IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOR THE SECOND DISTRICT
Case No. 2D23-1905

IGNACIO ZELAYA

Appellant

VS.

BAM 32 INC AND RE 710 LLC,

Appellees

RE 710 LLC

Appellee's Answer Brief

On Appeal from the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida

L.T. Case No.: 2023-CC-008827

Matthew D. Wolf, Esq.
Florida Bar No. 92611
Ivanov & Wolf, PLLC
3310 W. Cypress St., Suite 206
Tampa, FL 33607
Tel: (813) 870-6396
Email: Matt@IWFirm.com
Counsel for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE FACTS

On January 31, 2023, Bam 32, Inc. ("Bam") filed a one count Complaint against RE 710 to establish an equitable lien on the property located at 2015 Bridgehampton Place, Brandon, FL 33511 ("Property"). (R. 8-9). In the Complaint, Bam requested the trial court impose an equitable lien in Bam's favor, declare the lien superior to RE 710's interest, determine the amounts due and owing to Bam, set a date for these funds to be paid, and, if not paid, schedule a sale date to sell the Property. (R. 8-9).

On March 22, 2023, after BAM moved for summary judgment, Bam and RE 710 filed a Stipulation for Final Judgment ("Stipulation"), wherein RE 710 stipulated that a final judgment should be entered in favor of Bam. (R. 24-25). In paragraph 4 of the Stipulation, the parties disclosed that any equitable lien would be junior to a first lien mortgage recorded in Hillsborough County Official Records Book 17681, Page 1523. (R. 24-25). The parties further disclosed in the Stipulation that any sale related to the equitable lien would not affect the first lien mortgage on the Property. (R. 24-25).

On March 23, 2023, an Agreed Final Judgment of Foreclosure ("Judgment") was entered. (R. 26-31). The Judgment established a lien against the property and determined that if RE 710 did not pay the judgment amount of $13,894.00 by April 27, 2023, the Hillsborough County Clerk of Court would sell the Property at a public auction. (R. 26-31). Additionally, in paragraph 12 of the Judgment, it stated as follows:

> 12. This Judgment is subject to a superior mortgage foreclosure lien. This Judgment does NOT eliminate any senior lien holder's rights and any purchase of this property at foreclosure sale will be subject to a senior mortgage foreclosure lien.
>
> (R. 26-31).

The judgment amount remained unpaid and on April 27, 2023 the Hillsborough County Clerk of Court sold the property to Ignacio A Zelaya ("Zelaya"). (R. 1-7). On April 28, 2023, after Zelaya tendered all funds due and owing following the sale, the Certificate of Sale issued to Zelaya, located at 60 Grante Drive, North Haledon, NJ

07508, a 5 bedroom, 5 bathroom, 4,500 square foot residential home currently valued at over $1 million on Zillow.com. (R. 1-7).

On May 3, 2023, Zelaya filed a Third Party Purchaser's Emergency Motion to Vacate Foreclosure Sale – and – Objection to Sale and Issuance of Certificate of Title Based Upon an Ongoing Scheme to Defraud ("MTV"). (R. 38-104). In his MTV, Zelaya alleged a number of claims, which were eventually dropped. (R. 38-104). Amongst other claims, Zelaya alleged 1) that the Property was without equity at the time he purchased it at the auction, 2) that Bam did not hold a license to conduct air conditioner services, and 3) that he was unaware that the Property was subject to a superior mortgage. (R. 38-104).

On June 26, 2023, Zelaya filed Third Party Bidder's Motion for Leave to Amend his Objection to Sale and Motion to Vacate, which attached a document titled Third Party Purchaser's Amended Objection to Sale and Motion to Vacate – Final Judgment is Void for Lack of Subject Matter Jurisdiction – Rendering Sale Void Ab Initio ("Objection"). (R. 295-319). RE 710 filed a Motion for Sanctions Pursuant to Fla. Stat. 57.105 ("Motion for Sanctions") on July 14,

2023, directed at Zelaya's MTV, arguing that the claims raised in his MTV related to the lack of equity, lack of an air conditioning license, and lack of awareness of the superior mortgage were without merit and not supported by fact or then-existing law. (R. 320-341). To oppose the claim that there was no equity in the Property at the time Zelaya purchased it at auction, the Motion for Sanctions included the most recent payoff for the first lien mortgage as well as a screenshot from Realtor.com indicating the estimated value of the Property. (R. 320-341). By comparing these two exhibits, RE 710 argued in its Motion for Sanctions that there was equity in the Property at the time Zelaya was the successful bidder. (R. 320-341).

