehearing motion, which removed 2010-2014 and 2017 taxes, late charges, and property inspections.

² Defendant missed the response deadline *twice*. The first summary judgment hearing was set for February 2, 2023. Opposition evidence was due January 12, *before* defense counsel was suspended, but he did not respond. Summary judgment was reset for hearing March 23. Opposition evidence was due March 3—new counsel did not file a response timely.

E. Defendant filed new, untimely rehearing argument.

After oral argument, while the parties were waiting on a ruling on Defendant's rehearing motion, Defendant submitted an additional rehearing argument to the Court:

June 2, 2023

*Delivered via Courtmapp and
Email to dsardina@jud11.flcourts.org
Honorable Judge Carlos Guzman
Miami-Dade County Circuit Court
73 West Flagler Street, DCC 412
Miami, Florida 33130*

Re: 2019-9509-CA-04; Wilmington Trust v. Faine.

Dear Honorable Judge Guzman:

Good afternoon. I represent the Defendant, SFL Property Holding LLC, in the above-listed case. On May 22, 2023 you heard my client's motion for rehearing to either set aside the judgment or correct the judgment. In order to assist with the resolution and efficient administration of this case, Defendant has agreed to waive its right to have the judgment set aside based on *Martins v. PNC*, 170 So.3d 932 (Fla. 5d DCA 2015) provided the judgment is corrected to conform to the pleadings. As such, attached please find the corrected final judgment for Your Honor's consideration. Defendant thanks you in advance for your kind attention to this matter and wishes You a restful weekend.

Sincerely,

/S/ Erik Wesoloski

This is more than a cover letter. This is a never-before-seen argument that the judgment should be "corrected to conform to the pleadings." It does not actually say *how* the judgment needs to be corrected, but the letter affixed a "corrected" final judgment which removed \$100,14.79 from the total owed.

Without setting a hearing to address additional argument or Plaintiff having a meaningful opportunity to respond, the Court signed the "corrected" final judgment on June 6, 2023.

This was error. Expanded below, Defendant provides zero basis—no citations to case law, facts, or evidence—to remove \$1.00 from the final judgment, let alone \$100,000.00.

II. ARGUMENT

A party may move for rehearing under Rule 1.530 to call “to the attention of the court any error, omission, or oversight.” *Balmoral Condo. Ass’n v. Grimaldi*, 107 So.3d 1149 (Fla. 3d DCA 2013) (citation omitted). “These broad grounds include the contention that the final order conflicts with the governing law and is otherwise simply wrong on the merits.” (*Id.*). It was error for the Court to enter the “corrected” final judgment., which is “simply wrong” *and* “conflicts with governing law.”

Part (A) outlines how there was no factual basis to reduce the judgment. Record evidence confirms Plaintiff’s charges for taxes, late fees, and inspections were owed, and properly included in the judgment. Deleting these amounts was “simply wrong.” Part (B) explains how there was reducing the judgment conflicts with governing law. Defendant asked to conform the judgment to the relief sought in the complaint. This argument was meritless—the complaint requested all amounts due— and the Court violated Plaintiff’s due process by even considering the argument. Part (C) outlines additional errors with the “corrected” final judgment.

A. **Error to remove \$100,174.79 from the final judgment.**

At summary judgment, Plaintiff proved 2010-2014 and 2017 taxes (\$93,426.21), late charges (\$5,924.83) and property inspections (\$823.75) were due. *See supra* I.B. Plaintiff’s proof: payment histories and payoff screen shots. Defendant’s opposition evidence: nothing. The Court simply got it wrong when it removed these charges, \$100,174.79 in total, from the final judgment. *See Rouffe v. CitiMortgage, Inc.*, 241 So. 3d 870, 873 (Fla. 4th DCA 2018) (evidence in the form of a payment history is sufficient to present a *prima facie* case on damages); *Wells Fargo Bank, N.A. v. Eisenberg*, 220 So.3d 517 (Fla. 4th DCA 2017) (reversing involuntary dismissal finding “payoff screenshot ... showed all amounts due and owing”).

B. Court contravened Third DCA law and violated Plaintiff’s due process and when it considered belated, facially-wrong argument that judgment should be amended to conform to the pleadings.

Final judgment was rendered May 12, 2023. Defendant moved for rehearing on May 16, 2023. The 1.530 motion did not argue Plaintiff failed to plead entitlement to certain taxes, late charges, or property inspections. Plaintiff filed its response on May 19, 2023. The Court heard oral argument on May 22, 2023.

The jurisdictional deadline to raise rehearing arguments under Fla. R. Civ. P. 1.530 was May 30.³ On June 2, two days after the rehearing deadline, Defendant’s letter asked to have “the judgment [] corrected to conform to the pleadings.” (*See supra*, I.E.) Based on the language in the “corrected” final judgment, the Court granted rehearing on this basis. This was error.

