In the Third District Court of Appeal

State of Florida

No. 3D23-971

Lower Tribunal No. 12-43376-CA

Craig Snyder,

Petitioner,

v.

JPMorgan Chase Bank, N.A., et al.,

Respondents.

On Appeal from the Miami-Dade County Circuit Court
Eleventh Judicial Circuit of Florida

Initial Brief on the Merits

Paul Alexander Bravo
FBN 38275

P.A. Bravo
PO Box 558031
Miami, FL, 33255-8031
305.209.9019
pabravo@pabravo.com

P.A. Bravo

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Preface

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Statement of the Case

This is an appeal of the denial of a motion to intervene and objection to sale filed by Appellant, Craig Snyder, who was dropped as a defendant from the foreclosure action below by Appellee, JPMorgan Chase Bank, N.A. ("Chase"), after he challenged the defective service of process purportedly made on him by Chase. Snyder, along with his ex-wife, Nicole Robinson Snyder ("Robinson"), is the "owner of record" under section 45.032, Florida Statutes, which defines that term to mean "the person or persons who appear to be owners of the property that is the subject of the foreclosure proceeding on the date of the filing of the lis pendens," as he and Robinson jointly held title to the subject property when Chase filed the underlying foreclosure complaint. Snyder and Robinson both executed the subject mortgage, which expressly identifies each of them as a "borrower" and as "the mortgagor under this Security Agreement." A. 28. Nevertheless, rather than respond to the motion to quash service of process filed by Snyder, which sought to have the default entered against him set aside, Chase filed a notice of dropping

party that voluntarily dismissed Snyder from the action and proceeded to summary judgment against Robinson, who was also defaulted but did not join in Snyder's motion. By doing so, Chase was able to obtain a final judgment of foreclosure in the amount $962, 299.75, and a scheduled forced sale of the subject property, without opposition. A. 202-06. The cost of such expedience, however, is the soundness of the resulting judgment, which necessarily omitted one of two mortgagors and a holder of legal title at the time the lis pendens was recorded.

Despite the obvious defect in the judgment, which was apparent on the face of the trial court record, Chase proceeded to have the property sold at public auction, where it was purchased by a third-party, Behnam Cohenmehr, for $643, 300.00. Because well-settled Florida law unequivocally provides that the omission of a title holder from a foreclosure action renders any resulting judgment void for failure to join an indispensable party, Snyder promptly moved to intervene and filed a formal objection to the sale within the statutory 10-day objection period. In response, Chase defended its litigation strategy by arguing that "Snyder is not (sic) borrower on the Subject Loan and he has no ownership or possessory interest in the Subject Property foreclosed

upon" because he purportedly "transferred his ownership interest . . . via quitclaim deed." A. 208-09. By taking this position, Chase doubled down on its misguided strategy by inviting the trial court to err for a second time. Not only did Chase misstate the facts regarding the relationship of the parties and the nature of the mortgage at the heart of the proceedings below, but it presented a mistaken view of the controlling law by suggesting that the determination of whether a person is an indispensable party entitled to defend a foreclosure action is made at the time the judgment is entered rather than at the time the lis pendens is filed. Because Chase ultimately succeeded in persuading the lower court that Snyder was a stranger to the proceedings with "no interest in the Subject Property," rather than a mortgagor, the owner of record with statutory rights of redemption, and an indispensable holder of bare legal title at the time the lis pendens was recorded, Snyder timely appealed the denial of his motion to intervene to seek relief from this Court in the form of a mandate reversing the decision below and remanding the case for entry of an order granting his motion and sustaining his objection.

Facts

Chase initiated the proceedings below November 1, 2012, when it filed a one-count complaint suing both Robinson and Snyder in Miami-Dade County Circuit Court (the "Complaint"). A. 17. The Complaint, which also named the Yacht Club at Portofino Condominium Association, Inc. (the "Association") as a defendant, sought foreclosure of a mortgage given by Robinson and Snyder to Washington Mutual Bank, F.A. ("WAMU"), in September 2007 as security for a $486,000.00 loan (the "Mortgage"). A. 28. The Mortgage encumbered Unit #2406 of the Yacht Club at Portofino (the "Property"), which Snyder purchased directly from the developer in November 1999 before executing a quitclaim deed transferring fee-simple title to Robinson and himself, as husband and wife, on June 15, 2007. A. 108-12. As a result, on September 19, 2007, when the Mortgage was recorded, and on November 13, 2012, when a lis pendens giving notice of the filing of the Complaint was recorded, title to the Property was *jointly* held by Robinson and Snyder.

