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IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

Case No. 2D2024-2349
(Circuit Court Case No. 22-CA-007662)

NOURULDEEN SALHAB,
Appellant,

v.

FREEDOM MORTGAGE CORPORATION,
Appellee.

ON APPEAL FROM THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANT NOURULDEEN SALHAB

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STATEMENT OF CASE AND FACTS

Procedural History and Court Rulings

This appeal arises from a mortgage foreclosure action. (R., Item 2, pp. 11 – 31). Two orders are being appealed: (1) Order Denying Appellant's Motion to Intervene and Continue Summary Judgment Hearing (the "Order Denying Intervention"); and (2) Order Denying Appellant's Motion for Rehearing, To Vacate Final Judgment, Vacate Defaults, and For Sanctions (the "Order Denying Vacation") (together, the "Orders"). (R., Item 52, pp. 366 – 369; R., Item 57, pp. 381 – 384). Both are final Orders. The two Orders are inextricably intertwined. There is a transcript for the Order Denying Vacation, a true and correct copy of which is attached as an Appendix hereto and incorporated herein.

The Court entered an Order Granting Final Summary Judgment, and subsequently a Final Judgment of Foreclosure on July 11, 2024 (the "Judgment") based upon Plaintiff's Motion for Summary Judgment. (R., Item 38, pp. 142 – 143; R., Item 44, pp. 197 – 204; R., Item 33, pp. 94 – 100).

There are two separate but related proceedings that underly the facts of this case: (1) a partition action filed in Hillsborough County (Case No. 2023-CA-818) (the, "Partition Action"); and (2) a bankruptcy action filed in the Middle District of Florida by the original mortgagors (Case No. 2:21-BK-00192-FMD) (the, "Bankruptcy Case"). (App., pp. 12 – 16). The interplay of the actions is convulted.

Factual Background

The original mortgagors were two individuals named Justin Hendry and Jessica Hendry. (R., Item 2, pp. 11 -12). The original mortgagors filed bankruptcy which resulted in a conveyance of the property subject to foreclosure, located at 17333 White Mangrove Drive, Wimauma, Florida 33598 (the "Subject Property"), to Tampa Bay 335981 Trust ("Tampa Trust") (a party to the underlying action) and the other half to White Mangrove Holdings, LLC ("White Mangrove"). (App., p. 15). White Mangrove then deed its half interest in the Subject Property to itself and two other entities; Portfolio Florida 20201 Trust ("Portfolio Trust") and Hillsborough Realty 1012 Trust ("Hillsborough Trust") ("White Mangrove," "Portfolio Trust," and "Hillsborough Realty," each of which were parties to the underlying action giving rise to this appeal, are collectively referred to hereinafter as the "Partition Parties"). (App., p. 15). Although there is no record of Tampa Trust divesting its interest in the Subject Property, it was not included in the Partition Action despite the Partition Parties making sworn affirmations in the Partition Action that they were the only entities that owned the Subject Property. Id. Adding to the peculiarity, Tampa Trust made an appearance in the trial court proceedings giving rise to this appeal (the "Foreclosure Case") solely to observe the proceedings. Stranger still, Appellee did not join the Partition Action to recoup funds from said action without any risk of detriment. Id. at 17.

Despite inexplicably opting to pass on easily recoverable funds from the Partition Action, Appellee Freedom Corporation ("Freedom Corp.") did in fact make an appearance in the Partition Action; albeit a quickly vanishing one that was removed from the docket upon Freedom Corp.'s request by motion. Id.

The mysterious actions of Appellee Freedom Corp. begins to make sense when viewing all three proceedings in concert (i.e., the Foreclosure Case, the Partition Action and the Bankruptcy Proceeding). (App., pp. 17 – 23). Freedom Corp. originally opposed the conveyance of the Subject Property to Tampa Trust and White Mangrove in the Bankruptcy Case fearing such conveyance would prolong their recovery of funds from the Subject Property. Appellee Freedom Corp. subsequently recanted it objection in the Bankruptcy Case and, seven (7) days after entering an appearance in the Partition Action, moved to have such appearance removed from the record claiming it was filed in error. Id.

Just two days later, a joint stipulation for judgment was entered in the Partition Action on February 27, 2023. Id. (citation not as to specific date judgment entered). Freedom Corp. then went back to prosecuting the Foreclosure Case a little over a month later, despite having filed the complaint for the Foreclosure Case ("Complaint") back on September 9, 2022. (R., Item 2, pp. 11 – 31).

