

IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

S.E. PROPERTY HOLDINGS, LLC

Appellant,

v.

1ST DCA CASE NO.: 1D23-1304
L.T. CASE NO.: 09-4378

JF< INVESTMENTS, INC.; LARRY
B. THACKER; JESSE G. FLETCHER;
THE ST. JOE COMPANY; BEACH
COMMERCE PARK OWNERS
ASSOCIATION, INC.,

Appellees.

On Appeal from the Circuit Court of the
Fourteenth Judicial Circuit, in and for
Bay County, Florida

The Honorable Dedee Costello, Presiding

APPELLANT SE PROPERTY HOLDINGS, LLC'S INITIAL BRIEF

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STATEMENT OF THE CASE

I. Introduction

Appellant SE Property Holdings, LLC (“SEPH”) appeals from a judgment of the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida (the “Circuit Court”), entered on April 28, 2023. (See R.7204-05.)¹ SEPH’s predecessor in interest, Vision Bank, filed suit in 2009 against Appellees JF< Investments, Inc. (“JF<”), Larry B. Thacker (“Thacker”) Jesse G. Fletcher (“Fletcher”),² The St. Joe Company (“SJC”) and Beach Commerce Park Owners Association, Inc. (“BCPOA”), filing, *inter alia*, legal claims to recover damages on notes executed by JF< in favor of Vision Bank and guaranteed by Thacker and Fletcher and an equitable claim to foreclose on property owned by JF< securing the obligations under the notes.³ (R.77-135.)

The Circuit Court entered a partial summary judgment on March 17, 2010 (the “Partial Summary Judgment”), in which the Circuit Court found that JF<, Thacker, and Fletcher were liable for damages under the loan

¹ Citations to the Record on Appeal are made using the “R.#” format, with the page number referring to the page numbers added by the lower tribunal clerk of court when creating the Record on Appeal.

² JF<, Thacker, and Fletcher are collectively referred to herein as the “Defendants.”

³ Vision Bank joined SJC and BCPOA in the suit because those parties may have had an interest in the property sought to be foreclosed. (R.85-86.)

documents. (R.271-73.) Vision Bank and SEPH (Vision Bank's successor by merger) attempted to execute upon the Partial Summary Judgment, as permitted by Florida law. In 2015, SEPH obtained a Final Judgment of Foreclosure (the "Foreclosure Judgment") on its foreclosure count. (R.2003-08.) On September 13, 2017, the Circuit Court entered the "Order on Plaintiff's Motion For Judgment Establishing Deficiency" (the "Deficiency Judgment") against JF<, Thacker, and Fletcher, for the amounts owed under the Partial Summary Judgment after applying the credit following the foreclosure of the property and other collections. (R.4750-52.) This appeal involves, *inter alia*, the effect of provisions of the Partial Summary Judgment, the Foreclosure Judgment, and the Deficiency Judgment (collectively, the "Judgments").

SEPH's collection efforts continued after the entry of the Deficiency Judgment, resulting in the satisfaction of the amounts remaining due in principal and interest under the Judgments on or about May 9, 2022. (R.6153-56.) SEPH contends that Defendants still owe attorneys' fees and costs under the terms of the Judgments, the underlying loan documents, and Florida law. (R.6164, 6497-6501.) SEPH requested entry of a judgment for its reasonable attorneys' fees and costs in the amount of \$1,011,379.00. (R. R.6500.)

On November 4, 2022, the Circuit Court held an evidentiary hearing on SEPH's claims for attorneys' fees and costs, wherein SEPH presented evidence of the fees it incurred in obtaining the Judgments and executing upon them. (See Transcript of November 4, 2022 Hearing.) At the conclusion of the hearing, the Circuit Court stated that it had not heard any evidence that the hours expended or the rates charged by SEPH's counsel were unreasonable and concluded that most of the extensive litigation involved in this case and related collection proceedings occurred because of the Defendants. (11/4/2022 Tr., pp. 163-64.)

On December 28, 2022, the Circuit Court entered the "Order after Evidentiary Hearing on the Issue of Attorney's Fees and Costs Raised by the Plaintiff" (the "Attorneys' Fees Order"). (R.7092-7111.) Despite the statements made at the conclusion of the hearing, the Circuit Court held that SEPH was only entitled to recover certain attorneys' fees and costs incurred after entry of the Deficiency Judgment. The Circuit Court also ordered the parties to attempt to resolve SEPH's claims for the attorneys' fees and costs that the Court held it was legally entitled to recover. (R.7107-08.) SEPH moved the Circuit Court to reconsider the Attorneys' Fees Order, but the Circuit Court denied its motion on February 28, 2023. (R.7129-34.)

Following the denial of SEPH's motion to reconsider, the parties agreed to entry of a judgment in favor of SEPH in the amount of \$325,000.00 with respect to the specific categories of attorneys' fees and costs identified in the Attorneys' Fees Order, without waiving rights to appeal. (R.7204-05.) The Circuit Court entered a final judgment in the amount of \$325,000.00 consistent with the parties' agreement (the "Attorneys' Fees Judgment"). (R.7204-05.) The Attorneys' Fees Judgment is the subject of this appeal, and SEPH respectfully asserts that the Circuit Court made several legal errors and made factual findings that were entirely unsupported by any competent evidence in the record.

II. Factual Background and Proceedings Below

A. Complaint and Partial Summary Judgment

1. Vision Bank filed a Verified Complaint against JF<, Thacker, Fletcher, SJC, and BCPOA on August 27, 2009. (R.77-135.) Vision Bank alleged that it loaned JF< \$1,842,500.00 in 2006 and that JF< executed promissory notes in favor of Vision Bank with respect to this indebtedness. (R.79-80, 92-93, 107-10, 115-18.) JF< also executed a mortgage in favor of Vision Bank, which identified and described certain real property as security for the notes. (R.79, 94-102.) Thacker and Fletcher each executed guaranties with respect to each note. (R.103-06, 111-14, 119-22.) Thacker

and Fletcher unconditionally, jointly and severally, guaranteed the payment of the promissory notes and agreed that all terms and conditions of the notes would apply to them. (See, e.g., R.119-22.) Under the guaranties, their obligations were unlimited and included all of Plaintiff's "expenses and costs, including, but not limited to, attorneys' fees and other costs incurred by Lender to collect the indebtedness." (R.119, 121.) Thacker and Fletcher agreed "to pay [SEPH] reasonable fees and costs, including, but not limited to, fees and costs of attorneys and other agents (including without limitations paralegals, clerks and consultants) whether or not the attorney or agent is an employee of the lender, which are incurred by [SEPH] in collecting any amount due or enforcing any right or remedy under the Agreement, including, but not limited to, all fees and costs incurred on appeal, in bankruptcy, and for post-judgment collection actions, whether or not suit is brought." (R.120, 122.)