On August 10, 2023, the Trial Court granted Zelaya's amendment request which effectively allowed the Objection to be the operative motion before the Court. (R. 400-401). Notably, in his Objection, which amended the MTV, all Zelaya's claims related to the lack of equity, lack of an air conditioning license, and lack of notice of the superior mortgage were dropped. (R. 295-319).

Zelaya's Objection was scheduled for a 30-minute evidentiary hearing on August 9, 2023. There was no court reporter at the

hearing and, as a result, the matters before the Trial Court were not transcribed. Nevertheless, the hearing proceeded forward, and the Trial Court denied Zelaya's Objection and entered an Order Denying Third-Party Purchaser's Amended Objection to Sale and Objection to Issuance of Certificate of Title ("Order") on August 10, 2023. (R. 398-399). Following the Order, the Certificate of Title issued to Zelaya on August 14, 2023. (R. 406). Shortly thereafter, Zelaya appealed the Order on September 7, 2023. (R. 413-416).

SUMMARY OF THE ARGUMENT

RE 710 opposes Zelaya's request for relief for three reasons. First, Zelaya lacks standing to contest the jurisdiction of the trial court. Selaya is a non-party, who has not intervened in the trial court matter. Second, even if Zelaya could contest the jurisdiction of the trial court, the ruling in *Quadomain* does not apply and this court should following the ruling in *Jallali*. Third, jurisdiction is not conferred upon the Trial Court through the lis pendens statute, but instead through Fla. Stat. 34.01. Applying Fla. Stat. 34.01 to this matter, it is clear that the Trial Court had jurisdiction.

ARGUMENT AND LEGAL ANALYSIS

I. Lack of Standing to Dispute Foreclosure

Zelaya, as the third-party purchaser and non-party to the action, does not have standing to contest the underlying action.

In Florida, a stranger to litigation generally has no rights. See *Yankeetown Mgmt., LLC v. SunTrust Mortg., Inc.*, 164 So. 3d 744, 745 (Fla. 2d DCA 2015) ("We dismiss the appeal because the appellant, Yankeetown Management[,] LLC, lacks standing to challenge the final judgment of foreclosure in this case. Yankeetown did not seek to intervene before the final judgment was rendered; therefore, it is a legal stranger to the action.") and P*ortfolio Invs. Corp. v. Deutsche Bank Nat'l Tr. Co.*, 81 So. 3d 534, 536 (Fla. 3d DCA 2012) (“As a general rule, "a non-party in the lower tribunal is a 'stranger to the record' and, therefore, lacks standing to appeal an order entered by the lower tribunal.").

In *Thriving Invs., LLC v. Chao*, the Third District Court of Appeal dealt with the very issue presented to the Court in the Motion. The Court stated as follows: “The trial court properly held that the third-party purchaser was a stranger to the foreclosure action and lacked

standing to vacate the final judgment of foreclosure. This appeal is accordingly dismissed because "[t]he general rule is that a non-party is a stranger to the record who cannot transfer jurisdiction to the appellate court." *YHT & Assocs., Inc. v. Nationstar Mortg*. LLC, 177 So. 3d 641, 2015 Fla. App. LEXIS 14462, 40 Fla. L. Weekly D2208 (Fla. 2d DCA Sept. 30, 2015) (citations and quotations omitted)." *Thriving Invs., LLC v. Chao,* 184 So. 3d 552 (Fla. 3d DCA 2015).