The Partition Parties, Tampa Trust, and Freedom Corp. all worked together for their mutual fiscal gain to circumvent the procedural and substantive rules of Florida law at Appellant, an unsophisticated elderly member of the public's, expense. (App., pp. 17 – 23). Freedom Corp. negotiated with the Partition Parties, and seemingly the mysterious observer Tampa Trust that could have just asserted it had no interest in the Subject Property in the Foreclosure Case (if that were the case), to leave the funds from the Partition Action alone, in exchange for the Partition Parties not defending the Foreclosure Case. Id. The Partition Parties and Tampa Trust did exactly that. (R., Item 28, p. 79; R. Item 31, pp. 88 – 91; R., Item 33, pp. 94 – 100; R., Item 38, pp. 142 – 143).

In order for this plan to work, the unknowing unsophisticated purchaser of the Subject Party at the Partition Action, Appellant Mr. Salhab, had to be unaware of the existing Mortgage on the Subject Property. Freedom Corp. creatively accomplished such feat by omitting the legal description from the mortgage on the Subject Property ("Mortgage"), then seeking to be shielded from such omission on the basis of its filing of a Lis Pendens and a conclusory reference that all parties intended to encumber the Subject Property with the Mortgage. (R., Item 2, p. 14). Appellee then purported to serve the Partition Parties, but did so by publication despite each of them having registered agents and did so beyond the allotted time for service by the Court rendering the Judgment void. (R., Item 45, p. 207).

SUMMARY OF THE ARGUMENT

Appellants arguments on appeal are as follows:

I. Appellant was entitled to intervene because the Lis Pendens relied upon was defective because it was not based upon a duly recorded instrument. The Mortgage lacking a legal description failed to put Appellant on constructive notice of the Foreclosure Case, and the Lis Pendens relied upon was expired at the time it was relied upon so it could not be used "for any purpose."

II. Appellant was entitled to intervene by law in the Foreclosure Case because Appellee's fraudulent circumvention of the procedural mechanisms without constructive notice to Appellant of the lawsuit deprived Appellant of his due process right to notice and the opportunity to be heard; particularly with regard to the unchallenged unliquidated amounts entered in the Judgment that the court filings facially demonstrated were starkly inconsistent.

III. The Order Denying Vacation should be overturned because there was no effective service of process upon any defendant. The Judgment is void.

IV. The Order Denying Vacation should be overturned because the Order Granting Summary Judgment and corresponding Judgment were not based upon well pled facts and were instead based upon vague, unsupported conclusions of law; particularly Appellee's failure to move for reformation in its motion for summary judgment and its untimely and inadequate evidence filed in support.

ARGUMENT FOR EACH ISSUE

I. Appellant was entitled to intervene because the Lis Pendens relied upon was defective because it was not based upon a duly recorded instrument. The Mortgage lacking a legal description failed to put Appellant on constructive notice of the Foreclosure Case, and the Lis Pendens relied upon was expired at the time it was relied upon so it could not be used "for any purpose."

Legal Standard and Case Law

The following excerpts of Florida law illustrate how this appeal should be decided in favor of Appellant on the first issue stated above:

> An order denying a motion to intervene is final as to, and appealable by, the movant…Ordinarily, a trial court's denial of a motion to intervene is reviewed for an abuse of discretion…However, because this appeal concerns pure questions of law, we review the matter de novo
>
> Adhin v. First Horizon Home Loans, 44 So. 3d 1245, 1249 (Fla. 5th DCA 2010) (citations omitted).
>
> Florida's recording statute provides as follows:
>
> (1) No conveyance, transfer or mortgage of real property, or of any interest therein, nor any lease for a term of one year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; ....
>
> § 695.01, Fla.Stat. (1991). The act of recording an instrument in accordance with this statute constitutes constructive notice of a prior encumbrance on the property which is the subject of the instrument…

What is relevant, and dispositive of this case, is whether the recorded Lafitte mortgage with its improper legal description constituted constructive notice that the subject property had a prior encumbrance.

This issue was discussed briefly at the hearing on the parties' motions for summary judgment. The judge stated he was assuming it could be proven that the Lafitte mortgage would not have been revealed by a title search because of the incorrect section number in its legal description. He then stated he could deny the motions for summary judgment and have the parties present evidence regarding this issue. Neither party responded to this statement, although Lafitte's attorney had stated that he disagreed with the judge's assumption, and Gigliotti's attorney had earlier stated that the mortgage was not found during a title search.