2. JF< defaulted on the note(s) in 2009, and Vision Bank advised JF<, Thacker, and Fletcher that they were each liable for the full amount of the debt, including attorneys' fees and costs. (R.83, 123.) Vision Bank filed the underlying lawsuit and raised four counts. (See R.77-135.) In Count I, Vision Bank requested entry of a judgment against JF< for damages on the notes, including interest, attorneys' fees, and costs. (R.84.) Vision Bank

brought Count II for foreclosure of the mortgage against JF<, SJC, and BCPOA. (R.84-87.) In Count II, Vision Bank asserted that under the mortgage it was entitled to all principal and interest due under the notes as well as attorneys' fees and collection costs. (R.87.) Vision Bank brought Count III against Thacker and Fletcher for breach of the guaranties, requesting a judgment for damages, including interest, attorneys' fees, and costs. (R.88-89.) In Count IV, Vision Bank sought an accounting. (R.89-90.)

3. On January 13, 2010, Vision Bank moved for partial summary judgment, asserting that it was entitled to judgment as a matter of law on Count I (for breach of the notes) and Count III (for breach of the guaranties). (R.161-215.) Vision Bank asserted that as of January 6, 2010, the total indebtedness owed by JF< and guaranteed by Thacker and Fletcher was \$1,900,372.04 in interest and principal accrued through that date as well as costs and attorneys' fees. (R.166.) On March 17, 2020, Vision Bank supplemented the motion to revise the amount owed. (R.267-70.)

4. On March 17, 2010, the Circuit Court entered the Partial Summary Judgment. (R.271-73.) In the Partial Summary Judgment, the Circuit Court held that JF< had defaulted on the notes and that Thacker and Fletcher were jointly and severally liable for the full amount of JF<'s

default and indebtedness to Vision Bank. (R.271.) The Circuit Court held that under Count I, Vision Bank “**shall recover** from Defendant JF< Investments, Inc. . . . the sum of \$1,675,007.08 on principal, with \$283,989.96 in prejudgment interest, \$691.77 in late fees, **plus attorneys’ fees and costs to be determined at a later date**, making a total of \$1,959,688.81, plus additional attorneys’ fees and costs, that shall bear interest at the rate of 6% a year, for which let execution issue.” (R.272 (emphasis added).) The Circuit Court further adjudged that under Count III, Vision Bank “**shall recover** from [Thacker and Fletcher], jointly and severally, the sum of \$1,675,007.08 on principal, with \$283,989.96 in prejudgment interest, \$691.77 in late fees, **plus attorneys’ fees and costs to be determined at a later date**, making a total of \$1,959,688.81, plus additional attorneys’ fees and costs, . . . for which let execution issue.” (R.272 (emphasis added).)

B. SEPH’s Initial Collection Efforts

5. After entry of the Partial Summary Judgment, Vision Bank attempted to collect the judgment debt from Defendants. For instance, Vision Bank moved for issuance of several writs of garnishment between May and November, 2010 and obtained judgments of garnishment. (See

R.283-326, 341-45.) Additionally, Vision Bank conducted post-judgment discovery in aid of execution. (See R.346-52.)

6. Vision Bank eventually learned that Thacker had transferred substantially all of his assets into the Thacker Family Revocable Living Trust (the “Thacker Trust”), for which he and his spouse were co-trustees. On September 7, 2010, Vision Bank sought leave to file a supplemental complaint against Thacker related to these fraudulent transfers. (R.408-74.) Ultimately, that motion was denied by the Circuit Court (R.522), but only after Vision Bank had initiated a separate action against Thacker and his spouse in their capacities as trustees of the Thacker Trust, bearing Case No. 10-2763-CA in the Circuit Court. (R.498-512.) On March 31, 2011, the Circuit Court entered an order consolidating that action with the underlying lawsuit on the indebtedness. (R.555-56.)

7. On September 6, 2011, Vision Bank filed a motion for proceedings supplementary pursuant to § 56.29, Fla. Stat. and requested that the Court require that Thacker appear and be examined concerning his property, funds, assets, and potential fraudulent transfers that could be used to satisfy the Partial Summary Judgment. (R.603-08.) Vision Bank also requested that the Circuit Court award Vision Bank its reasonable attorneys’

fees, for which it asserted Thacker was liable under §§ 56.29 and 57.115, Fla. Stat. (R.604.)

8. On November 14, 2011, the Circuit Court entered an order setting proceedings supplementary to execution and ordering Thacker to be examined regarding his property and income, holding that the Partial Summary Judgment was a “valid and enforceable” judgment against Defendants. (R.627-28.)

9. After it merged with Vision Bank in early 2012, SEPH was subsequently substituted as Plaintiff in the Circuit Court litigation. (R.643-57.)

10. In January and March 2012, the Circuit Court held an evidentiary hearing on SEPH’s motion for proceedings supplementary. (See R.633-42, 658-997.) On March 15, 2012, the Circuit Court entered an Order to Show Cause, holding that SEPH had made a prima facie showing that the transfers into the Thacker Trust were fraudulent and directing Thacker and his spouse to show cause why the transfers should not be voided and the assets applied to satisfy the Partial Summary Judgment. (R.998-1008.)

11. On June 13, 2012, the Circuit Court entered a Judgment on Order to Show Cause (the “Fraudulent Transfer Judgment”). (R.1162-75.) The Circuit Court held that Thacker and his spouse failed to present evidence

that the transfers into the Thacker Trust were not fraudulent and that the evidence “conclusively demonstrates an intent to hinder, delay, and defraud Mr. Thacker’s creditors, including . . . [SEPH].” (R.1163-64.) The Circuit Court voided the transfers and retained jurisdiction to “enter further orders as necessary, including an order awarding [SEPH] its attorneys’ fees and costs incurred in pursuing these proceedings supplementary against Larry B. Thacker in accordance with Fla. Stat. § 56.29.” (R.1164-65.) Following the entry of the Fraudulent Transfer Judgment, the Circuit Court entered charging orders on Thacker’s interest in several entities. (See R.1251-71.)