The sole exception for the above rule is outlined in *Pearlman v. Pearlman*, 405 So. 2d 764 (Fla. 3d DCA 1981) stating "A person who is a stranger to the action has standing under the rule to move for vacation of the judgment when the judgment was obtained by fraud or collusion and directly affected the rights of that person". This "Pearlman standing" which has been repeatedly recognized throughout the state, is a narrow exception…"" *Carlisle v. United States Bank*, 225 So. 3d 893 (Fla. 3d DCA 2017). In Pearlman the party seeking relief based on 1.540(b) had rights which predated the litigation and were directly affected by the judgment that been fraudulently obtained. In contrast the party seeking relief in Carlisle was purchaser pendente lite at the time litigation commenced and

"he purchased the property subject to and bound by any judgment rendered in the foreclosure action". *Id.*

Here, Zelaya lacks standing to challenge the jurisdiction of the trial court. Zelaya was not the plaintiff. (R. 8-9). Zelaya was not the defendant. (R. 8-9). Instead, Zelaya was the successful bidder at the foreclosure sale. (R. 1-7). As such, by applying Florida law, Zelaya has no standing to contest the jurisdiction of the trial court or the judgment.

Further, Zelaya cannot make a claim that an exception should be applied under the Pearlman standard. Zelaya did not gain any rights as it related to the property until after the foreclosure sale. (R. 1-7). Logically, Zelaya cannot make a claim that its rights pre-dated the litigation. By nature, as the successful bidder at sale, Zelaya can only gain its rights post judgment.

In his Initial Brief, Zelaya relies upon *Quinn Plumbing Co. v. New Miami Shores Corp.,* 100 Fla. 413 (Fla. 1930), *Miller v. Stavros,* 174 So.2d 48 (Fla. 3d DCA 1965), and *Confederate Point P'ship, Ltd v. Schatten*, 278 So.2d 661 (Fla. 4th DCA 1973) to support his claim that he is entitled to contest the underlying case. However, none of these

cases stand for Zelaya's proposition and are distinguishable from the facts before this Court.

In *Quinn Plumbing Co. v. New Miami Shores Corp*, the Florida Supreme Court narrowly reasoned that if a junior encumbrance is unnamed in a senior lien foreclosure, the purchaser at the foreclosure auction becomes an equitable assignee of the senior interest to foreclose all remaining interests in the subject property. Zelaya claims that the ruling in *Quinn* gives Zelaya the right to enter the underlying case as an equitable assignee of Bam and contest the judgment. However, Zelaya's reliance upon *Quinn* fails for a number of reasons.

First, the facts of this case are distinguishable from *Quinn*. Here, Zelaya is not attempting to foreclose a junior interest, whereas the third-party purchaser in *Quinn* was seeking this very remedy. Instead, Zelaya is attempting to step in the shoes of Bam and re-litigate this very case. *Quinn* does not stand for this proposition. To the extent Zelaya located an interest which was subordinate to RE 710's and wanted to foreclose this interest, RE 710 would agree that Zelaya is an equitable assignee of Bam and entitled to file suit to clear

title. But nothing within *Quinn* allows Zelaya to stand in the shoes of Bam and re-litigate the underlying case before the Trial Court.

Second, Zelaya's claim that the Judgment is void is inconsistent with its claim that it is an equitable assignee. In order to become an equitable assignee of the plaintiff, the judgment and sale must be valid. If the judgment and sale are not valid, then a third-party purchaser cannot be an equitable assignee. Therefore, if Zelaya believes that it has the right to dispute the underlying foreclosure as an equitable assignee of Bam, he must concede that the judgment and sale were valid. If, on the other hand, Zelaya believes the Judgment is void, he cannot be an equitable assignee of Bam. Plainly stated, the only way for Zelaya to become an equitable assignee of Bam is if the judgment, and resulting sale, are valid. Zelaya cannot have his cake and eat it too by claiming, on one hand, that he is the equitable assignee of Bam as the successful purchaser at the sale and, on the other hand, claiming the judgment is void, the very judgment which bestowed upon Zelaya his status as an alleged equitable assignee.

Finally, Zelaya's claim that, as an equitable assignee of the Plaintiff, he now has standing to contest the underlying foreclosure would be contrary to against public policy. If Zelaya's claim is correct, then every third-party purchaser in the state of Florida would now be given authority to intervene in the underlying case and re-litigate the issues before the trial court. With Zelaya's untethered claim that he can attack the judgment, every plaintiff and defendant in every foreclosure case in the state of Florida is now subject to further litigation after the sale of property at a foreclosure auction, as a third-party purchaser could stand in the shoes of the plaintiff and raise any issue ripe for the original plaintiff to raise. This flies in the face of longstanding Florida law.