The judge should have denied the parties' motions for summary judgment because there clearly exists a genuine issue of material fact whether the Lafitte mortgage would have been revealed during a title search. If it would have been, then it has priority over the Gigliotti mechanic's lien. If it would not have been revealed, then the Gigliotti lien has priority. As our colleagues at the Fourth District have said, albeit with regard to a different instrument, "it would create great uncertainty in the conveyance of real property if a careful title examiner could not rely upon the clerk's index to determine whether there are any recorded judgments that constitute a prior lien on property."

The grant of summary judgment on the issue of priority between the Lafitte mortgage and the Gigliotti mechanic's lien being in error, we reverse and remand with directions consistent herewith.

Lafitte v. Gigliotti Pipeline, Inc., 624 So. 2d 844, 845 (Fla. 2d DCA 1993) (citations omitted).

The case law construing the lis pendens statute makes it clear that the statutory language "founded on a duly recorded instrument" imposes the strict requirement that the lawsuit must be based on the terms contained in the recorded document itself. See American Legion Community Club v. Diamond, 561 So.2d 268, 272 (Fla.1990)(holding that the phrase "founded on a duly recorded instrument" in the lis pendens statute applies "only to those cases in which the suit is based on the terms and provisions contained in the recorded document")…reason for this strict requirement is that the imposition of a lis pendens functions as "a harsh and oppressive remedy" that "operates as a cloud on the title and prevents an owner from selling or dealing with it."

Suarez v. KMD Const., Inc., 965 So. 2d 184, 187 (Fla. 5th DCA 2007) (citation omitted).

We also reject American Legion Department's alternative argument that, even if the notice of lis pendens was effective for only one year, Diamond was placed on constructive notice of the pending litigation between American Legion Community Club, American Legion Department, and Del Rossi, subjecting Diamond to that outcome. We find no merit in this contention. Section 48.23(2) clearly states: "No notice of lis pendens is effectual for any purpose beyond 1 year...." (Emphasis added.) If American Legion Department wanted the lis pendens to remain in effect beyond one year, it could have made this request to the trial court.

Am. Legion Cmty. Club v. Diamond, 561 So. 2d 268, 272 (Fla. 1990).

Florida Statutes provides, in pertinent part:

1. An action that is filed for specific performance or that is not based on a duly recorded instrument has no effect, except as between the parties to the proceeding, on the title to, or on any lien upon, the real or personal property unless a notice of lis pendens has been recorded and has not expired or been withdrawn or discharged.

2. Any person acquiring for value an interest in, or lien upon, the real or personal property during the pendency of an action described in subparagraph 1., other than a party to the proceeding or the legal successor by operation of law ... shall take such interest or lien exempt from all claims against the property that were filed in such action by the party who failed to record a notice of lis pendens or whose notice expired or was withdrawn or discharged, and from any judgment entered in the proceeding ... as if such person had no actual or constructive notice of the proceeding or of the claims made therein or the documents forming the causes of action against the property in the proceeding.

§ 48.23(1)(b), Fla. Stat.

It is apparent from the clear language of the statute that the purpose of the one year limitation feature thereof is to prevent restriction for unreasonable lengths of time of property subject to notice of lis pendens. Therefore, by the terms of Sec. 47.49(2), supra, the only two situations which will extend a notice of lis pendens beyond one year from the institution of the proceeding are, 1) where the relief sought is disclosed by plaintiff's initial pleading to be founded upon an instrument of writing properly of record, or upon a materialman's or mechanic's lien claimed against the property involved in the suit, or, 2) where the judge has, upon reasonable notice and good cause shown, extended such time.

Neither of these factors appear, from the record, to be here involved.

Marchand v. De Soto Mortg. Co., 149 So. 2d 357, 359 (Fla. 2d DCA 1963)

A motion to dissolve a notice of lis pendens does not subject the movant to the general jurisdiction of the trial court. Loidl, 927 So. 2d at 1019-20 ("A property owner who has been subjected to an improper notice of lis pendens has received no summons or other judicial process and has not been served with a complaint. It has no reason to expect that it will be haled into court as a party or subjected to a judgment on an undisclosed cause of action when it objects to a cloud upon the title of its [property].").

ProntoCash, LLC v. Autoboutique of Miami, Inc., 336 So. 3d 1212, 1216 (Fla. 3d DCA 2021).

The duly recorded easement through its recorded terms provides notice of the easement owner's interest without an investigation of factual matters outside the record.

