IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

2D22-2663
LC CASE # 2009-CA-003718 NC

MARIN ASSOCIATES, LLC, et al,
Appellants,

vs.

CHASE HOME FINANCE, LLC,
Appellee.

INITIAL BRIEF OF APPELLANTS

On Appeal from a Final Judgment of Foreclosure of the Twelfth Judicial Circuit in and for Sarasota County, Florida

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INTRODUCTION

Appellants, MARIN ASSOCIATES, LLC and GUILLERMO L. MARIN appeal the trial court's July 27, 2024 Order Granting Appellee/Plaintiff Bank's Motion for Summary Judgment [R 2914] and Uniform Final Judgment of Mortgage Foreclosure July 27, 2024 [R 2905] because (1) there is no basis under Florida law for substituting a party in a reformation action; (2) Plaintiff Bank failed to add an indispensable party; (3) even if it were possible under Florida law to substitute a party pursuant to a reformation action, Plaintiff Bank has provided no admissible evidence with its Motion for Summary Judgment to meet the "clear and convincing" evidentiary standard required to reform a contract in Florida.

APPLICABLE LAW

Fla. Rule Civ. Proc. 1.510 - SUMMARY JUDGMENT states:

> **(a) Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense-or the part of each claim or defense-on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court shall state on the record the reasons for granting or denying the motion. The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard.

FACTUAL BACKGROUND

Plaintiff Bank moved for partial summary judgment on Counts I (Foreclosure) and V (Reformation) of its Fourth Amended Complaint against Defendant MARIN ASSOCIATES, LLC.

Defendant MARIN ASSOCIATES, LLC owns the subject property, but is not a party to the mortgage that Plaintiff Bank seeks to foreclose.

In order to get around this difficult fact, Plaintiff Bank is seeking to "reform" the mortgage in order to substitute Defendant MARIN ASSOCIATES, LLC for the current mortgagor.

Because (1) there is no basis under Florida law for substituting a party in a reformation action; (2) Plaintiff has failed to add an indispensable party; and (3) even if it were possible under Florida law to substitute a party pursuant to a reformation action, Plaintiff has provided no admissible evidence with its Motion for Summary Judgment to meet the "clear and convincing" evidentiary standard required to reform a contract in Florida.

As such, the Court should have denied Plaintiff Bank's Motion for Summary Judgment and granted Defendant MARIN ASSOCIATES, LLC's Cross-Motion for Summary Judgment

STANDARD OF REVIEW

The issue of whether the trial court properly applied the law is reviewed de novo. *Pompano Beach Cmty. Redev. Agency v. Holland*, 82 So.3d 1034, 1036 (Fla. 4th DCA 2011).

ARGUMENT

A court of equity has the inherent power "to order a written instrument reformed in such manner as to cause the instrument to reflect the true agreement of the parties when the terms of the agreement have not been clearly expressed in the instrument because of the mutual mistake or inadvertence." *Tri–Cnty. Prod. Distrs., Inc. v. Ne. Prod. Credit Ass'n,* 160 So.2d 46, 49 (Fla. 1st DCA 1963); *see generally* Thomas E. Baynes, Jr., *More Than You Wanted to Know About the Doctrine of Reformation,* 78 Fla. Bar J. 58 (Oct.2004) (discussing the use of the remedy of reformation in Florida to correct mistakes in documents).

1. Court does not have the power to substitute a party to an agreement

"Reformation only corrects the defective writing so as to accurately reflect true terms actually agreed to by parties." *Providence Square Assn v. Biancardi*, 507 So. 2d 1366 (Fla. 1987).

The language regarding "agreed to by the parties" is critical, because in the instant action Plaintiff is attempting to substitute a party to a contract, rather than reform the agreement between parties.

This is simply not allowed under Florida law. The court's role is not "conjuring up a new agreement." *Southern Lead Corp v. Glass*, 138 So. 59 (Fla. 1931); *Olster v. Paskow*, 289 So. 2d 11 (Fla. 3d D.C.A. 1974).

It is important to point out that Defendant MARIN ASSOCIATES, LLC was not a party to the Mortgage at issue, NOR the Note associated with that Mortgage.