12. On July 12, 2012, SEPH filed a motion for post-judgment attorneys’ fees against Thacker in the amount of \$95,250.65 “for the proceedings supplementary and other costs associated with collection and execution of the [Partial Summary Judgment] against Thacker.” (R.1217-45.) SEPH asserted both that § 56.29(11) permitted the taxing of attorneys’ fees and costs against Thacker and that SEPH’s activities after entry of the Partial Summary Judgment “were undertaken in connection with execution on the [Partial Summary] Judgment” and were thus recoverable under § 57.115. (R.1220.) SEPH further asserted it was entitled under the provisions of the loan documents to recover all its reasonable costs and attorneys’ fees incurred in enforcing and collecting the Judgment. (R.1220.)

13. On July 12, 2012, Thacker appealed the Fraudulent Transfer Judgment to the First District Court of Appeal, initiating Case No.: 1D12-3403 (the “Fraudulent Transfer Appeal”). (R.1201-16.)

14. On July 30, 2012, Thacker filed a suggestion of bankruptcy, stating that he had filed a petition for relief under Title 11 of the United States Code (the “Bankruptcy Code”), initiating Case No. 12-50370-KKS in the United States Bankruptcy Court for the Northern District of Florida (the “Bankruptcy Court”). (R.1294-95.) On October 4, 2012, the First District Court of Appeal entered an order clarifying that the Fraudulent Transfer Appeal was stayed by operation of 11 U.S.C. § 362. (R.1606.)

15. On January 28, 2013, JF< filed a suggestion of bankruptcy, stating that it had filed a petition for relief under the Bankruptcy Code, initiating Case No. 13-50026-KKS in the Bankruptcy Court. (R.1619-20.) On June 30, 2014, the JF< bankruptcy case was dismissed. (R.1714.)

16. On July 12, 2013, this Court lifted the stay in the Fraudulent Transfer Appeal and ultimately affirmed the Fraudulent Transfer Judgment. (R.1626, 1631.) SEPH filed a motion for attorneys’ fees in the appeal, which the Court granted on February 26, 2014, remanding the case to the Circuit Court to assess the amount. (R.1628.) No hearing regarding SEPH’s claim for its appellate attorneys’ fees and costs was ever set. (See R.46-75, 7094.)

17. On August 19, 2014, SEPH filed a motion requesting that the Circuit Court direct JF< to pay all rents on the mortgaged property into the Circuit Court's registry as required by the mortgage. (R.1709-16.) The Circuit Court granted SEPH's motion. (R.1721-22.)

18. On November 11, 2014, in part due to Defendants' failure to deposit all rents into court and to account for missing rents, SEPH filed a motion to appoint a receiver. (R.1729-49.) On December 12, 2014 the Circuit Court appointed a receiver with respect to the mortgaged property. (R.1756-62.)

C. Proceedings Regarding Foreclosure Count

19. On March 10, 2015, SEPH filed a Motion for Summary Judgment of Foreclosure on Count II of the Complaint with supporting materials, including affidavits from its attorneys and an expert regarding the reasonableness of the fees requested. (R.1856-1926.) SEPH noted that the action against JF< in the case had been stayed between January 29, 2013 and July 3, 2014 due to JF<'s bankruptcy case. (R.1859-60.) SEPH additionally asserted that it was entitled to its attorneys' fees under the terms of the note, the mortgage, and the other loan documents. (R.1860.) SEPH requested that the Circuit Court enter a Final Judgment of Foreclosure as to

Count II of the Complaint and determine the amounts owed, including attorneys' fees, costs, and expenses. (R.1863.)

20. SEPH sought an award of \$44,965.50 in attorneys' fees and costs. (R.1867-70, 1890-1926.) In an affidavit submitted in support of the motion for summary judgment on the foreclosure count, counsel for SEPH stated that this amount included the actual and anticipated attorneys' fees and costs "in relation to the foreclosure action in this case as of February 24, 2015." (R.1891.) A review of the invoices demonstrates that the fees sought in connection with the foreclosure count primarily consisted of fees incurred that were necessary to obtain a judgment on the foreclosure count. (See R.1894-1924.) Some of these fees included those incurred in the JF< bankruptcy as that proceeding stayed the Circuit Court action as to JF< and such stay had to be lifted prior to foreclosing on the property. (See R.1894-1924.)

21. On May 12, 2015, the Circuit Court entered the Foreclosure Judgment. (R.2003-08.) The Court determined that as of the date of entry of the Foreclosure Judgment, the total sum due "as secured by the Mortgage" was \$2,491,060.40, including \$44,965.50 in attorneys' fees and costs (including those incurred in the JF< bankruptcy proceedings). (R.2004-05.) The Circuit Court also held that SEPH's interest in the

mortgaged property was superior to all other claims (including claims of SJC and/or BCPOA). (R.2005.) The Circuit Court further authorized the sale of the mortgaged property. (R.2005.) The Circuit Court retained jurisdiction to enter further orders, “including, without limitation, deficiency judgments, but notwithstanding the foregoing nothing contained in this judgment or the findings herein shall prejudice the ability of any party to present evidence regarding the amount of any deficiency, including post-judgment interest, fees, costs, and expenses, **which may be owed or due on the Judgment dated 3/17/2020** [i.e., the Partial Summary Judgment].” (R.2006-07 (emphasis added).)

22. A public foreclosure sale was held on June 25, 2015, with SEPH submitting the highest and best bid. (R.2028-29.) On August 24, 2015, the receiver was discharged, and the Circuit Court instructed the clerk to pay SEPH the funds held in the registry. (R.2067-70.) On August 28, 2015, SEPH sold the property to a third party. (R.2628-31.)

D. Post-Foreclosure Collection Efforts and Deficiency Judgment

23. After entry of the Foreclosure Judgment, SEPH initiated additional garnishment proceedings to collect the amounts owed under the Partial Summary Judgment. (See, e.g., R.2071-2172, 2183-2226, 2233-50, 2254-90, 2301-04.)

24. At the same time, SEPH also participated in Thacker's bankruptcy case, including by filing an adversary proceeding seeking to deny Thacker a discharge. (See R.6778-6882, 6896-6920). On May 22, 2015, SEPH obtained a judgment denying Thacker's discharge, permitting SEPH to continue to collect on the Partial Summary Judgment. (See R.2603-14, 6896-6920.) Thacker unsuccessfully appealed this judgment to the United States District Court for the Northern District of Florida and to the Eleventh Circuit Court of Appeals. (R.6917-20.) In addition to obtaining a denial of Thacker's discharge, Thacker objected to SEPH's claim. (R.6842.) Ultimately, Thacker's objection was overruled, SEPH's claim was allowed, Thacker's assets were liquidated, and SEPH received \$639,910.66 in distributions from Thacker's bankruptcy estate. (See R.6662-67, 6859-63.)