Stinnett v. Dodson, 575 So. 2d 1350, 1351 (Fla. 2d DCA 1991).

To hold otherwise, it reasoned, would allow for a notice of lis pendens to "remain in effect beyond one year as of right whenever real property was involved, contrary to the clear intent of section 48.23." Id. Thus, only in "those cases in which the suit is based on the terms and provisions contained in the recorded document" is the proponent entitled to a lis pendens as a matter of right. Id.

Petkovich v. Sandy Point Condo. Apartments Ass'n, Inc., 325 So. 3d 201, 204 (Fla. 3d DCA 2021) (citation omitted).

> "Constructive notice is a legal inference, and it is imputed to creditors and subsequent purchasers by virtue of any document filed in the grantor/grantee index—the official records."
>
> Whitburn, LLC v. Wells Fargo Bank, N.A., 190 So. 3d 1087, 1091 (Fla. 2d DCA 2015) (citations omitted).

Applicable Argument

Here, the Order Denying Intervention was made based upon a legal error so it should be renewed de novo. There is no doubt that the Mortgage failed to include a legal description. (R., Item 2, p. 14). Therefore, there was no constructive notice and the general rule of preclusion from intervention is inapt. Lafitte, 624 So. 2d at 845 (Fla. 2d DCA 1993). Appellee relied upon an expired Lis Pendens to preclude Appellant from intervening, when said Lis Pendens could not be used for any purpose at that point. Diamond, 561 So. 2d at 272 (Fla. 1990).

II. **Appellant was entitled to intervene by law in the Foreclosure Case because Appellee's fraudulent circumvention of the procedural mechanisms without constructive notice to Appellant of the lawsuit deprived Appellant of his due process right to notice and the opportunity to be heard; particularly with regard to the unchallenged unliquidated amounts entered in the Judgment that the court filings facially demonstrated were starkly inconsistent**.

Legal Standard and Case Law

The following excerpts of Florida law illustrate how this appeal should be decided in favor of Appellant on the second issue stated above:

We held the general rule preventing third party purchasers to intervene in a foreclosure actions did not apply because the third party purchaser "was not a stranger to [the lender]. Rather, [the lender] was actively involved in the [the third party purchaser's] purchase of the real property because it had approved both the short sale of the real property to [the third party purchaser] and the settlement statement ... prior to the short sale closing." Thus, Bymel was "not a situation where [the third party purchaser] believed that he was purchasing the property subject to the pending foreclosure action and the lis pendens." Id. To the contrary, the third party purchaser "reasonably believed that following the short sale, [the lender] would dismiss its foreclosure action against the [borrowers], discharge its notice of lis pendens, and record a satisfaction of its mortgage, thereby clearing title to the real property." Id. Here, in contrast, no relationship between Asset Recoveries and Space Coast exists comparable to that between the third party purchaser and lender in Bymel.

Space Coast Credit Union v. Goldman, 262 So. 3d 836, 838–39 (Fla. 3d DCA 2018) (citations omitted).

Based on the facts of this case, we conclude that the trial court abused its discretion by denying Bymel's motion to intervene. Accordingly, we reverse the denial of Bymel's motion to intervene and remand with instructions to enter an order allowing Bymel to intervene in the foreclosure action.

Bymel v. Bank of Am., N.A., 159 So. 3d 345, 347 (Fla. 3d DCA 2015).

The cases have sometimes loosely characterized the substantive rules that subsequent purchasers are estopped from contesting the validity of facially valid mortgages and cannot assert contract rights they do not own as related to a foreclosure defendant's "standing" to defend.

…But we should recognize these rules for what they are: limitations on the rights of particular parties in the foreclosure process imposed by substantive law. Their scope is confined to the limited subject areas they cover—disputes as to the validity of mortgages and the rights of nonparties to enforce contract provisions. On their face, they do not represent a determination that a subsequent purchaser lacks standing to contest practically anything a plaintiff might assert in a foreclosure case or that a subsequent purchaser must tie each and every matter it asserts by way of defense to some interest that gives it standing to assert that specific matter. See Wilmington Tr., N.A. v. Alvarez, 239 So. 3d 1265, 1266 n.1 (Fla. 3d DCA 2018) (rejecting the argument that a subsequent purchaser "lack[ed] standing" to assert the statute of limitations as a defense to a foreclosure case); 3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A., 226 So. 3d 1040, 1042 (Fla. 4th DCA 2017) (holding that a subsequent purchaser may challenge a foreclosure plaintiff's standing to foreclose because otherwise "a subsequent purchaser would never have the ability to defend against the taking of a bona fide interest in the property through a foreclosure sale").

