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

APPEAL NO. 3D23-0784
(LOWER TRIBUNAL CASE NO.: 2012-CA-50246)

MARSDREAMLAND, LP,
APPELLANT,

vs.

MTGLQ INVESTORS, L.P.,
APPELLEE.

ON APPEAL FROM THE 11TH JUDICIAL CIRCUIT COURT
IN AND FOR MIAMI-DADE COUNTY FLORIDA

APPELLANT'S INITIAL BRIEF

Dated: August 7, 2023. Respectfully Submitted,

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PRELIMINARY STATEMENT

The Appellant, MARSDREAMLAND, LP (hereinafter “MARSDREAMLAND”), was a named Defendant and owner of the subject property in this case.

The Appellee, MTGLQ INVESTORS, LP, was the Plaintiff in this case and hereinafter will be referred to as “MTGLQ” or “Appellee”.

Appendix for this Appeal will be referred to as [A.] followed by Exhibit Number, Bate Stamp Page Number referred to as [P.] and Docket Entry Number referred to as [Dk No.], where applicable.

STATEMENT OF THE CASE AND FACTS

A copy of the lower-case docket is incorporated into this appeal. [A.1]. This is an appeal of the entry of an Order on Competing Motion for Surplus Foreclosure Sale Proceeds, denying Defendant MARSDREAMLAND LP’s Owners Claim for Mortgage Foreclosure Surplus Funds, entered on April 5, 2023. [A.2]. The premise of the denial of the MARSDREAMLAND’s entitlement to surplus was predicated on a failure of the Appellee to amend the Lis Pendens when the Complaint was amended to include MARSDREAMLAND as the legal owner of the subject property.

I. THE APPELLEE FAILED TO AMEND THE LIS PENDENS AT THE TIME IT AMENDED THE COMPLAINT.

This foreclosure action was originally filed by JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (hereinafter “CHASE”), on December 28, 2012, against MADELINE J. TATUM who was deceased at the time of the foreclosure filing. [A.3]. The property was owned by SOUTH FLORIDA DREAM HOMES, INC. (hereinafter “SFDH”) at the time the complaint was filed. [A.4]. The Lis Pendens was originally filed on January 2, 2013, after the filing of the initial complaint. [A.5]. The foreclosure went completely unopposed with a final judgment being entered on September 3, 2013 [A.6], and a Certificate of Sale being entered November 5, 2013.¹

On November 7, 2013, SFDH filed an objection to the sale given it was the owner of the subject property prior to the filing of the 2012 initial complaint in this action. [A.7]. The trial court entered

¹ Prior to the filing of the amended complaint CATALINA HOMEOWNER ASSOCIATION (hereinafter “CATALINA”) under Case No. 2013-018163-CC-05 which was litigated from 2013 to 2021. [A.]. SFDH was named in both the CHASE Lis Pendens and the CATALINA Lis Pendens. [A.].

an order on January 6, 2014, that vacated the sale and gave the Plaintiff 60 days to amend their complaint to add SFDH. [A.8].

On May 15, 2014, after the 60 days had past and expired for CHASE to file its amended complaint, Appellant, MARSDREAMLAND, became the legal owner of the subject property. [A.9]. When CHASE finally did file an amended complaint on February 22, 2015, they added MARSDREAMLAND as the legal owner of the property to the amended complaint however, in amending the complaint, Appellee CHASE, failed to file an amended Lis Pendens to properly reflect the parties with an interest in the subject property at the time of the amending of the complaint. [A.10].

On November 20, 2019, another final judgment was entered [A.11] and on October 20, 2022, a Certificate of Sale was entered. [A.12]. MARSDREAMLAND as the owner of the subject property, filed its Owners Claim for Mortgage Foreclosure Surplus on October 24, 2022. [A.13]. On the same day, Defendant CATALINA also filed a surplus claim and then amended its claim on November 21, 2022,

without having an active filed lien for the purported assessments claimed owed.² [A.14].

On February 13, 2023, a hearing was held on Defendant MARSDREAMLAND's Owner's Claim for Mortgage Foreclosure Surplus and CATALINA HOMEOWNER'S ASSOCIATION, INC., Motion for Surplus Foreclosure Funds on February 13, 2023, and pursuant to the Court's instruction, MARSDREAMLAND and CATALINA were directed to file a memorandum of law for argument and case law that would support why MARSDREAMLAND and CATALINA should be entitled to the foreclosure surplus. [A.15 and 16]. Shortly thereafter, the lower court entered an order on the competing motions for surplus foreclosure sale proceeds, denying MARSDREAMLAND's request stating that MARSDREAMLAND was not the title owner of the property at the time the Plaintiff filed its Lis Pendens. [A.2][P.MARS00013].