25. In February 2017, Thacker objected to further post-judgment discovery, asserting that the the Partial Summary Judgment (which Thacker referred to as the "Final Judgment") had been satisfied. (R.2352-53.) Thacker requested that the Court deny any further discovery until the Court determined the balance owed on the Partial Summary Judgment. (R.2352.)

26. On March 9, 2017, SEPH filed the Motion for Judgment Establishing Deficiency. (R.2578-2633.) SEPH requested that the Court enter a judgment against JF<, Thacker, and Fletcher, jointly and severally,

modifying the Partial Summary Judgment to account for the fair market value of the mortgaged property on the date of the foreclosure sale. SEPH submitted a calculation of the principal and interest owed on the Partial Summary Judgment as well as property preservation expenses incurred through the date of the sale of the property to the third party. (R.2581-82,2632-33.) SEPH further asserted that it was entitled to recover from the Defendants its reasonable costs, expenses, and attorneys' fees and requested that the Circuit Court retain jurisdiction to assess such fees and costs "as part of the amount due under the terms of the [Partial Summary Judgment]." (R.2582.)

27. The parties conducted discovery and engaged in motion practice in connection with SEPH's request for entry of a deficiency judgment. (See, e.g., R.3419-21, 3521-27, 3586-3641, 3535-50, 4011-54, 4140-4293.) The Circuit Court held a hearing on SEPH's motion for deficiency judgment on August 4 and August 9, 2017. (R.4294-96, 4750.) Following the hearing, the parties submitted additional briefing on several issues, including valuation issues, insurance expenses and applicable interest rates. (R.4297-4358,4654-4749.)

28. On September 13, 2017, the Circuit Court entered the Deficiency Judgment. (R.4750-52.) The Circuit Court held that the principal and interest

owed on the Partial Summary Judgment as of the date of the foreclosure sale (and after applying post-judgment recoveries) was \$2,322,008.46 while the fair market value of the mortgaged property at the time of the foreclosure sale was \$1,344,166.56. (R.4751.) The Circuit Court concluded that after applying the fair market value credit, additional recoveries, interest accrued since the foreclosure sale, and the addition of property taxes and insurance, “the **remaining amount owed under the Partial Summary Judgment** as principal, interest, property taxes paid and insurance paid (**not including attorneys’ fees, expenses, and costs**) is \$841,437.15, for which sum let execution issue” (R.4751 (emphasis added.)) The Circuit Court further “retain[ed] jurisdiction over this matter and the parties to award attorneys’ fees, costs, and expenses, if appropriate” (R.4752.)

E. Proceedings Following Entry of Deficiency Judgment

29. After entry of the Deficiency Judgment, SEPH continued its collection efforts, particularly through additional garnishment proceedings, including obtaining a writ with respect to Big Dog Investments, LLC (“Big Dog”), an entity owned primarily by Fletcher. (See R.4754-75.) In addition to these efforts, SEPH filed a separate action against Fletcher, his spouse, and Big Dog (the “Big Dog Lawsuit”) related to alleged fraudulent transfers. (See R.6775-77.)

30. SEPH also conducted additional post-judgment discovery, including serving requests on Defendants and issuing a subpoena to Big Dog. (R.4806-07, 4841-51.) Defendants challenged these efforts. (See, e.g., R.4822-04.) Fletcher also filed a motion to stay collection efforts, asserting SEPH had committed fraud on the Circuit Court. (R.5004-14.)

31. After substantial motion practice and briefing related to SEPH's collection efforts and Defendants' attempts to prevent those efforts, the Circuit Court set pending matters for a hearing on January 23, 2018. (R.5390.) In the order setting the hearing, the Circuit Court ordered that "all discovery proceedings are stayed until further order of the court." (R.5390.)

32. On February 6, 2018, the Circuit Court entered an Order which, among other things, granted SEPH's motion for final judgment of garnishment as to Big Dog, overruled Fletcher's objection to the subpoena to Big Dog with some limitations, denied Fletcher's motion to stay collection, and denied Fletcher's motion to compel production of documents. (R.5592-93.) The Circuit Court did not expressly lift the stay of discovery from the order setting the motions for hearing. (See R.5592-93.)

33. SEPH continued its collection efforts. (See R.5958-64, 5983-90, 6775-77.) On October 6, 2019, the underlying case was assigned to the Honorable Dedee Costello. (R.5995-96.)

34. On February 18, 2021, SEPH served additional post-judgment discovery on Thacker. (R.6027-28.) SEPH also requested production of documents from non-parties through subpoenas. (R.6029-71.) Thacker filed an objection to discovery and asserted the judgment had been satisfied. (R.6072.) Thacker did not object on the grounds that any stay of discovery remained in effect. (See R.6072.)

35. Throughout 2021 and early 2022, Defendants communicated with SEPH regarding the amount owed under the Judgments and loan documents. (See R.6158-67.) On July 23, 2021, SEPH provided Defendants with an accounting showing that, after application of payments and credits through June 15, 2021, the amount owed on the principal balance of the Judgments and interest totaled \$463,372.21. (R.6158-63.) Additionally, in response to interrogatories issued to SEPH, SEPH asserted that it was owed its attorneys' fees and costs pursuant to the loan documents and Judgments. (R.6207.)

36. On December 6, 2021, SEPH filed a motion to compel Thacker to respond to post-judgment discovery requests. (R.6073-94.) On June 21, 2022, SEPH also filed a motion to order issuance of non-party subpoenas to which Thacker had objected. (R.6095-6139.)

37. On May 9, 2022, Fletcher tendered to SEPH a certified check in the amount of \$478,596.37, the amount owed in principal and interest under the Judgments as of that date, to satisfy the judgments. (R.6153-56.) On May 20, 2022, SEPH rejected the tender because the amount of the check did not include any of SEPH's attorneys' fees and costs. (R.6164.)

38. On June 22, 2022, Thacker filed a renewed objection to discovery, asserting that the tender by Fletcher satisfied the judgments and no debt was owed. (R.6140.) On June 29, 2022, SEPH informed Thacker that the amount of attorneys' fees owed as of May 2022 was \$1,015,026.23. (R.6306.) This information was provided to Fletcher as well. (R.6324-26.)

39. On July 1, 2022 and August 23, 2022, Fletcher filed motions requesting in part that the Circuit Court hold that SEPH was not entitled to recover any attorneys' fees and costs, asserting, *inter alia*, that SEPH's rejection of the tender was made in bad faith. (R.6147-67, 6297-6312.) SEPH filed responses in opposition to these motions. (R.6315-43.)