Green Emerald Homes, LLC v. 21st Mortgage Corp., 300 So. 3d 698, 706–07 (Fla. 2d DCA 2019) (citations omitted).

It provides them with an opportunity to raise their defenses and protect their interests consistent with genuine due process...The fundamentals of procedural due process are (1) a hearing (2) before an impartial decision-maker, after (3) fair notice of the charges and allegations, (4) with an opportunity to present one's own case.

Wieczoreck v. H & H Builders, Inc., 450 So. 2d 867, 871 (Fla. 5th DCA 1984), certified question answered, 475 So. 2d 227 (Fla. 1985) (citations omitted).

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."…Additionally, notice by publication is not sufficient with respect to an individual whose name and address are known or easily ascertainable.
>
> Lorie v. Calderon, 982 So. 2d 1199, 1201 (Fla. 3d DCA 2008) (citations omitted).

Applicable Argument

Here, Appellee was no stranger to the Partition action. As in Space Coast and Bymel, the Appellant and Appellee had a relationship; the problem is it was not a symbiotic relationship. Appellee was no stranger to the Partition Action, but instead pulled the strings behind the scenes hoping to benefit from the often harsh in application Lis Pendens rule, without adhering to its particular requirements. Lorie, 982 So. 2d at 1201; (App., pp. 17 – 23). In fact, even when Appellant did find out about the proceedings, Appellee made every effort to prevent Appellant from being heard. (App., pp. 15 – 16).

Even when Appellant attempted to get a proper payoff statement, Appellee refused to provide it and when it did eventually provide said statement, the numbers starkly contrasted with the court filings. (R., Item 43, pp. 187 – 190). If Appellee is allowed to benefit from its procedural smoke and mirrors, it would effectively render the requirements to delineate amounts owed meaningless. Id.

III. **The Order Denying Vacation should be overturned because there was no effective service of process upon any defendant. The Judgment is void**.

Legal Standard and Case Law

The following excerpts of Florida law illustrate how this appeal should be decided in favor of Appellant on the third issue stated above:

> Because valid service of process is necessary to vest jurisdiction in the trial court, the court lacks personal jurisdiction over Tuscan River until service is perfected… To determine whether a plaintiff has exercised "reasonable diligence," courts have considered whether the plaintiff has employed the knowledge at its command, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate service of process…"[P]roof of a few attempts at service of process are insufficient to prove diligent search."… Courts have also held that reasonable diligence was not exercised where the plaintiff failed to follow an "obvious" lead…Howard v. Gualt, 259 So. 3d 119, 122 (Fla. 4th DCA 2018) (reversing the default judgment because the record reflected "only three attempts at service at addresses located through Sunbiz.org" and was "silent as to any follow-up investigation").
>
> Tuscan River Estate, LLC v. U.S. Bank Tr. Nat'l Ass'n as Tr. of Greene St. Funding Tr., 351 So. 3d 1233, 1236 (Fla. 1st DCA 2022) (citations omitted).
>
> Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and, whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are regarded as nullities.

> They are not voidable, but simply void.
>
> Malone v. Meres, 109 So. 677, 683 (Fla. 1926) (citation omitted).

Applicable Argument

Here, no service was made within the time allotted by the Court. (R., Item 43, p. 187). Further, Appellee did not make reasonable efforts to serve the named defendants. (R., Items 15 -17, pp. 62 – 64). Accordingly, the Judgement is void. Malone, 109 So. at 683.

IV. **The Order Denying Vacation should be overturned because the Order Granting Summary Judgment and corresponding Judgment were not based upon well pled facts and were instead based upon vague, unsupported conclusions of law; particularly Appellee's failure to move for reformation in its motion for summary judgment and its untimely and inadequate evidence filed in support**.

Legal Standard and Case Law

The following excerpts of Florida law illustrate how this appeal should be decided in favor of Appellant on the fourth issue stated above:

> Upon review of the applicable authorities and consideration of the facts herein we are of the opinion that the mortgage was not properly recorded in July 19, 1973, so as to impart constructive notice to subsequent purchasers and encumbrancers and hence was not superior to the mechanic's liens which took priority as of July 19, 1973; it was not until July 26, 1973, when the mortgage was re-recorded with the proper description that constructive notice was created.