The Court simply has no authority to reform a mortgage by substituting a corporate grantor, and thereby judicially supplying the necessary witnesses, corporate seal and corporate authorization required by Florida law for mortgaging real property. See *Chanrai Investments, Inc. v. Clement*, 566 So. 2d 838 (Fla. Dist. Ct. App. 1990) ("This Court has no authority to reform a wild deed by adding a corporate grantor to such a deed and by supplying the necessary witnesses and/or corporate seal and notarization required by Florida law for conveyances of real property.")

Further, any reformation of the Mortgage to substitute a party would also require reformation of the Note, as the Mortgage is security for the Note and Defendant MARIN ASSOCIATES, LLC was also not a party to the Note.

Plaintiff has not pled to reform the Note, making its mortgage reformation count a legal nullity.

2. Plaintiff has failed to add a necessary Party

Another reason that reformation will not lie in this case is the fact that all parties necessary for reformation of the Mortgage are not before the court. The Second District Court in *Insua v. Otero*, 524 So.2d 1142 (Fla. 2d DCA 1988) held that the party who had executed the instrument sought to be reformed was a necessary party to the action seeking to reform that very deed. DJP Morgan Chase Bank, N.A., the original mortgagee, has not been made a party to this reformation action. As such, the reformation action must be dismissed for failing to join an indispensable party. See *Palm v. Taylor*, 929 So.2d 566 (Fla. 2nd DCA 2006), which held

> Furthermore, reformation of the deed was not permissible as a matter of law in this procedural context. The original grantor — Magnum Excavating — was not before the court, nor were any subsequent grantees — including K.M.A. Mining. These are necessary parties in an action to reform a deed. See *Chanrai Invs., Inc. v. Clement*, 566 So.2d 838 (Fla. 5th DCA 1990).

The rule is well established in Florida that in a suit to reform a written instrument, all persons interested in the subject matter of the litigation, whether their interest be legal or equitable, should be made parties, so that the court may settle all rights at once thereby preventing a multiplicity of suits. *Bevis Constr. Co. v. Grace*, 115 So.2d 84, 85 (Fla. 1st DCA 1959).

3. **Even if it were possible under Florida law to substitute a party pursuant to a reformation action, Plaintiff has provided no admissible evidence with its Motion for Summary Judgment to meet the "clear and convincing" evidentiary standard required to reform a contract in Florida.**

The requisite standard of proof in actions for reformation is "clear and convincing evidence." *Allstate Ins. Co. v. Vanater*, 297 So.2d 293, 295 (Fla.1974). "Rigorous application of the higher standard of proof in reformation cases promotes the policy that parties should not be subjected to contractual obligations to which they never agreed." *USAA Cas. Ins. Co. v. Threadgill*, 729 So.2d 476, 478 (Fla. 4th DCA 1999) (citing *Smith v. Royal Auto. Group, Inc*., 675 So.2d 144, 154 (Fla. 5th DCA 1996)).

Under Florida law, the burden is on Plaintiff to show that a different contract was entered into from that which was reduced to writing. *Fidelity Phenix Fire Ins. Co. v. Hilliard,* 62 So.2d 585, 586 (Fla. 1913); *Samet v. Prudential Ins. Co. of America*, 294 So.2d 35, 36 (Fla. 3d DCA 1974)

Here, the lender prepared the Mortgage and Note having accepted, examined and retained the policy for an extended time without questioning the provisions thereof, the burden was on the plaintiff to show that a different contract was entered into from that which was reduced to writing. *Fidelity Phenix Fire Ins. Co. v. Hilliard*, 65 Fla. 443, 62 So. 585.

CONCLUSION

WHEREFORE, for the foregoing reasons, Appellants respectfully submit that they are entitled to Summary Judgment for the reasons stated above.

As such, summary judgment should be granted in favor of Appellants, and this Honorable Court should grant any further relief deemed appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Florida Court's E-Filing Portal and that I have effectuated service on all attorneys registered to receive service on this case in compliance with Fla. R. Jud. Admin. 2.516 this 8th day of July, 2024, including Counsel for appellee Michele A. Cavallaro at FIDELITY NATIONAL LAW GROUP 100 W. Cypress Creek Rd, Suite 889 Fort Lauderdale, Florida 33309 michele.cavallaro@fnf.com.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been generated in Arial 14-point font and complies with the font requirements of Rule 9.210(a) of the Florida Rules of Appellate Procedure and consists of 1848 words.

Respectfully submitted,

s/davidwinker/

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