In the Complaint, which was verified by a Chase employee, Chase expressly acknowledged that *both* Robinson and Snyder

"executed and delivered a mortgage" to WAMU and that the Property "is now owned by Defendants NICOLE ROBINSON SNYDER and CRAIG SNYDER." A. 18-9. Chase also explicitly alleged that "[t]here is now due, owing and unpaid to Plaintiff from Defendants $558, 141.47 on principle plus interest on said note and mortgage" before requesting "that the Court enter judgment foreclosing the mortgage" and "if the proceeds of the sale are insufficient to pay Plaintiff's claim, a deficiency judgment." A. 19. And all the loan documents submitted by Chase as exhibits to the Complaint, other than the promissory note, were executed by both Robinson and Snyder, including the Mortgage and incorporated adjustable-rate interest rate rider. A. 42-50. Finally, the Mortgage itself identifies the "Lender" as WAMU, the "Borrower" as "NICOLE ROBINSON SNYDER AND CRAIG SNYDER, wife and husband," the "mortgagee" as Lender, the "mortgagor" as Borrower, and explicitly provides that "Borrower owes Lender FOUR HUNDRED EIGHTY SIX THOUSAND AND 00/100 Dollars ($486,000.00) plus interest." A. 28-9.

The same day the Complaint was filed, the lower court clerk issued a separate summons for each of the three named defendants

A. 14. According to the clerk's docket report, however, only two of the three were ever returned. *Id.* Specifically, on December 14, 2012, the summons directed at the Association was returned served, and, on February 9, 2013, the summons directed at Robinson was returned unserved. A. 54. Nevertheless, on May 3, 2013, the trial court clerk issued a notice of action for publication against both Robinson *and* Snyder after Chase filed separate affidavits of diligent search for each of them. A. 66-7.

In the affidavit of diligent search for Robinson, the affiant Jaime Glisson, alleged that Robinson's address had been "Verified" as 217 E. 96th Street, Apt. 39H, New York, New York, despite a hand-written notation on the return of service indicating that Robinson had allegedly "moved a year and a half ago" from that same address. And despite that allegation concerning Robinson's supposedly verified address, the affiant remarkably concluded that Robinson's then "current" residence was "in Florida" but that Robinson had "been absent from Florida for more than 60 days prior to the date of this affidavit or conceals him (her) self so that process cannot be served[,]" which she indicated by placing an "x" in a blank space preceding that

option instead of the option stating that Robinson's "current residence is in some state or country other than Florida and the last known address is:". A. 56. In the affidavit of diligent search for Robinson, the same affiant alleged that Snyder's address was "Verified" as 203 Spring Street, Apartment 14, New York, NY 10012, and referred generally to "Affidavit/Return of Service for Subject" regarding the purported attempts to personally serve process on him. And despite no return of service for Snyder being in the record or attached to the affidavit, the affiant inexplicably concluded that Snyder, like Robinson, had a current residence in Florida but had been absent from Florida for more than 60 days or was concealing himself to avoid service. A. 76.

Nonetheless, on May 15, 2013, Chase filed proof of publication of the notice of action. A. 13. Almost a year later, on May 2, 2014, Chase filed a motion for default against Robinson and Snyder, and, on June 12, 2014, the trial court entered an order defaulting both of them. A. 57-8. Several days later, however, the Property was sold at a public auction held pursuant to a final judgment entered in a separate lien foreclosure action filed by the Association. But the

certificate of title issued to the purchaser at that sale, 90-CWELT-2088 LLC, was subsequently vacated, after Chase successfully moved to have the Association's foreclosure judgment vacated. *See 90 CWELT-2008 v. Yacht Club at Portofino*, 245 So. 3d 925 (Fla. 3d DCA 2018). In the meantime, Chase and the Association engaged in protracted litigation in both the Association's lien foreclosure action and in the proceedings below. On April 21, 2020, after several years of contentious litigation, the Association ultimately relented and filed a stipulation consenting to the entry of final judgment of foreclosure in Chase's favor. A. 8.

On December 20, 2021, a little more than a month after Chase unsuccessfully attempted to have a consent final judgment entered at a motion calendar hearing, Snyder filed a motion to quash service of process (the "Motion to Quash"). A. 59. In the Motion to Quash, Snyder argued that the constructive service purportedly made on him was defective because Chase failed to strictly comply with the requirements of chapter 49 of the Florida Statutes, including by pointing to the contradictions and other irregularities on the face of affidavit of diligent search described above in addition to noting that

the notice of action was never mailed to him as expressly required by section 49.12 of the Florida Statutes. A. 60-1. The Motion to Quash was supported by an affidavit executed by Snyder in which he alleged that he was never personally served with process, never concealed himself or the address of his residence in New York, and never received any process by mail or any other means. A. 69-70.