As was the case in *Quinn*, the facts in *Miller v. Stavros* are distinguishable, as *Miller* dealt with post-judgment surplus matters. In *Miller*, the third-party purchaser at a junior lien foreclosure sale sought to obtain part of the surplus funds to recover payments he made to the first lienholder. After the trial court denied his request, the third-party purchaser filed an appeal. The court in *Miller* reasoned that the third-party purchaser had standing to appeal the

denial of his surplus claim because he was a quasi-party. Here, Zelaya is not contesting post-judgment matters. He is contesting the underlying case and Judgment. No where in *Miller* does it state that a third-party purchaser has standing to contest the underlying case. As such, Zelaya's reliance on *Miller* is misplaced.

Similar to *Miller,* the issues in *Confederate Point P'ship, Ltd v. Schatten* are distinguishable, as *Confederate* dealt with the post judgment rights of the third-party purchaser. In *Confederate,* the appellate court determined that if the third-party purchaser wanted to enforce its right to obtain the collected post-judgment rents and security deposits held by the prior owner, it was required to make its claims in the foreclosure case. Once again, this is not the issue before this Court. Here, Zelaya is not seeking to enforce his rights as the owner of the property. Instead, Zelaya is attempting to intervene in the underlying case and attack the judgment; *Confederate* does not support this contention.

Based upon the above, Zelaya does not have standing to contest the Judgment, as his interest in the Property did not accrue until after the sale. Further, Zelaya's claim that he is an equitable assignee

of Bam fails for a number of reasons. Finally, all of the cases relief upon by Zelaya are distinguishable from the facts before this Court and does not supports Zelaya's claim that he has standing to contest the underlying case.

II. The Lis Pendens Statute Does Not Require Intervention

Zelaya, in his Initial Brief, relies heavily upon *Quadomain* as persuasive authority arguing Bam was required to intervene in the first lien foreclosure. Appellant's analysis of *Quadomain* is flawed and should not be relied upon, as it does not stand for Zelaya's proposition.

a. Quadomain Facts

The facts of Quadomain and the accompanying mortgage foreclosure are somewhat complex. On February 4, 2008, US Bank National Association filed an action to foreclose its first lien mortgage in Broward County, Case No. CACE080004787 ("US Bank Foreclosure"). (Appx. 4-20). During the pendency of its action, the titleholder to the subject property died. (Appx. 94-113). US Bank completed its action by obtaining a final judgment of foreclosure. (Appx. 94-113). The judgment scheduled a sale for September 3,

2009. (Appx. 94-113). US Bank was the successful bidder at the foreclosure sale, and the clerk of court issued the certificate of title to US Bank. (Appx. 94-113).

Following the issuance of title, US Bank filed a supplemental lis pendens on August 6, 2010, and sought leave of court to reforeclose the interest of the heirs of the former titleholder. (Appx. 94-113). The trial court granted this request and US Bank obtained Final Judgment of Reforeclosure on March 31, 2011. (Appx. 30-32).

Prior to US Bank's Judgment of Reforeclosure, but after the aforementioned supplemental lis pendens, Quadomain recorded a claim of lien against the subject property for outstanding assessments on November 10, 2010. (Appx. 33). Quadomain then filed a Complaint to foreclose the claim of lien on December 15, 2010 in Broward County, Case No. CACA10047537 ("Quadomain Foreclosure") and named US Bank as the titleholder of the subject property. (Appx. 40-57). US Bank failed to respond to the complaint and Quadomain obtained a final judgment on March 1, 2011, 30 days prior to US Bank's reforeclosure judgment. (Appx. 94-113). Quadomain's judgment proceeded to sale on June 15, 2011, wherein

Sabana Rentals I LLC ("Sabana") was the successful bidder. Sabana obtained title to the subject property on June 28, 2011. (Appx. 94-113).

After Sabana obtained title in the property in the Quadomain Foreclosure, Sabana filed a Motion to Intervene in the US Bank Foreclosure on October 3, 2011. (Appx. 58-63). The trial court granted Sabana's motion to intervene and Sabana became a party to the US Bank Foreclosure. (Appx. 64). After it became a party, the association sought to set aside Reforeclosure Judgment by filing a Motion to Set Aside Re-Foreclosure Judgment for Lack of Subject Matter Jurisdiction and to Cancel Re-Foreclosure Sale on August 28, 2013. (Appx. 65-82).