² On November 12, 2022, GET LIQUID FUNDING, LLC, on a purported assignment from Defendant Mario E. Lopez-Mata a/k/a Mario E. Lopez-Mata a/k/a Mario Evelio Lopez a/ka Mario E. Lopez' filed a Motion to Intervene and Disburse Surplus Funds. They then filed a Notice of Withdrawal of that motion/claim on January 18, 2023.

STANDARD ON APPEAL

The standard of review for a question of law concerning interpretation of "the statutory scheme for the disbursement of surplus funds, we review the trial court's order de novo.". See *Corey v. Unknown heirs by Neuffer*, 301 So. 3d 380, 383 (Fla. 2d DCA 2020); *Accord Pineda v. Wells Fargo Bank, N.A.*, 143 So. 3d 1008, 1011 (Fla. 3d DCA 2014) (citing *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000)).

LEGAL ARGUMENTS

I. THE LIS PENDENS SHOULD HAVE BEEN AMENDED UPON THE FILING OF THE AMENDED COMPLAINT.

This case falls on a very narrow issue and may present first impression. It is axiomatic that if a lis pendens is properly dissolved upon dismissal of a complaint against parties, that a lis pendens be amended upon the amending of the complaint to add a necessary party of interest given F.S. 48.23(c)(1)(a) requires identifying the names of the parties to an action in the Lis Pendens.

A party must amend a lis pendens when there is a material change in the underlying lawsuit that affects the validity or enforceability of the lis pendens. If there is a material change in the

lawsuit, such as amending the complaint to include the legal title owners of the subject property as a defendant, the lis pendens must be amended to accurately reflect the inclusion of that party given their legal interest in the subject property once the amended complaint becomes the operative complaint. Failure to amend a lis pendens when required may result in the lis pendens being deemed invalid or unenforceable.

Section 48.23 provides that the notice **must** contain the names of all of the parties... In *Re Amends. to Fla. R. Civ. Pro.*, 199 So. 3d 867 (Fla. 2016). Where the property owner is not named as a party to the action in the complaint, any lis pendens filed against it is without legal basis and must be dissolved.-*See Loidl v. I & E Group, Inc.*, 927 So. 2d 1016 (Fla. 2nd DCA 2006) (*citing Marbin v. Cohen*, 789 So.2d 1193 (Fla. 4th DCA 2001) (holding that lis pendens should be discharged against property owner that was not joined in the action below); *HOPO Corp. v. Keller*, 798 So.2d 889 (Fla. 4th DCA 2001) (quashing trial court's order denying the motion to dissolve the lis pendens filed against HOPO because HOPO had not been joined as a party in the pending dissolution of marriage action); *M.G. Marine Supply Corp. v. Foreign Trade, Inc.*, 537 So.2d 696 (Fla. 3d DCA

1989) (holding lis pendens was fatally defective where burdened property owner was not named in the complaint).

In *Jallali v. Knightsbridge Village*, 211 So. 3d 216 (Fla. 4th DCA 2017), Jallali relied on *U.S. Bank National Ass'n v. Quadomain Condominium Ass'n*, 103 So.3d 977 (Fla. 4th DCA 2012). In *Quadomain*, the bank holding a first mortgage on a condominium unit filed a foreclosure action, recorded a notice of lis pendens, and ultimately obtained a final judgment. 103 So.3d at 978. Because ownership of the unit had changed before the final judgment, the bank obtained leave to supplement its complaint to foreclose on the new owners. *Id.* **It also filed a supplemental notice of lis pendens.** *Id.*

Here, at the time the amended complaint was filed, the Plaintiff joined Appellant MARSDREAMLAND because at the time of the amended complaint, MARSDREAMLAND was the legal title owner of the property and was an indispensable party. Accordingly, the denial of MARSDREAMLAND's claim for mortgage surplus funds should not have been denied and should have been granted.

CONCLUSION

As a result of the foregoing, the order denying Appellant MARSDREAMLAND's Owners Claim for Mortgage Foreclosure Surplus Funds, entered on April 5, 2023, should be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished by electronic service to all registered parties on the Florida e-File Portal List including but not limited to Jason M. Vanslette, Esq., at jvanslette@kelleykronenberg.com and pbarbaccia@kelleykronenberg.com, attorney for Plaintiff and Robert E. Paige, Esq., counsel for Defendant Catalina Homeowners

Associations at email@paigelawgroup.com, this 7th day of August 2023.

By: /s/ Niles B. Whitten, Esq.
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the lettering in this brief is Bookman Old Style 14-point font and complies with the font requirements of the Florida Rule of Appellate Procedure 9.210(a)(2).

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APPENDIX 15 - March 6, 2023 – Defendant’s Memorandum of Law in Support of an Order Granting Defendant MARSDREAMLAND LP’S Claim for Mortgage Foreclosure Surplus Funds. 0072-0076

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