On January 13, 2022, less than a month after the Motion to Quash was filed, Chase filed a notice of dropping party in which it "voluntarily dismiss[ed] th[e] action without prejudice, solely as to Defendant CRAIG SNYDER." A. 79. On July 6, 2022, Chase moved for summary final judgment of foreclosure and taxation of attorneys' fees and costs (the "MSJ"). A. 81. In the MSJ, Chase explicitly acknowledged that Robinson and Snyder, who were referred to collectively as "SNYDER" throughout the MSJ, both "executed [the] Mortgage as security for payment of the Note (collectively "Loan")." A. 82. According to Chase's own assertions, Robinson and Snyder both "defaulted under the terms of the Loan by failing to make payment due January 1, 2012, and all subsequent payments" and both "failed to cure the default or satisfy the debt." *Id.* Yet after admitting that

"Defendant, CRAIG SNYDER, was dropped from the action," Chase went on to argue that "[t]his Court should enter Summary Final Judgment of Foreclosure for CHASE because it has stated a cause of action for mortgage foreclosure and there have been no defenses asserted by any of the Defendants." A. 85. And while Chase acknowledged that "a foreclosure plaintiff must show" both "(1) an agreement" and "(2) a default," Chase represented to the trial court that "CHASE has proven each and every element of its foreclosure claim" even though one of the two counterparties to the agreement that was allegedly in default was no longer a party to the action, a fact that was obscured in the argument that followed by Chase's continual reference to "SNYDER" in the singular form. *Id.*

In any event, on September 30, 2022, Chase appeared unopposed at a hearing on the MSJ and persuaded the trial court to enter a summary final judgment of foreclosure in the amount of $962, 299.75 (the "Foreclosure Judgment"). A. 94-8. On February 21, 2023, in accordance with the Foreclosure Judgment, a foreclosure sale was held at which the Property was sold for $646,000.00 to a third-party identified as Benham Cohenmer (the "Purchaser"). A.

100. Five days later, Snyder filed a motion seeking intervention for the limited purpose "to set aside the February 21, 2022 sale in this matter" and requesting that the trial court "otherwise grant the objection to sale" on the basis that both Robinson and Snyder were indispensable parties, but Chase "only foreclosed out the interest of Robinson," so "the final judgment is void" (the "Motion"). A. 105-7.

On March 6, 2023, Snyder timely filed a formal objection to sale (the "Objection"). A. 108. Two weeks later, on March 21, 2023, Chase filed a response in opposition to the Motion and the Objection (the "Opposition"). A. 211. In the Opposition, Chase claimed that Snyder "is not a borrower on the Subject Loan in this case," that Snyder "***was*** a non-borrower spouse who acknowledged the mortgage his then-wife, Nicole Robinson Snyder (the "Borrower") gave as security for her promissory note," and that Snyder "has no ownership or possessory interest" because he "transferred his ownership interest in the Subject Property to 90 Cwelt-2008, LLC via quitclaim deed." (Emphasis in the original) A. 212. This was in stark contrast to representations Chase made in the MSJ, where it repeatedly referred collectively to Robinson and Snyder as "SNYDER", including when

setting forth the material facts supporting the elements of its foreclosure claim such as the existence of an agreement and a default thereunder, and where Chase made no mention of Snyder having transferred his interest in the Property. A. 82. And although Chase did not elaborate in the MSJ when it referred to Snyder having been dropped as a defendant, in the Opposition it claimed that "Chase properly dropped Mr. Snyder as a party from this action" after "realizing that Mr. Snyder deeded away his ownership interest" without making any mention of the Motion to Quash. *Id.* Based on these representations, Chase argued that "[a]t the time the final judgment of foreclosure was entered, Mr. Snyder was not a necessary or proper party to this action because he had no legal rights or interest in the Subject Property" and that "even if he did have an interest in the Subject Property … he cannot seek to intervene now that the final judgment has been entered." A. 214.

On April 26, 2023, at a motion calendar hearing on the Motion and the Objection, the trial court ordered the parties to further brief the issue before resetting the matter for hearing. In accordance with those instructions, Snyder filed a memorandum of law in support of

the Motion on May 11, 2023 (the "Memorandum"), and Chase filed a supplemental brief in further opposition to the Motion and the Objection on May 24, 2023 (the "Supplemental Brief"). In the Memorandum, Snyder argued that "the only proper and necessary parties to the foreclosure lawsuit are the title owners at the time of the filing of the lis pendens" and that, in any event, Robinson and Snyder both "held an undivided 100% interest in the property" because that they took title as tenants in the entirety as husband and wife, so the post lis pendens quitclaim deed was irrelevant given that Snyder "could not have legally transferred any interest in the property without her consent." A. 237. In the Supplemental Brief, Chase reiterated the misleading assertions made in the Opposition, including the misconceived notion that "Snyder was not an indispensable party because he did not have a legal or beneficial interest in the Subject Property to foreclose upon." A. 240.