After Sabana sought to intervene in the US Bank Foreclosure, US Bank sought to vacate the judgment in the Quadomain Foreclosure by filing Defendant's U.S. Bank National Association's Motion to Vacate as Void the Default, Final Judgment, Sale and Certificate of Title on December 7, 2011. (Appx. 83-93). US Bank's request to vacate the judgment in the Quadomain Judgment was

denied on June 18, 2012. US Bank's appeal shortly following thereafter.

On appeal and in the trial court, when seeking to set aside the judgment from the Quadomain Foreclosure, US Bank argued that it was not the titleholder to the subject property, but instead still in first lien position. (Appx. 94-113). On appeal US Bank claimed the following: 1) it failed to foreclose the owner of the property in its initial action, 2) that the certificate of title to US Bank in the US Bank Foreclosure was void, 3) that it was the equitable assignee of the first lien holder from the US Bank Foreclosure, and 4) that it was in first lien position. (Appx. 94-113). US Bank then posited that because it was now the first lien, due to being the equitable assignee of the first lien holder in the initial foreclosure action, US Bank's supplemental Lis Pendens controlled and, if Quadomain wanted to foreclose US Bank's lien interest, it would have had to intervene in the reforeclosure case within 30 days from the recording of the supplemental Lis Pendens. (Appx. 168-196).

The above claims by US Bank are thoroughly vetted throughout US Bank's appellate briefs and trial court filings. The below are claims made by US Bank in these proceedings:

- " For over a century, in has been "well established in this jurisdiction that the purchaser of mortgaged property at a foreclosure sale, when ***for any reason*** the foreclosure proceedings are imperfect or irregular, becomes subrogated to all the rights of the mortgagee in such mortgage and to the indebtedness that it secured…such purchaser becomes virtually an equitable assignee of the mortgage and of the debt secured, with all rights of the original mortgagee." *Quinn Plumbing Co. v. New Miami Shores Corporation*, 100 Fla. 413, 417, 129 So. 690(Fla. 1930)(emphasis added); *Jordan v. Sayre*, 29 Fla. 100, 10 So.823 (Fla. 1892); *Key West Whary & Coal Co. v. Porter*, 63 Fla. 448, 58 So. 599 (Fla. 1912).

  In the case *sub judice*, the Appellant acquired title to the subject property as the successful purchaser at the foreclosure sale in the Foreclosure Action. (APP. 3). As a result, in accord with the long standing rule in Florida,

Appellant was "an equitable assignee of the mortgage and of the debt it secured, with all rights of the original mortgagee." *Quinn Plumbing Co.,* 129 So. 690. It was then discovered that there were missed heirs in the Foreclosure Action, and due to this fact, the Foreclosure Action was "imperfect or irregular" and a Reforeclosure action was necessary. *Id.*

The Appellant, as an equitable assignee of the original mortgage and mortgagee, including the rights associated therewith, subsequently filed a Motion for Leave to File Supplemental Complaint to Reforeclose Mortgage to Foreclose Omitted Defendant in the Foreclosure Action. (APP. 4). Said motion was granted and on July 16, 2010 the lower court entered an order granting Appellant leave to file a supplemental complaint in the Foreclosure Action. (APP 5)…"

(Appx. 94-113).

- " …more-over, U.S. Bank held a validly recorded first mortgage on the subject property and was in the process of prosecuting its mortgage foreclosure action when Quadomain filed a Claim of Lien and initiated the underlying foreclosure action. (App. 8,9,10). Florida Statute

718.116(5)(a) specifically provides, "as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located." 718.116(5)(a), Fla. Stat. (2012). Thus, Quadomain's argument that their Declaration of Covenants was recorded in the Public Records is wholly irrelevant in this case when the key factor for perfecting the association's lien for unpaid assessments against a first mortgagee is the act of recording the claim of lien in the public records.