40. The Circuit Court held a hearing on Fletcher's motions on September 1, 2022. (See September 1, 2022 Hearing Transcript.) At the hearing, the Circuit Court ordered SEPH to produce documents it intended to present to support its claim for attorneys' fees and costs. (9/1/2022 Tr., p.

40.) SEPH complied with the Circuit Court's order and produced these documents to Defendants. (R.6376-77.)

41. On October 17, 2022, the Circuit Court entered an Order on Fletcher's motions. (R.6397-99.) The Circuit Court held that Fletcher's tender satisfied the principal and interest portions of the Judgments but held that the "remaining sums due under the judgment are attorneys' fees and costs, the exact amount of which will be determined by the Court at the hearing on November 4, 2022." (R.6397-98.)

42. On October 31, 2022, SEPH filed its Submission in Support of Proposed Fee and Costs Award, seeking an award of attorneys' fees and costs incurred through June 30, 2022. (R.6497-6501.) SEPH asserted that the loan documents, including the guaranties, provided that SEPH was entitled to recover its attorneys' fees and costs, including costs of collection and bankruptcy-related fees. (R.6497-99.) SEPH also argued that the Circuit Court had already held it was entitled to recover its attorneys' fees and costs in the Partial Summary Judgment. (R.6498.) SEPH further asserted that since entry of the Partial Summary Judgment, it had incurred attorneys' fees and costs in attempting to execute upon and collect the Partial Summary Judgment, including discovery, supplementary proceedings, and litigation in bankruptcy court and various state and federal

appellate courts. (R.6499.) SEPH asserted that the attorneys' fees and costs associated with these efforts since the entry of the Partial Summary Judgment are recoverable under § 57.115, Fla. Stat. (R.6499.) SEPH's fee expert, Mr. John Adams, opined that the reasonable amount of SEPH's attorneys' fees and expenses (excluding the attorneys' fees and costs awarded in the Foreclosure Judgment) totaled \$1,011,379.00. (R.6500.)

43. On November 2, 2022, Fletcher submitted a hearing brief on SEPH's claim for attorneys' fees and costs. (R.6515-6602.) Fletcher asserted, *inter alia*, that SEPH could not recover attorneys' fees incurred before entry of the Deficiency Judgment under the doctrine of merger. (R.6515-16.) Specifically, Fletcher argued that the obligations under both the underlying loan documents and the Partial Summary Judgment were extinguished upon entry of the Deficiency Judgment. (R.6522-23.)

44. SEPH filed a response to Fletcher's hearing brief on November 3, 2022. (R.6608-67.) Among other arguments in response to Fletcher's brief, SEPH asserted that Fletcher's reliance on the merger doctrine was misplaced because the Circuit Court had held that SEPH was entitled to recover attorneys' fees and costs in the Partial Summary Judgment, and this finding of entitlement was incorporated into the Deficiency Judgment. (R.6611.) SEPH further contended that SEPH's rights under the notes and

guaranties, including the right to recover fees incurred in post-judgment collection actions, did not merge into the Deficiency Judgment. (R.6611-14.) SEPH also argued that it had acted in good faith and that its collection efforts, which resulted in the recovery of \$2,823,847.02 in principal and interest owed, were necessary due to Defendants' myriad efforts to avoid paying the debt. (R.6620-21.)

45. The Circuit Court held an evidentiary hearing on SEPH's claim for attorneys' fees and costs on November 4, 2022. During the hearing, SEPH submitted evidence of the attorneys' fees it incurred in relation to its efforts to obtain the Judgments and collect the debt. (See Transcript of November 4, 2022 Hearing; R.7348-8333.) SEPH and Fletcher also submitted testimony from their fee experts, Mr. Adams and Mr. Stephen Cozart, respectively. Notably, Mr. Cozart admitted that he could not identify any individual tasks that were unreasonable. (11/4/2022 Tr., pp. 116-18.)

46. At the conclusion of the hearing, the Circuit Court found that there was no evidence supporting Fletcher's allegations of bad faith, even stating that the Circuit Court found it "offensive that [Fletcher] went so far as to impugn improper motives to [SEPH]." (11/4/2022 Tr., pp. 162-63.) The Circuit Court additionally concluded that while there had been "a lot money spent on this matter," it took thirteen (13) years for SEPH to collect the

indebtedness and that “most of the litigation that occurred was because of the debtors, not because of the Plaintiff.” (*Id.* at 163.) The Circuit Court specifically noted that the bankruptcy-related fees of approximately \$375,000.00 would not have been incurred but for Defendants’ actions. (*Id.* at 163-64.) Furthermore, the Court stated that the Defendants did not present evidence that the number of hours expended or the applicable hourly rates were unreasonable. (*Id.* at 163.) The Circuit Court requested that the parties submit additional briefing within seven days on the limited issue of whether the fees should be reduced for the time period after Fletcher’s tender in May 2022. (*Id.* at 164-65.)

47. On November 11, 2022, Fletcher and SEPH submitted post-hearing briefs.⁴ Based on the Circuit Court’s instructions at the hearing, SEPH limited its brief to the issue of whether its post-tender attorneys’ fees should be reduced, arguing that there was no legal or equitable basis for the Circuit Court to do so. (R.6963-7010.)

48. Fletcher, on the other hand, raised new legal arguments in his post-hearing brief and did not limit his submission to the issue of post-tender

⁴ Thacker submitted additional evidentiary material despite the evidence having been closed at the conclusion of the hearing. (R.7056-86.) However, it does not appear Thacker’s post-hearing evidence had any bearing on the Circuit Court’s determinations in this case.

fees. (See R.7011-54.) Fletcher for the first time asserted that SEPH's could not recover its attorneys' fees and costs because SEPH did not file a motion for attorneys' fees under Rule 1.525 of the Florida Rules of Civil Procedure. (R.7013.) Notably, Fletcher admitted that SEPH was legally entitled to execute upon the Partial Summary Judgment by pursuing recovery from Defendants without first obtaining a judgment on the foreclosure claim. (R.7015.) Fletcher also repeated his arguments related to the merger doctrine. (R.7020-24.) Fletcher also submitted affidavits from himself and Mr. Cozart despite the evidence being closed. (R.7047-53.)

49. On November 15, 2022, SEPH filed a motion to strike Fletcher's post-hearing brief and evidence because it went beyond the scope of the Circuit Court's request for additional briefing and because the evidence had closed. (R.7087-89.) SEPH alternatively requested that the Circuit Court give SEPH an opportunity to address Fletcher's newly-raised argument regarding Rule 1.525. (R.7088.)