On May 31, 2023, a second motion calendar hearing was held on the Motion and the Objection. At that hearing, Snyder's counsel argued that "[w]ithout foreclosing out Craig Snyder, they haven't foreclosed out the proper interests . . . [b]ecause they were joint

tenants in the entirety." A. 254-55. In response, the trial court abruptly concluded that "to the extent that he had an interest in the property, he quitclaimed it to somebody else and the Bank, I believe, did foreclose out the wife … [s]o motion is denied." A. 255-56.

Issue on Appeal

The sole issue on appeal is whether a trial court abuses its discretion by denying intervention to a person omitted from a foreclosure judgment where the plaintiff recorded an undischarged lis pendens at the time it filed its operative complaint identifying the person as owning the subject property as a tenant by the entireties.

Standard of Review

This Court "review[s] the denial of [a] motion to intervene for an abuse of discretion." *Charry v. Torres*, 263 So. 3d 238, 238 (Fla. 3d DCA 2019).

Summary of the Argument

The trial court reversibly erred when it denied the Motion and overruled the Objection for at least three reasons. First, because the lis pendens Chase recorded when it filed the Complaint remained in

effect at the time the Foreclosure Judgment was entered, both Robinson and Snyder remained indispensable parties to Chase's foreclosure action irrespective of any purported intervening transfers of title by either of them. Second, because the evidence in the record establishes that Robinson and Snyder held title to the Property as tenants by the entireties, the Foreclosure Judgment was incapable of passing title to the purchaser at the resulting foreclosure sale. Third, even if the Foreclosure Judgment is not void for failure to join an indispensable party, and the Foreclosure Judgment were not otherwise incapable of transferring title to the estate by the entireties created in the Property, the trial court still would have abused its discretion because Snyder was, at the very least, a necessary party that was denied his entitlement to redemption rights as the "owner of record" of the Property without due process of law.

Argument

I. Because the lis pendens Chase recorded when it filed the Complaint was never discharged, Snyder was an indispensable party to Chase's cause of action for

foreclosure at the time the Foreclosure Judgment was entered irrespective of any alleged intervening transfers.

At the time of the filing of the Complaint, which identified *both* Robinson and Snyder as the owners of the Property and was never amended, Chase recorded a lis pendens that remained in effect through the entry of the Foreclosure Judgment. As a result, no intervening transfers of title to the Property, whether by Robinson or Snyder, could be effective for determining the rights of the parties to the cause of action for mortgage foreclosure brought in the Complaint. Because both Robinson and Snyder were indispensable parties to Chase's cause of action for foreclosure, the failure to join Snyder as a defendant rendered the Foreclosure Judgment void under well settled Florida law. *See, e.g., MEH BYRON 4 LLC v. Federal Nat. Mortg. Ass'n*, 187 So. 3d 335, 335 (Fla. 3d DCA 2016) (noting the appellant's claim that "it should not have been dropped as a party to the instant foreclosure action on the morning of trial" and agreeing "that as the owner of the property at issue, MEH BYRON 4 LLC was

an indispensable party to this action and should not have been precluded from participating in this action.").

A. A mortgage foreclosure judgment that omits one of the mortgagors of jointly held property is void for failure to join an indispensable party.

It has been settled Florida law for over a hundred years that "a foreclosure proceeding resulting in a final decree and a sale of the mortgaged property, without the holder of the legal title being before the court will have no effect to transfer his title to the purchaser at said sale." *Jordan v. Sayre*, 3 So. 329, 330 (Fla. 1888). For that reason, "[o]ne who holds the legal title to mortgaged property is not only necessary, but is an indispensable, party defendant in a suit to foreclose a mortgage." *Oakland Props. Corp. v. Hogan*, 117 So. 846, 848 (Fla. 1928); *accord Davanzo v. Resolute Ins. Co.*, 346 So.2d 1227, 1228 (Fla. 3d DCA 1977) (finding that "[o]ne who holds legal title to mortgaged property is an indispensable party defendant in a suit to foreclose a mortgage and a court cannot properly adjudicate the matters involved in this suit when it appears indispensable parties are not in some proper way actually or constructively before the court"); *see also Rosenberg v. Bakerman*, 481 So. 2d 29, 29 (Fla. 3d DCA 1986) (holding that "[b]ased upon appellees'

failure to name and serve the titleholder of the subject property in their mortgage foreclosure action, we reverse."). In other words, "[i]f the foreclosure proceeding has no effect to transfer title because the legal title holder has not been joined, it is simply another way of saying that the foreclosure proceeding is void." *English v. Bankers Trust Co. of California*, 895 So. 2d 1120, 1121 (Fla. 4th DCA 2005).