Quadomain Condominium Association, Inc.'s Declaration of Covenants and Florida Statute 718.116 both require the association to record a claim of lien to secure the payment of assessments. A Claim of Lien with regard to a first mortgagee is only effective from and after the recording of the Clain od Lien in the public records. *See,* 718.116(5)(a), Fla. Stat. (2012). Significantly, Quadomain does not argue that their Declaration of Covenants grants their lien a super priority lien over U.S. Bank's first mortgage, but only that their Declaration of Covenants is recorded in the public records

and that Florids's Lis Pendens Statute should not apply to them. In contract, Florida Statute and case law both support U.S. Bank's position that their recorded Lis Pendens and Supplemental Lis Pendens in Circuit Court Case CACE-08-004784 effectively terminated Quadomain's substantive rights to foreclose on its Claim of Lien during the pendency of U.S. Bank's action."

(Appx. 114-134).

- "Both Quadomain and any subsequent purchaser as a result of Quadomain's foreclosure sale had constructive notice of U.S. Bank's pending mortgage foreclosure action as a result of U.S. Bank's properly recorded Lis Pendens and Supplemental Lis Pendens. (App 13)…In addition, it is well established under Florida Law that first or senior mortgagees are not "necessary" or "proper" parties to foreclosure proceedings brought by second or junior encumbrances and even if a first mortgagee is made a party to the suit and a judgment is entered against them after hearing, the judgment will not bind the first mortgagee's interests. *Cone Bro. Constr. Co. v. Moore,* 193 So. 288 (Fla. 1940); *Garcia v. Stewart,* 906

So.2d 1117, 1119 (Fla. 4th DCA 2005). Thus, Quadomain's Final Judgment against U.S. Bank is not binding on U.S. Bank as the holder of a first mortgage on the property and the resulting Foreclosure Sale in this case simply creates a cloud on U.S. Bank's Certificate of Title recorded on September 26, 2011 in Official Records Book 48202, Page 1560. (App. 13, 14 at Exhibit "E"). Florida case law upholds the rationale that a party 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 mush so as though he had been a party to the judgment or decree himself" *Iannazzo v. Stanson,* 927 So.2d 1005 (Fla. 4th DCA 2005), *citing Greenwald v. Graham,* 130 So. 608 (1930). This is so because and Final Judgment obtained against the property is subject to the previously recorded Lis Pendens. (Ap. 13). Accordingly, the trial court below abused its discretion in denying U.S. Bank's motion to vacate Quadomain's Certificate of Title, Sale and Foreclosure Judgment as void."

(Appx. 114-134).

- "U.S Bank could not acquire title to the real property through the original foreclosure judgment entered on June 30, 2009 a result of the omission of an indispensable party to the foreclosure action. As a result of the omission of an indispensable party, the subsequent Foreclosure Sale held on May 13, 2010 was not a valid sale. (App. 2,3). This Court has recently upheld that the only indispensable party defendant to a foreclosure action is the holder of fee simple title. *English v. Bankers Trust Co. of Calif., N.A.,* 895 So.3d 1120, 1121 (Fla. DCA 2005)(finding a foreclosure action could not result in a valid sale when the owner of fee simple title was not made a party to the action)."

(Appx. 114-134).

As can be seen above, US Bank's claim to the appellate court was that it stepped into the shoes of the first lienholder after the foreclosure sale in the US Bank Foreclosure. (Appx. 94-134). US Bank argued that it was the "equitable assignee of the original mortgage and mortgagee" and, as a result, was a first lien on the subject property. (Appx. 94-134). US Bank further argued that it was

not the title holder of the property because it had failed to foreclose the title holder in its initial action. (Appx. 94-134). Based upon this, US Bank reasoned that if Quadomain wanted to assert that its Claim of Lien was superior to US Bank's first lien position obtained as an equitable assignee, it was required to intervene in the reforeclosure action within 30 days. (Appx. 94-134).

On December 19, 2012, following the submission of briefs, the Court of Appeal of Florida, Fourth District, issued a ruling in *Quadomain*. In its Opinion, the Court in Quadomain reversed the trial court's denial of US Bank's motion to vacate the judgment in the Quadomain Foreclosure. The Court acknowledged that US Bank failed to foreclose the titleholder in its action and, as a result, had to initiate a reforeclosure of the title interest. The Court ultimately concluded that if Quadomain wanted to foreclose its interest against US Bank, the first lienholder, it was required to intervene in the action within 30 days or forever be barred.