Where land intended to be mortgaged cannot be identified because of a lack of description the mortgage is ineffective unless it is reformed. …Therefore, recording a mortgage with No description imparts notice of nothing and defeats the very effect and purpose of recordation…

However, the reference to the existence of another deed or unrecorded document must be Specific not only in terms of identifying the other deed or document with particularity but in putting a reasonable person on notice of the need to make reference to such other deed or unrecorded document…In the instant case the language appearing on the face of the mortgage under the heading 'The Land' wherein the description would be set forth, refers only to an 'attached Exhibit A', which was Not attached. There is no reference whatsoever to any other deed or document recorded or unrecorded...There is no indication to any prudent and reasonable person that the omitted legal description was intended to be supplied by reference to some other document.

Air Flow Heating & Air Conditioning, Inc. v. Baker, 326 So. 2d 449, 452 (Fla. 4th DCA 1976) (citations omitted).

In entering a final summary judgment of foreclosure, the trial court also granted a reformation of the mortgage to include a legal description of the property foreclosed, as apparently the mortgage failed to include the proper legal description. The appellee Bank's motion for summary judgment and accompanying notice, however, did not raise the issue of reformation as an issue to be addressed at the summary judgment hearing. Because of the lack of notice, the court erred in reforming the mortgage to add a legal description. See Gee v. U.S. Bank Nat'l Ass'n, 72 So.3d 211, 214–15 (Fla. 5th DCA 2011) (where motion for summary judgment makes no mention of request to reform legal description in mortgage, court errs in granting such relief in foreclosure judgment);

Locke v. State Farm Fire & Cas. Co., 509 So.2d 1375, 1377 (Fla. 1st DCA 1987) ("The appellee's motion stated only in general terms that no material issues of fact or law existed and that appellee was entitled to the relief requested. Such a motion is insufficient to place the nonmoving party on notice of the issues of fact or law which will be argued at the hearing.").

Based on the record, the Bank's boilerplate motion for summary judgment was insufficient to apprise appellant of this specific topic that would be discussed at the motion hearing.

Willis v. Bank of New York Mellon, 115 So. 3d 1075 (Fla. 4th DCA 2013); see also Sample v. Wells Fargo Bank, N.A., 150 So. 3d 1191, 1193 (Fla. 4th DCA 2014).

This Court reviews a trial court's ruling on a motion for summary judgment de novo… The overarching issue in this case is whether the absence of a legal description for the bay bottom parcel from the original mortgage and its subsequent modifications was intentional or due to a mutual mistake.

Keys Country Resort, LLC v. 1733 Overseas Highway, LLC, 272 So. 3d 500, 503 (Fla. 3d DCA 2019) (citation omitted).

When a mortgage contains an incorrect legal description, a court may correct the mistake before foreclosure. If, however, the mistaken legal description is not corrected before final judgment of foreclosure, and the mistake is carried into the advertisement for sale and the foreclosure deed, a court cannot reform the mistake in the deed and judgment; rather, the foreclosure process must begin anew. Fisher v. Villamil, 62 Fla. 472, 56 So. 559 (1911).

Lucas v. Barnett Bank of Lee Cnty., 705 So. 2d 115, 116 (Fla. 2d DCA 1998).

Applicable Argument

Here, there was a genuine issue of material fact as to whether the omission of the legal description put defendants in the Underlying Action and Appellant on notice of the Mortgage, particularly given the fact that the Motion for Summary Judgment did not even move for reformation in its bare bones form. (R., Item 33, pp. 94 – 100). The Order granting summary judgement failed to delineate whether and how the requisite elements of Appellee's claims were met. (R., Item 38, pp. 142 – 143). Granting summary judgment was improper under the circumstance. Baker, 326 So. 2d at 452.

CONCLUSION

Appellant respectfully requests that this Court reverse the Order Denying Intervention and the Order Denying Vacation, dismiss the Underlying Action without prejudice to refile, and allow the Appellant to intervene.

CERTIFICATE OF SERVICE

I hereby certify that a copy has been furnished to: David W Rodstein drodstein@mgs-legal.com; kcardenas@mgs-legal.com; and Robert Rex Edwards redwards@mgs-legal.com; kcardenas@mgs-legal.com, counsel for Appellee, this 23rd day of December 2024.

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CERTIFICATE OF COMPLIANCE

I hereby certify this brief was prepared using Times New Roman 14-point font and that it complies with the word count requirements in the Florida Rules of Appellate Procedure.

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