In *Citibank, N.A. v. Villanueva*, 174 So. 3d 612, 613 (Fla. 4th DCA 2015), "a non-party, Dianna Diaz, moved to cancel the sale" but "did not move to intervene in the foreclosure action or to vacate the foreclosure judgment." Her motion, however, "alerted Citibank that the owners of the property at the time the note and mortgage were executed had quit-claimed the property to Diaz and another person," who "were the record title owners at the time the foreclosure complaint was filed" but "were not named in the foreclosure action or on the final judgment" and "were not foreclosed." *Id.* After Citibank wisely moved to vacate the final judgment, the trial court denied the bank's motion as being untimely based on more than one year having passed since the judgment was entered. *Id.* On appeal, the Fourth District reversed after finding that "Citibank's foreclosure judgment was void for failing to join

indispensable parties" and that the "within a reasonable time" language in rule 1.540(b) "has been construed to mean almost no time limit." *Id.* at 614.

Similarly, in *FL Homes LLC v. Kokolis*, 271 So. 3d 6, 7 (4th DCA 2019), which the presiding panel described as "the tale of the legal chaos that can happen when a mortgage holder initiates a foreclosure action but fails to include the sole record title holder as a party[,]" the Fourth District held that "the failure to name FL Homes LLC in the initial mortgage foreclosure lawsuit rendered the entire foreclosure action void." *Id.* at 10. In reaching its holding, the court rejected the argument "that the final judgment in the initial mortgage foreclosure lawsuit was not void in its entirety and was ineffective only as to FL Homes LLC's interest in the property." *Id.* In doing so, the court distinguished cases where "at least one owner of the property was named in the foreclosure action and was properly foreclosed upon, while another owner was omitted from the action." *Id.* Importantly, none of those cases involved the omission of a joint title holder that jointly executed the mortgage being foreclosed. *Id.*

In *Lambert v. Dracos*, 403 So. 2d 481, 483 (Fla. 1st DCA 1981), the First District dismissed similar authority after concluding that "[n]one of these cases reach the question here presented of the right to maintain a foreclosure action in which one of two joint owners, who is a co-obligor on the mortgage, is not made a party to the action." After beginning its opinion by framing the "controlling question presented" as "[m]ay a mortgage foreclosure be maintained against one of two debtors who is a tenant in common with another without joining the second co-tenant who is also a co-obligor on the mortgage[,]" the court in *Lambert* expressly held that the co-tenants as co-obligors on the mortgage are indispensable parties." *Id.* at 482. *Lambert* involved a husband and wife who jointly executed a "mortgage on their jointly held marital home" before becoming tenants in common after the entry of a divorce decree. *Id.* at 481. Nevertheless, the court found that under controlling Florida law "it was improper to allow a foreclosure against appellant's interest alone." *Id.* at 484. Because the foreclosing plaintiff had only named the former husband as a defendant, the court found that "[t]he complaint should have been dismissed for failure to join the indispensable party, i.e., the legal owner of the remaining interest of the estate foreclosed."

Id. Although the court did not discuss whether or not the foreclosure judgment was void, it reversed the judgment and the resulting sale based on "the rights of an owner to have notice and an opportunity to defend in an action which affects the title to the property." *Id.*

B. When a lis pendens is recorded before a foreclosure judgment is entered, the title holder at the time of recording is the indispensable party for the purpose of determining whether the judgment is void.

Despite the overwhelming Florida authority providing that the holder of legal title is an indispensable party to an action to foreclose, Chase argued to the lower court that "Snyder was not an indispensable party because he was not the record titleholder to the Subject Property when the final judgment was entered." A. 243. In doing so, Chase asserted that "Snyder has failed to provide a single case in support of his argument that indispensable parties at inception of a foreclosure must remain indispensable parties the entire suit, even if they deed away their interest while the case is pending." A. 241. Tellingly, Chase could not point to a single case where a mortgagor identified in a complaint as an owner of the property was found to *not be* an indispensable party after being

omitted from the resulting foreclosure judgment. Instead, the cases relied on by Chase in the Supplemental Brief involved mortgagors that deeded away their interests *before* the filing of the foreclosure action in which they sought to intervene.