In addition to Zelaya's reliance on *Quadomain* being meritless, the court in *Jallali v. Knightsbridge Vill, Homeowners Ass'n*, 211 So.3d 216 (Fla. 4th DCA 2017) confirmed that intervention in the

superior lien is not required when a junior lien interest forecloses on the homeowner.

In *Jallali*, the Fourth District Court of Appeal was tasked with analyzing its decision in *Quadomain* and how it would apply to an interest junior to a first lien foreclosing against a further junior interest (i.e. the titleholder). The Court of Appeal of Florida, Fourth District, affirmed an order denying a motion to vacate a final judgment by Knightsbridge Village Homeowners Association ("Knightsbridge") and specifically stated it was issuing its opinion to distinguish *Jallali* from *Quadomain*.

The facts of *Jallali* are less complex than *Quadomain* and commonplace in the state of Florda. In *Jallali*, the holder of the first mortgage filed a foreclosure action in 2007. (Appx. 168-196). The first lien holder named Jallali, the titleholder to the subject property, and Knightsbridge as defendants in its suit. (Appx. 168-196). While the bank's foreclosure was pending, Knightsbridge recorded a claim of lien for delinquent assessments and filed suit to foreclose Jallali in 2012. (Appx. 168-196). Notably, Knightsbridge's claim of lien

foreclosure did not name the holder of the first lien. Knightsbridge obtained a default judgment against Jallali. (Appx. 168-196).

After the first lien mortgage foreclosure concluded against Jallali, Jallali filed a motion to vacate Knightsbridge's default final judgment. (Appx. 168-196). In requesting the trial court vacate the default final judgment, Jallali relied upon *Quadomain* and Fla. Stat. 48.23. (Appx. 168-196). The trial court denied the request to vacate and Jallali appealed the ruling to the Fourth District Court of Appeal. On January 4, 2017, the Appellate Court issued its opinion in *Jallali*.

In Jallali, the appellate court advanced that it was presented with the following: "The question presented is whether the filing of the notice of lis pendens by the first mortgage holder constitutes a bar to the Association's foreclosure action based upon a claim of lien for unpaid assessments filed after the notice of lis pendens." *Jallali* at 217.

In its Opinion, as it relates to Quadomain, the Court stated as follows: "Quadomain is factually distinguishable from this case. First, in Quadomain, the association was attempting to foreclose its lien against the bank, a first mortgagee, and not the homeowner." *Jallali*

at 219. In stating this, *Jallali* confirmed the position taken by US Bank in the *Quadomain* matter, wherein US Bank was not the titleholder, but the first lien mortgagee.

Along these same lines, when discussing Florida's lis pendens statute, and a party's ability to foreclose a first lien interest, the *Jallali* Court stated the following:

> "The filing of a lis pendens does not automatically preclude an association from foreclosing on a lien imposed under the declaration against parties other than a first mortgagee, although the association's foreclosure may be subordinate to the foreclosure of a first mortgage."
>
> …
>
> "The provisions of the Declaration of Covenants recorded by the Association operate as section 720.3085(1), Florida Statutes, contemplates. The Declaration provides for the assessment of fees by the Association for maintenance of the Association and its properties. It provides that when a lien is imposed for any unpaid fees, it relates back to the recording of the Declaration,

except that the lien is subordinate to the lien of an institutional mortgage recorded prior to the time a notice of lien is recorded."

…

"Because the Declaration was recorded prior to the Lender's lis pendens, a foreclosure action against anyone other than a first mortgagee based upon a claim of lien filed in accordance with the Declaration is not barred by section 48.23(1)(d), Florida Statutes…"

…

"This conclusion is not undermined by the Declaration's exception with regard to first mortgages to the relation-back provision for claims of liens for assessments. This exception is relevant in determining priority of liens, not the application of section 48.23, Florida Statutes, in actions by an association to foreclose a lien against the property owner when a foreclosure proceeding is pending. From the outset, the Association has acknowledged its lien is inferior to the mortgage; its lien foreclosure action does not purport to affect the Lender's superior interest."

Jallali at 220.