F. Circuit Court's Orders and Judgment Regarding SEPH's Claim for Attorneys' Fees.

50. On December 28, 2022, without ruling on SEPH's motion to strike, the Circuit entered the Attorneys' Fees Order (R.7092-7111.) In the Attorneys' Fees Order, the Circuit Court barely addressed the evidence presented, and most of the Attorneys' Fees Order contains legal conclusions

or factual findings based on a review of the docket in the case. (See R.7092-7108.) The Circuit Court held that SEPH was required under Rule 1.525 to file a motion for attorneys' fees and costs within thirty (30) days of entry of the Deficiency Judgment, and its failure to do so prevented it from recovering fees incurred before entry of that judgment as a matter of law. (R.7103.) In reaching this conclusion, the Circuit Court rejected SEPH's argument that the Circuit Court's finding in the Partial Summary Judgment that SEPH was entitled to attorneys' fees and costs was incorporated into the Deficiency Judgment. (R.7103-06.) The Circuit Court held that the Partial Summary Judgment was a non-final judgment that was modified by the Deficiency Judgment and that the Deficiency Judgment did not include a finding of entitlement to attorneys' fees and costs. (R.7104-05.)

51. Additionally, the Circuit Court stated that Fletcher's merger argument was "compelling" and held that the merger doctrine extinguished any right to fees incurred before entry of the Deficiency Judgment.⁵

⁵ It is not entirely clear which aspect of Fletcher's merger doctrine argument the Circuit Court found "compelling," given that Fletcher argued that SEPH's rights under both the loan documents and under the Partial Summary Judgment were extinguished under the merger doctrine. (See R.6515-16, 6522-23.) The Circuit Court focused primarily on the language of the judgments and held that the Deficiency Judgment modified the Partial Summary Judgment, so it appears the Circuit Court's reliance on Fletcher's merger doctrine argument related to his assertions regarding the language of the Judgments. The Circuit Court did not explicitly hold that SEPH could

(R.7105.) The Circuit Court further held that SEPH's Submission on October 31, 2022 was the first "motion" for fees with the exception of the fees incurred related to the Fraudulent Transfer Judgment and Thacker's appeal thereof.

(R.7105-06.) Thus, the Circuit Court concluded that SEPH was barred from recovering trial court attorney's fees prior to entry of the Deficiency Judgment under Rule 1.525 except attorneys' fees and costs related to the Fraudulent Transfer Judgment and the appeal. (R.7106.)

52. Despite the Circuit Court's statements at the hearing that there was no evidence suggesting that any of the hours expended or applicable rates were unreasonable, in the Attorneys' Fees Order, the Circuit Court stated that it was "skeptical about the reasonableness of some of the pre-judgment fees" claimed by SEPH. (R.7106.) However, this finding was based primarily on the passage of time between the entry of the Partial Summary Judgment and SEPH's motion for summary judgment on the foreclosure claim, and the Circuit Court relied solely on one case from New Jersey to support this finding. (R.7106.)

53. However, the Circuit Court held that SEPH was entitled to recover attorneys' fees and costs in connection with the Fraudulent Transfer

no longer recover any attorneys' fees or costs under the loan documents based on the merger doctrine. (See R.7092-7108.)

Appeal because this Court had held SEPH was entitled to those fees. (R.7106.) Furthermore, because SEPH had filed a motion for attorneys' fees and costs after entry of the Fraudulent Transfer Judgment, the Circuit Court held SEPH could recover fees related to that judgment. (R.7106-07.)

54. The Circuit Court additionally held that SEPH could recover attorneys' fees and costs in connection with execution on the Deficiency Judgment under § 57.115, Fla. Stat., but implicitly rejected SEPH's assertion that § 57.115 entitled it to recover attorneys' fees incurred in connection with execution on the Partial Summary Judgment. (See R.7107-08.) The Circuit Court initially held that SEPH could not recover any attorneys' fees and costs in connection with garnishment proceedings under the garnishment statutes or § 57.115. (R.7107.) The Circuit Court also held that it could not award fees and costs incurred in connection with the bankruptcy proceedings and appeals because those fees can generally only be awarded by bankruptcy courts. (R.7107.) Finally, the Circuit Court held that any attorneys' fees and costs incurred related to post-judgment discovery efforts after entry of the Circuit Court's January 9, 2018 order staying discovery were also unreasonable. (R.7108.)

55. Instead of determining the reasonable amount of attorneys' fees and costs to award SEPH for the categories of attorneys' fees and costs the

Circuit Court held SEPH could recover, the Circuit Court ordered SEPH to submit to Defendants an affidavit stating the amount of attorneys' fees and costs it claimed were related to those categories of fees. (R.7107-08.) The Circuit Court further ordered the parties to attempt to resolve the issues related to these categories of fees independently of the Circuit Court, and, if they were unable to do so, then the Circuit Court would set an additional evidentiary hearing with respect to these fees and costs. (R.7107-08.)

56. On January 27, 2023, SEPH filed a Motion to Reconsider the Attorneys' Fees Order. (R.7112-26.) SEPH asserted that Rule 1.525 did not prevent the recovery of attorneys' fees and costs incurred before entry of the Deficiency Judgment because the Circuit Court had held SEPH was entitled to fees and costs in the Partial Summary Judgment and that holding of entitlement was incorporated into the Deficiency Judgment. (R.7114-17.) SEPH also argued that it was entitled to garnishment-related fees under the attorneys' fees provisions of the loan documents, which are broad enough to permit recovery of garnishment-related fees. (R.7117-19.) Furthermore, SEPH argued that the Circuit Court should not have held that it could not award bankruptcy-related fees. (R.7120-22.) SEPH also requested that the Circuit Court's reconsider its holding that all fees incurred related to discovery after January 9, 2018 were unreasonable because the parties had

not conducted themselves as if a stay remained in effect and had not objected to any such discovery on the ground that the stay was in effect. (R.7122-23.) Finally, SEPH asserted that its decision to pursue recovery under the Partial Summary Judgment before moving to foreclose on the property was reasonable. (R.7123-25.)

57. On January 27, 2023, SEPH also submitted to Defendants the affidavit required by the Attorneys' Fees Order related to its reasonable attorneys' fees and costs regarding the categories the Circuit Court held SEPH was legally entitled to recover. (R.7127-28.)