This is unsurprising given the near-universal practice of recording a lis pendens in conjunction with the filing of a foreclosure complaint, the purpose of which is not only to put the holders of unrecorded interests on notice but also to prevent the owner from avoiding foreclosure by simply deeding the property to another owner before the entry of final judgment. Notably, the term "lis pendens" does not appear a single time in either the Opposition or the Supplemental Brief. Chase's silence on the issue notwithstanding, settled Florida law provides that the recording of a lis pendens fixes the indispensable title holder(s) for the remainder of a foreclosure action by (1) preventing subsequent transferees from intervening in the case, and (2) requiring that the title holder at the time judgment is entered be joined where no lis pendens is recorded.

As this Court has explained on repeated occasions, "when property is purchased during a pending foreclosure action in which

a lis pendens has been filed, the purchaser generally is not entitled to intervene in the pending foreclosure action." *Bymel v. Bank of America*, NA, 159 So. 3d 345, 347 (Fla. 3d DCA 2015). This rule is founded on the fact that "the purpose of a notice of lis pendens is to notify third parties of pending litigation and protect its proponents from intervening liens that could impair or extinguish claimed property rights." *Centerstate Bank Cent. Florida v. Krause*, 87 So. 3d 25, 28 (Fla. 5th DCA 2012). It is for that reason that "the rule precluding intervention in a mortgage foreclosure action by a person who acquires an interest in the subject property after the recording of a lis pendens . . . is equally applicable where the prospective intervenor's interest, although acquired beforehand, is not recorded until after the recording of the lis pendens." *Harrod v. Union Finance Company*, 420 So. 2d 108, 109 (Fla. 3d DCA 1982).

In *US Bank, N.A. v. Bevans*, 138 So. 3d 1185 (Fla. 3d DCA 2014), this Court had the opportunity to directly address the import of the recording of a lis pendens with respect to the determination of an indispensable party in a foreclosure action. In *Bevans*, "the Bank did not file a lis pendens and Striding was not a party to the Bank's

foreclosure" even though "Striding was the legal title holder of the subject property at the time the court entered a final judgment of foreclosure in favor of the Bank." *Id.* at 1188. Because Striding had taken title after the filing of the complaint but before the final judgment was entered, the Court remanded the case back to the trial court to determine whether Striding had actual notice of the foreclosure action given that no lis pendens providing constructive notice was recorded. Importantly, in its discussion of the effect of the recording of a lis pendens, the Court emphasized that "[o]ne who purchases property subject to a lis pendens 'is bound by the judgment or decree rendered against the party from whom he makes the purchases as much so as though he had been a party to the judgment or decree himself.'" *Id.* at 1189 (quoting *U.S. Bank Nat. Ass'n v. Quadomain Condo. Ass'n*, 103 So.3d 977, 979 (Fla. 4th DCA 2012)).

Simply put, the only way Chase's misguided position could have any merit would be if Chase had not recorded a lis pendens at the time it filed the Complaint. But even then, under *Bevans*, Chase would still have failed to include the holder of Snyder's purportedly

transferred interest in the Foreclosure Judgment, which would render it and the resulting sale equally void. Accepting Chase's argument to the trial court, one would expect that Chase would have sought to amend its complaint to add CWELT as a defendant, or at the very least to have CWELT substituted for Snyder. Perhaps not doing so was simply an oversight. Or perhaps, instead, after realizing it failed to perfect to service against Snyder almost a decade after filing the Complaint, Chase understood that the lis pendens it recorded at the inception of the case would prevent CWELT from interfering with its inadvisable rush to judgment against the Property. Whatever the case, Chase's failure to include *either* Snyder or CWELT in the Foreclosure Judgment renders it void as a matter of law.

II. Because the evidence in the record establishes that Robinson and Snyder jointly held title to the Property as tenants by the entirety, the failure to join Snyder renders the Foreclosure Judgment and the resulting sale void.

In paragraph 7 of the Complaint, which was verified and never amended, Chase unequivocally stated that the Property "is now owned by NICOLE ROBINSON SNYDER and CRAIG SNYDER." In

addition, on the first page of Exhibit B to the Complaint (the Mortgage) Robinson and Snyder are identified as "wife and husband" in the definition "Borrower", which is the term used several pages later in the section titled "TRANSFER OF RIGHTS IN THE PROPERTY". A. 28-30. The only other admissible evidence properly before the trial court at the time it ruled on the Motion and the Objection, was the affidavit Chase submitted in support of the MSJ. In that affidavit, which was executed by Nicole L. Smiley as an "Authorized Signer" of Chase, the affiant unequivocally testified that "NICOLE ROBINSON SNYDER and CRAIG SNYDER (collectively "SNYDER") executed a Mortgage as security for payment of the Note (collectively "Loan")" and that "a default occurred under the terms of the Loan." A. 92.