Finally, the Court in *Jallali* discussed the purpose of the lis pendens statute, which is to protect a creditor, not the homeowner. The Court stated as follows:

> "Moreover, we note that, in the context of this case, a lis pendens recorded by a mortgage holder serves to protect the mortgage holder from liens unrecorded at the time of the filing. Although section 48.23(1)(d), Florida Statutes, creates a "bar to . . . enforcement" and provides for extinguishment of any unrecorded interests or liens if the case proceeds to judicial sale, the statute is not designed to protect the delinquent homeowner. Here, not only does the Association have a prior recorded interest through its Declaration of Covenants, its action was only against the delinquent homeowner. Unlike Quadomain, the Association's suit did not involve the Lender. See Quadomain, 103 So. 3d at 978."

Jallali at 221.

Here, similar to *Jallali*, Bam was only seeking to foreclosure the RE 710 and not the superior mortgage. As such, based upon *Jallali*,

Bam was not required to intervene in the superior mortgage foreclosure.

III. Section 48.23, Florida Statutes, Is Unrelated to Jurisdiction of County Courts in Florida

Zelaya argues that the Judgment was void for lack of jurisdiction. In claiming this, Zelaya relies upon the plain language of Fla. Stat. 48.23. However, contrary to Zelaya's analysis, jurisdiction is not conferred via Section 48, Florida Statutes.

The legislative branch of Florida has conferred jurisdiction to the county courts of Florida via Fla. Stat. 34.01. Pursuant to Fla. Stat. 34.01, county courts of the state of Florida shall have original jurisdiction "of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees: 3. If filed on or after January 1, 2023, the sum of $50,000."

Here, Bam's claim against RE 710 was in the amount of $11,979.00, well within the jurisdictional confines of Fla. Stat. 34.01. As such, the county court of Hillsborough County had jurisdiction to preside over the matter. Nothing within Fla. Stat. 48.23 does anything to limit the county court's jurisdiction conferred in Fla. Stat.

34.01. In fact, the word 'jurisdiction' is not even included within the text of Fla. Stat. 48.23. As such, Zelaya's reliance upon the language of Fla. Stat. 48.23 to limit the county court's jurisdiction is without merit. Instead, the county court of Hillsborough County obtains its jurisdiction pursuant to Fla. Stat. 34.01, which includes presiding over matters such as the claim filed by Bam.

CONCLUSION

As discussed above, Appellant has no standing to contest the trial court's jurisdiction. Appellant was not a party to the underlying and has not intervened. As such, the Trial Court's order should be confirmed. Nevertheless, even if Appellant had standing to challenge the jurisdiction of the trial court, *Jallali* is controlling and *Quadomain* does not apply in this instance. In this matter, Bam's interest was junior to the first lien. Bam only sought to enforce its interest against RE 710, the property owner who was also junior to the first lien. Bam specifically disclosed to the court and any third-party purchaser that its interest was junior to the first lien and would not affect the first lien.

For the forgoing reasons, RE 710 respectfully request this Court affirm the Order.

DATED, April 24, 2024, in Tampa, Hillsborough County, Florida.

IVANOV & WOLF, PLLC
Attorney for Appellee
3310 W. Cypress St, Suite 206
Tampa, FL 33607
Telephone: 813-870-6396
Matt@IWFirm.com

By: /s/ Matthew D. Wolf

MATTHEW D. WOLF, FBN: 92611

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on Appellee's counsel via e-service to Erik@deletoilelaw.com and jweber@mantalaw.com and Bam 32 Inc. And IGNACIO ZELAYAon Wednesday, April 24, 2024.

IVANOV & WOLF, PLLC
Attorney for Appellee
3310 W. Cypress St, Suite 206
Tampa, FL 33607
Telephone: 813-870-6396
Matt@IWFirm.com

By: /s/ Matthew D. Wolf

MATTHEW D. WOLF, FBN: 92611

CERTIFICATE AS TO COMPUTER GENERATED FONT

I HEREBY CERIFY that the font used in this computer-generated document is Bookman Old Style 14 point font, in compliance with Florida Appellate Rule of Procedure 9.210 (a).

By: /s/ Matthew D. Wolf

MATTHEW D. WOLF, FBN: 92611