58. On February 28, 2023, the Circuit Court entered an Order denying SEPH's motion to reconsider. (R.7129-34.) The Circuit Court held that SEPH was correct that it could have recovered its fees related to garnishments under the loan documents⁶ but held that SEPH failed to file motions for attorneys' fees in connection with judgments of garnishments within thirty days of those judgments, and thus said fees were barred under Rule 1.525. (R.7130.) The Circuit Court also explicitly rejected SEPH's argument related to the discovery stay order. (R.7130-31.) The Circuit Court

⁶ Given that the Circuit Court held that SEPH could recover garnishment-related fees under the loan documents, it seems most likely that the Circuit Court's finding that the merger doctrine applied related to the language of the Judgments and not Fletcher's assertion that SEPH's rights under the loan documents had merged into the Deficiency Judgment.

otherwise generally denied SEPH's other arguments in the motion to reconsider without specifically addressing them. (R.7131.)

59. SEPH and Defendants were able to reach an agreement regarding SEPH's attorneys' fees and costs for the categories the Circuit Court held SEPH was legally entitled to recover, though the parties agreed to retain their rights to appeal. (R.7204-05.) The Defendants agreed that SEPH was entitled to recover \$325,000.00 in attorneys' fees and costs for the categories identified by the Circuit Court, and the parties requested entry of a final judgment in that amount subject to potential appeal. (R.7204-05.) On April 28, 2023, the Circuit Court entered the Attorneys' Fees Judgment on SEPH's claim for attorneys' fees and costs through June 30, 2022 in the amount of \$325,000.00 against Thacker and Fletcher. (R.7204-05.)

60. On May 30, 2023, SEPH timely filed a Notice of Appeal regarding the Attorneys' Fees Judgment, specifically appealing conclusions of law and findings of fact set forth in the Attorneys' Fees Order and the order denying SEPH's motion for reconsideration. (R.7211-12.)

SUMMARY OF THE ARGUMENT

Under Florida law, the Circuit Court's Attorneys' Fees Judgment is reviewed for an abuse of discretion, but such an abuse occurs when the trial court's order is based on incorrect legal conclusions or when the trial court's

factual determinations are not supported by competent evidence. In this case, the Circuit Court made several incorrect legal conclusions and/or unsupported factual findings.

First, the Circuit Court erred in holding that Rule 1.525 of the Florida Rules of Civil Procedure barred SEPH's recovery of attorneys' fees and costs incurred prior to entry of the Deficiency Judgment because SEPH did not file a motion for attorneys' fees and costs within thirty (30) days of entry of the Deficiency Judgment. The Supreme Court of Florida has recognized an exception to Rule 1.525's requirement of filing a motion within thirty (30) days where the judgment(s) at issue contain a finding that a party is entitled to recover attorneys' fees and costs. In this case, the Partial Summary Judgment contains such an express entitlement to attorneys' fees, and this express finding of entitlement was incorporated into the Deficiency Judgment by its plain, unambiguous terms. Rule 1.525 is meant to avoid unfair surprise, but in this case, that concern was negated because the Circuit Court had already determined SEPH was entitled to its attorneys' fees and costs. Therefore, the Circuit Court erred in holding that SEPH's claim for attorneys' fees was barred as a matter of law under Rule 1.525 because the well-established exception to Rule 1.525 applies in this case.

Additionally, the Circuit Court made an incorrect legal determination when it rejected SEPH's assertion that § 57.115, Fla. Stat., permits SEPH to recover fees in aid of execution of the Partial Summary Judgment and not just the Deficiency Judgment. Section 57.115 provides that a judgment creditor may recover attorneys' fees and costs incurred in aid of execution on a judgment. The Circuit Court only permitted SEPH to recover attorneys' fees in aid of execution on the Deficiency Judgment. However, the Partial Summary Judgment in this case was an executable judgment under Florida law because SEPH had the right to pursue its legal remedies and equitable remedies simultaneously. SEPH did so by obtaining a judgment on the notes and guaranties and collecting on that judgment before moving to foreclose on the property. Because Florida law permitted SEPH to execute upon the Partial Summary Judgment, it should be able to recover fees and costs incurred in aid of execution on the Partial Summary Judgment and not just fees and costs incurred after entry of the Deficiency Judgment. Additionally, § 57.115 does not provide that a motion for attorneys' fees under that statute must be filed within thirty (30) days of entry of a judgment or order relating to such execution. Rule 1.525 by its terms applies to attorneys' fees and costs incurred in obtaining a judgment on underlying claims, and therefore it was legally improper to apply Rule 1.525 to fees and costs related to execution.

Furthermore, the Circuit Court erred in holding that it did not have authority to award fees incurred in bankruptcy proceedings. The Circuit Court previously awarded bankruptcy-related fees in connection with the foreclosure count. The Circuit Court relied on only one case from the Third District Court of Appeal in reaching this legal conclusion, but that case and others in Florida denying claims for bankruptcy-related fees sought in state court actions do not involve similar facts to this case. Here, SEPH obtained a judgment denying Thacker his discharge, which permitted SEPH to continue collecting the debt against Thacker personally. SEPH also obtained more than \$600,000.00 in distributions from Thacker's bankruptcy estate. Other Florida courts, particularly the Fourth District Court of Appeal, have affirmed state court attorneys' fees award involving bankruptcy proceedings. In general, bankruptcy courts only have limited authority to award attorneys' fees. Here, SEPH included in its claim for damages attorneys' fees pursuant to the loan documents, and those loan documents explicitly reference bankruptcy fees as being recoverable costs of collection. Therefore, SEPH's claim for bankruptcy-related fees was squarely before the Circuit Court, and the holding that the Circuit Court was legally not permitted to award bankruptcy-related fees was incorrect as a matter of law.

Similarly, Fletcher's argument that SEPH's right to attorneys' fees and costs under the loan documents and/or the Partial Summary Judgment merged into the Deficiency Judgment is without merit. As discussed above, the Deficiency Judgment incorporated the entitlement to attorneys' fees and costs from the Partial Summary Judgment. As such, the entitlement to fees was not extinguished by entry of the Deficiency Judgment and the doctrine of merger does not apply. With respect to the loan documents and the merger doctrine, the loan documents expressly provide that SEPH is entitled to recover attorneys' fees, including in collection actions that can only arise post-judgment. Given the broad rights under the loan documents, any suggestion that the Deficiency Judgment extinguished SEPH's right to attorneys' fees and costs under the loan documents is legally incorrect. To the extent the Circuit Court held that the merger doctrine extinguished SEPH's rights under the loan documents, such a finding is legally incorrect and supports reversal of the Attorneys' Fees Judgment.