Because Robinson and Snyder are identified as husband and wife in the Complaint, settled Florida law provides a presumption that they jointly owned the Property as tenants by the entirety. As a result, the failure to include Snyder in the Foreclosure Judgment rendered it incapable of passing anything to the purchaser at the resulting foreclosure sale. *See, e.g., Balding v. Fleisher*, 279 So.2d

883, 884 (Fla. 3d DCA 1973) (holding that "an estate by the entireties … [is] not capable of being the object of satisfaction for the debt of one of the tenants alone" and therefore "the interest of the judgment debtor could not pass by the sale."). Moreover, because Chase relied on the verified allegations in the Complaint to obtain the Foreclosure Judgment, the inconsistent positions Chase took in response to the Motion, including the inadmissible factual assertions made in the Opposition and the Supplemental Brief, were barred by principles of estoppel.

A. An estate by the entireties cannot be transferred without the consent of both tenants and cannot be subjected to forced sale for the satisfaction of the debts of one tenant without the other being joined in the action.

Settled Florida law provides that "[i]n the case of ownership of real property by husband and wife, the ownership in the name of both spouses vests title in them as tenants by the entireties." *Beal Bank, SSB v. Almand and Associates*, 780 So. 2d 45, 54 (Fla. 2001); *see also Bridgeview Bank Group v. Callaghan*, 84 So. 3d 1154, 1156 (Fla. 4th DCA 2012) (explaining that "[a]pplying a rule of construction for real property instead of a burden-shifting presumption can be

explained by the real property transaction" because "[t]he use of a rebuttable presumption applied to the title to real property would cause significant problems with titles, which are recorded and serve as notice to the world of the ownership of property."). In fact, as this Court recently noted, "the owners do not need to be described as husband and wife in the deed and their marital relationship does not need to be referred to in order to establish a tenancy by the entireties" because "'[t]he rule is rooted in the historical notion that a husband and wife are but one person in law.'" *Ramos v. Estate of Ramos*, 329 So. 3d 172, 173 (Fla. 3d DCA 2021) (quoting *Mitchell v. Mitchell*, 344 B.R. 171, 174 (Bkrtcy. M.D. Fla. 2006)). Significantly, "[t]he important attribute separating a joint tenancy from a tenancy by the entirety is that in a tenancy by the entirety neither spouse may sever or forfeit any part of the estate without the assent of the other, so as to defeat the right of the survivor." *Sitomer v. Orlan*, 660 So. 2d 1111, 1113 (Fla. 4th DCA 1995). And, for that reason, "[i]t is well established in Florida law that property held as a tenancy by the entireties cannot be made available to answer for the judgment debts of one of the tenants individually." *Balding*, 279 So. 2d at 884.

For instance, in *Rocketrider Pictures, LLC v. BankUnited*, 138 So. 3d 1223 (Fla. 3d DCA 2014), where "the property subject to the sale was owned by a husband and wife as tenants by the entireties," this Court found that the trial court erred when it denied an objection to sale "[b]ecause only the wife's interest in the property was foreclosed, nothing passed by the judicial sale" to the purchaser. Similarly, in *Miller v. Washington Mutual Bank*, 184 So. 3d 558, 559 (Fla. 4th DCA 2016), a case with eerily similar facts to those here, the Fourth District held that "[i]nsofar as the foreclosure judgment was only against the wife but not the husband, and the husband was an indispensable party, the certificate of title cannot issue." Like Chase, the bank in *Miller* initially named both Gretchen Miller and her husband as defendants to its foreclosure action. *Id.* Also like Chase, "[s]ubsequently, and for no explainable reason, the Bank voluntarily dismissed Gretchen Miller's husband from the action." *Id.* Even though "[t]he mortgage on the property reflected that Gretchen Miller was the sole signer and borrower," the court still found that the omitted husband was an indispensable party because "[t]he residential property in question was owned by husband and wife, and

as such was being held as a tenancy by the entirety." *Id.* In doing so, the Court noted that "[t]he Bank was well aware of their co-ownership as it initially filed the complaint against both husband and wife" and that "[t]he record and pleadings are uncontroverted as to the husband and wife co-owning the property at the time of the foreclosure action." *Id.*

B. The evidence in the record establishes that Snyder owned the Property as a tenant by the entireties at the time Chase recorded its lis pendens, and Chase's post-judgment assertions to the contrary are both based on inadmissible hearsay and barred by judicial estoppel.