First, the argument is demonstrably false. Plaintiff’s amended complaint demands all amounts due, including all taxes, late charges, and property inspections, with no limitation on time. *See supra* I.A. Defendant does not explain *how* the judgment is to be amended to conform to the pleadings. Defendant does not explain *why* the allegation in the amended complaint is deficient. There is no grammatical basis to argue the “May 1, 2014” date limitation applies to anything other than interest. *Cf. Mendelsohn v. State, Dept. of Health*, 68 So. 3d 965 (Fla. 1st DCA 2011) (“qualifying phrases in a clause are limited to the words immediately preceding”).

Second, this violates controlling appellate precedent. Defendant’s flawed theory is that the initial pled date of default is the beginning point of recovery as a matter of law, and any amounts that came due before that date are unrecoverable. Putting aside the fact that this does not explain why Defendant sought to remove 2017 taxes, this legal theory makes no sense. Default gives the mortgagee the right to accelerate. It has nothing to do with the amounts due under the mortgage

³ The fifteenth day—the deadline under rule 1.530—was May 27, a Saturday. Monday, May 29 was Memorial Day.

loan. This theory does not survive the Third District’s decision in *Gonzalez v. Federal National Mortgage Association*, 276 So. 3d 332 (Fla. 3d DCA 2018). “By exercising its contractual right to acceleration, the note holder is not seeking to collect a series of individual past and future installment payments due to it.” *Id.* at 336-37. “Instead, the holder elects to accelerate the entirety of the obligation owed to it under the terms of the note and mortgage, such that the entire sum owed—including principal, interest, advances, costs, and fees—will be included in the judgment. It is that entire debt—not individual installments of it—that comes due upon acceleration and that is sought to be liquidated in a foreclosure action.” *Id.* at 337.; *see also Bank of America, N.A. v. Graybush*, 253 So. 3d 1188, 1193 (Fla. 4th DCA 2018) (“[T]he Bank was entitled to all sums alleged and proven due under the note and mortgage—even those sums due more than five years from the date of filing the complaint.”); *Grant v. Citizens Bank, N.A.*, 263 So. 3d 156 (Fla. 5th DCA 2018) (en banc) (plaintiff not entitled to interest prior to November 2010 because complaint specifically limited interest to that date).

Third, the Court lacked jurisdiction to consider this argument. It was raised two days too late. *Hidalgo v. Binder*, 355 So.3d 487, 492 (Fla. 3d DCA 2023) (court cannot consider untimely arguments because “Rule 1.530(b) has a jurisdictional time window of 15 days from the ‘date of filing of the judgment’”). The Court lacked jurisdiction to sua sponte consider this untimely argument. *Helmich v. Wells Fargo Bank, N.A.*, 136 So.3d 763 (Fla. 1st DCA 2014) (court “does not have the authority under Rule 1.530(d) to initiate rehearing on its own accord”).

To the extent this was treated as a motion to reduce the judgment to conform to the pleadings, Plaintiff should have been given the chance to respond. *Viets v. American Recruiters Enterprises, Inc.*, 922 So.2d 1090, 1095 (Fla. 4th DCA 2006) (“due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure *before* judgment is rendered.”)

C. **Additional errors.**

1. **Post-judgment interest wrongly removed.**

The May 12, 2023 judgment properly awarded default interest from May 1, 2014 through March 23, 2023. (Doc 151, Final judgment at ¶ 4.) The judgment properly awards statutory interest from March 24, 2023 forward. (*Id.* at ¶ 5.)

Defendant’s “corrected” final judgment (again, submitted unilaterally to the Court) stealthily changed the statutory interest paragraph. It only awards statutory interest “from the date of this Order forward.” (Doc. 162, “Corrected” final judgment at ¶ 5.) That is clearly error. Plaintiff is entitled to default interest from March 24, 2023 forward.

2. **Judgment is internally inconsistent.**

The “corrected” final judgment finds “plaintiff’s motion evidenced a *prima facie* case for foreclosure [including] ... damages.” (Doc. 162, “Corrected” final judgment at ¶ 2.) But Plaintiff’s motion requested damages which included 2010-2014 taxes, late charges, and property inspections, and there is no evidence to the contrary. How can one paragraph confirm these amounts were proven, yet another paragraph remove various amounts due, with no explanation?

3. **No basis to barter waiver of discovery for judgment reduction.**

The “corrected” final judgment contains bizarre language that “Defendant agreed to waive its right to have the judgement set aside based on *Martins v. PNC*, 170 So.3d 932 (Fla. 5th DCA 2015) provided [the Court reduce the judgment \$100,000].” *Martins* holds in part that pending discovery *potentially* supports postponing summary judgment. There is no rule of procedure, statute, or constitutional provision supporting the relief concocted by Defendant.