As was the case in *Miller*, Chase identified Robinson and Snyder as co-owners in the Complaint, was well aware that they executed the Mortgage as husband and wife, and the record evidence before the trial court was uncontroverted that Robinson and Snyder co-owned the Property as husband and wife at the time Chase brought its foreclosure action against them. Although Chase attached a copy of a post lis pendens quitclaim deed to its Opposition, the document was unauthenticated and was otherwise inadmissible hearsay, and no evidentiary hearing was held on the Motion and Objection anyhow. Additionally, Chase did not request, and the trial court did not take,

judicial notice of the deed. And even if the deed had been properly introduced as evidence, it would still have been insufficient to establish a severance of the tenancy by the entireties created by rule of construction under Florida law. *See, e.g., Bridgeview Bank Group*, 84 So. 3d at 1155 (finding that "an estate by the entireties is presumed" and "[t]hat presumption is not rebuttable"). For one, no transfer of the estate by the entireties could have been effective without Robinson having joined. And because Chase's assertions regarding Robinson and Snyder having divorced were unsubstantiated and inadmissible hearsay made by its counsel, there was no evidence in the record of the parties having divorced from which the trial court could have concluded that the tenancy by the entirety had been severed by operation of law. *See, e.g., Eight Hundred, Inc. v. Fla. Dep't of Revenue*, 837 So. 2d 574, 576 (Fla. 1st DCA 2003) (confirming that "[r]epresentations by an attorney for one of the parties regarding the facts, and documents attached as exhibits to a motion, do not constitute evidence.").

Finally, even if Chase had properly introduced evidence of a post lis pendens transfer of title and/or divorce decree, principles of estoppel would still prevent Chase from taking a position that was entirely

contrary to the verified facts set forth in the Complaint on which it obtained the Foreclosure Judgment. As the Florida Supreme Court explained in *Blumberg v. USAA Cas. Ins. Co.*, 790 So. 2d 1061, 1066 (Fla. 2001), "[j]udicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial, including quasi-judicial, proceedings" and that "the doctrine prevents parties from making a mockery of the justice system by inconsistent pleadings." The Court went on to explain that "courts cannot permit a vacillating and capricious litigant to blow hot and cold or play fast and loose by indecision and uncertainty" before concluding that "[t]he courthouse should not be viewed as an all-you-can-sue buffet, in which litigants can pick and choose which [decisions] they want and which they do not." *Id.* at 1067.

III. Even if the failure to join Snyder in the Foreclosure Judgment did not render the foreclosure sale incapable of passing anything to the Purchaser, the trial court would still have abused its discretion because Snyder's right of redemption was extinguished without due process.

Even if Snyder were not an indispensable party as joint-title holder of the Property and co-obligor on the mortgage under *Lambert*, and the Foreclosure Judgment and resulting sale were incapable of

passing title of the uncontroverted estate by the entireties held by Robinson and Snyder to the foreclosure sale purchaser under *Miller*, the lower court would still have reversibly erred by denying the Motion and the Objection under the holding of *Sudhoff v. Federal Nat. Mortg. Ass'n*, 942 So. 2d 425 (Fla. 5th DCA 2006). In *Sudhoff*, the Fifth District reversed an order denying a motion to intervene and set aside a judicial sale filed by a woman whose "husband owned a parcel of property individually" and was required "to join in the mortgage, although not the note." *Id.* at 427. In doing so, the Court held that the omitted spouse "was, at the least, a necessary party who had a sufficient stake in the outcome to permit her to intervene and seek whatever relief might be available to her." *Id.* at 428. The court reasoned that "Fannie Mae's failure to join Mrs. Sudhoff deprived her of her equity of redemption[,]" which the court described as "the mortgagor's valued and protected equitable right to reclaim her estate in foreclosed property." *Id.* And although the omitted spouse did not jointly hold title to the property, the possibility that she might have had homestead rights was sufficient for the court to conclude that

"[t]he trial court incorrectly allowed Fannie Mae to foreclose on the property, depriving Mrs. Sudhoff of her equity of redemption."

Conclusion

For the above reasons, and in accordance with controlling authority, Appellant, Craig Snyder, respectfully asks the Court for a mandate quashing the order denying his motion to intervene and overruling his objection to sale entered in the proceedings below without Snyder, a necessary and indispensable part, being joined in the underlying foreclosure action, and remanding the matter to the lower court for entry of an order granting the motion and sustaining the objection.

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Miami, Florida

Respectfully submitted,

/s/ Paul Alexander Bravo
Paul Alexander Bravo
Fla. Bar No. 38275

P.A. Bravo, P.A.
PO Box 558031
Miami, FL, 33255
305.209.9019
pabravo@pabravo.com

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I certify that this document has been provided to counsel for Appellee, JPMorgan Chase Bank, N.A., and to counsel for Appellee, Michael Hal, Daniel Alan Weber, 6111 Broken Sound Parkway, Boca Raton, FL 33487, by email to dweber@ssclawfirm.com.

/s/ Paul Alexander Bravo
Paul Alexander Bravo

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