First, the Court has no authority to rewrite the loan contract between Plaintiff and the borrower and unilaterally reduce the amount owed, even if Defendant promises not to pursue

irrelevant discovery. Controlling law confirms “[c]ourts may not rewrite contracts or interfere with freedom of contracts or substitute [their] judgment for that of the parties to the contract in order to relieve one of the parties from apparent hardships of an improvident bargain.” *First Eq. Realty III, Ltd. v. Grandview Palace Condo. Ass’n, Inc.*, 329 So. 3d 167, 171-72 (Fla. 3d DCA 2021); *Per Jonas Ingvar Gustafsson v. Aid Auto Brokers, Inc.*, 212 So.3d 405, 408 (Fla. 4th DCA 2017) (“Courts may not rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.”). This is based on the constitutional protection against impairing obligations of contracts. Art. I, § 10, U.S. Const.; Art. I, § 10, Fla. Const. "While the contract clause in the federal constitution prohibiting the impairment by states of the obligations of contracts has been held to apply to impairment by legislative action rather than by judicial decisions, the complaint in this case furnished no lawful basis to impair and abrogate the obligations of the contract by judicial action." *Morton v. Zucker-Vernon Corp.*, 290 So. 2d 141, 143 (Fla. 3d DCA 1974).

Second, Defendant did not submit an affidavit per Fla. R. Civ. P. 1.510(d) explaining why it could not present facts essential to justify its opposition to summary judgment—not before the first hearing, not before the second hearing, and not post-judgment. Defendant did not diligently pursue discovery. Any argument to the contrary is waived. *Congress Park Office Condos, II, LLC v. Frist Citizens Bank & Trust Co.*, 105 So.3d 602 (Fla. 4th DCA 2013). Regardless, the discovery sought by Defendant was irrelevant given its status as a third-party purchaser. *Bank of America v. 37C Team, LLC*, 353 So. 3d 1200 (Fla. 3d DCA 2022) (quashing discovery order from third-party purchaser seeking irrelevant information about note indorsement). The Court already made this exact ruling in the May 12, 2023 judgment. The case relied on by Defendant, *Martins*, was adjudicated before the new summary judgment rule, which controls.

III. CONCLUSION

The Court should grant Plaintiff's motion for rehearing. The "corrected" final judgment was filled with factual, legal, procedural, and constitutional error. The Court must vacate the June 6, 2023 "corrected" final judgment and reinstate the May 12, 2023 final judgment. The Court can then separately adjudicate Plaintiff's motions to amend the judgment to add in 2022 taxes and attorney's fees and costs.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via e-mail from the Clerk's E-Portal to the parties on the service list who have provided e-mail addresses, per Florida Rule of General Practice and Judicial Administration 2.516, and via U.S. Mail to parties who have not provided an email address on this 16th day of June, 2023.

ATLAS | SOLOMON, PLLC
Counsel for Plaintiff

By: /s/ Eric S. Matthew
Eric S. Matthew, Esq.
Florida Bar No. 26539
Dorothy Ann A. Dlugolecki, Esq.
Florida Bar No. 1022496
819 SW Federal Highway, Suite 301
Stuart, FL 34994
Tel: (772) 247-0157
E-mail: servicemailbox@atlas-solomon.com
eric@atlas-solomon.com

SERVICE LIST

Wesley B. Colgan, III
Colgan Dominelli Law, PLLC
848 Brickell Ave, Ste 302
Miami, FL 33131
Email: wes@codolaw.com
service@codolaw.com
*Counsel for Defendant SFL Property
Holding, LLC (pending withdrawal order)*

Erik Wesoloski
Counsel for Defendant SFL Property

Barry Blaxberg, Esq.
Blaxberg, Grayson, Kukoff & Forteza, P.A.
25 SE 2nd Avenue, Suite 730
Miami, Florida 33131
Email: barry.blaxberg@blaxfray.com
blaxberg.assistant@blaxgray.com
*Counsel for Defendant The Tower Residences
Condominium Association of Coconut Grove, Inc.*

Holding, LLC (pending appearance)

Email: service@wesoloskicarlson.com

erik@wesoloskicarlson.com

gheredia@wesoloskicarlson.com

Dennis Grossman Esq.
6701 Sunset Drive, Suite 104
Miami, FL 33143

Email: dagrossman@aol.com

Counsel for Defendant Robert Faine

The Tower and Executive Residences
Master Association, Inc.
9300 S. Dadeland Blvd., Suite 600
Miami, FL 33156

Unknown Tenant #1 n/k/a
Helen Goldstein
3400 SW 27th Avenue Unit 1805
Miami, FL 33133

Coatings Application & Waterproofing Co.
c/o InCorp Services, Inc.
17888 67 Ct N.
Loxahatchee, FL 33470

JP Morgan Chase Bank, N.A.
1200 South Pine Island Road
Plantation, FL 33324

State of Florida
Department of Revenue Bldg. 1
2450 Shumard Oak Blvd.
Tallahassee, FL 32399

Unknown Tenant #2 n/k/a Bratt Goldstein
3400 SW 27th Avenue Unit 1805
Miami, FL 33133