Finally, the Circuit Court's limited factual findings in the Attorneys' Fees Order were unsupported by any competent evidence. At the November 4, 2022 hearing, the Circuit Court stated that there was no evidence that SEPH's attorneys' fees were unreasonable, and the Circuit Court acknowledged that the extensive litigation was caused by Defendants, not

SEPH. However, in the Attorneys' Fees Order, the Circuit Court stated it viewed SEPH's claim for attorneys' fees and costs with skepticism because SEPH did not move to foreclose on the property until more than five years after entry of the Partial Summary Judgment. However, it was within SEPH's rights to execute upon the Partial Summary Judgment without foreclosing, and JF< bankruptcy' stayed the state court proceedings against JF<. Furthermore, it is undisputed that foreclosing on the property would not have satisfied the debt, and any finding that SEPH was unreasonable in not foreclosing sooner is not supported by any evidence in the record. Likewise, the Circuit Court's holding that any hours expended after the January 9, 2018 order staying discovery pending an order of the Circuit Court on motions then-pending were unreasonable is also factually unsupported. The Circuit Court entered an order in February 2018 disposing of the motions that caused the Circuit Court to enter the stay of discovery in the first place, and the parties conducted themselves as if a stay of discovery was not in effect after February 2018. The Circuit Court's factual findings were unsupported by competent evidence, and the Attorneys' Fees Judgment should be reversed.

Based on the points raised above and discussed more fully below, SEPH asserts that the Circuit Court abused its discretion in entering the

Attorneys' Fees Judgment and requests that the Court reverse that judgment.

ARGUMENT

SEPH appeals the Circuit Court's Attorneys' Fees Judgment, including the conclusions of law and limited findings of fact made by the Circuit Court. A trial court's "order on attorney's fees . . . is generally reviewed for an abuse of discretion; however, such an order is reviewed *de novo* to the extent it is based on an issue of law." *Georges v. Avanti Condominium Assoc.*, 324 So. 3d 991, 992 (Fla. 1st DCA 2021) (quoting *Hall v. Lopez*, 213 So. 3d 1003, 1005 (Fla. 1st DCA 2016)). Furthermore, while factual findings regarding the determination of the amount of attorneys' fees and costs to award are reviewed for an abuse of discretion, such findings "must be supported by competent, substantial evidence." *Webber for Keitel v. D'Agostino*, 251 So. 3d 188, 191 (Fla. 4th DCA 2018). Additionally, "[w]hen the determination of entitlement to attorney's fees depends on the trial court's interpretation of a contractual attorney's fees provision or a statute, this Court reviews the order *de novo*." *Fla. First Fin. Servs., LLC v. Randolph*, 350 So. 3d 820, 823 (Fla. 1st DCA 2022). SEPH asserts that the Circuit Court abused its discretion by making several legal errors and making factual findings unsupported by competent, substantial evidence.

I. **The Circuit Court Erred In Determining that Rule 1.525 Prevented SEPH from Recovering Any Fees Incurred Prior to Entry of the Deficiency Judgment.**

The Circuit Court held in the Attorneys' Fees Order that SEPH could not recover any pre-Deficiency Judgment fees or costs by operation of Rule 1.525 of the Florida Rules of Civil Procedure. (R.7100-06.) Because the Circuit Court's holding with respect to Rule 1.525 involves the interpretation and operation of a statute, the Circuit Court's conclusion relates to an issue of law and is reviewed *de novo*.

Rule 1.525 provides that, "[a]ny party seeking a judgment taxing costs, attorneys' fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal, which judgment or notice concludes the action as to that party." Fla. R. Civ. P. 1.525. However, the Supreme Court of Florida has explained that the purpose of Rule 1.525 is to avoid "prejudice and unfair surprise" to the opposing party. *See Amerus Life Ins. Co. v. Lait*, 2 So. 3d 203, 207 (Fla. 2009). The *Lait* Court held that this concern does not apply where the judgment contains a finding that the prevailing party is entitled to attorneys' fees and costs. *Id.* This is so because "[o]nce the trial court determines that the prevailing party is **entitled** to attorneys' fees and costs, the losing party is aware that it is required to pay the fees and costs. At that

point, the concerns of prejudice and unfair surprise to the losing party are eliminated, thus eliminating the need to apply the thirty-day time requirement under rule 1.525.” *Id.* (emphasis added); see also *Hart v. City of Groveland*, 919 So. 2d 665, 669 (Fla. 5th DCA 2006) (“If a party already has a judgment granting attorney’s fees and costs, it would appear superfluous to require such a party to file a motion seeking to tax them again. The court has, in essence, already ruled to tax them and all that remains is a determination of the reasonable amount.”). Ultimately, “Florida Rule of Civil Procedure 1.525 does not apply when the trial court has determined entitlement to attorneys’ fees and costs in its final judgment, but reserves jurisdiction only to determine the amount in attorneys’ fees and costs that is owed.” *Lait*, 2 So. 3d at 207-08.

Furthermore, it is not necessary for a motion under Rule 1.525 to specifically state the amount of fees and costs sought or to be accompanied by affidavits supporting a request for fees. See *McDaniel v. Edmonds*, 990 So. 2d 9, 12 (Fla. 2d DCA 2008) (“Rule 1.100(b) does not impose a requirement that motions for attorney’s fees and costs be accompanied by affidavits setting forth the amount of fees and costs claimed In the absence of such a requirement, there is no basis to deny a motion for

attorney's fees for failing to request a particular amount of fees or costs or identify the specific costs sought or legal services performed.”).

Read together, *Lait* and *McDaniel* stand for the proposition that the “prejudice and unfair surprise” that Rule 1.525 is meant to prevent relates only to unfair surprise as to a party's claim that they are entitled to fees at all, and not to unfair surprise as to the amount of the fees ultimately sought. In this case, there was no prejudice or unfair surprise to the Defendants because the entitlement to fees had been established in the Partial Summary Judgment, and this entitlement to fees was memorialized in the Deficiency Judgment as well. In *Lait*, the judgment included a statement that the defendant was “liable to plaintiff” for attorney's fees. 2 So. 3d at 204. In this case, the Partial Summary Judgment states that SEPH “shall recover” its attorneys' fees and expenses, which is an unequivocal statement that SEPH is entitled to its attorneys' fees and expenses. (R.272.) This satisfies the *Lait* requirement that the judgment include a finding that the prevailing party is entitled to fees. *Cf. Hovercraft of South Fla., LLC v. Reynolds*, 211 So. 3d 1073, 1076 (Fla. 5th DCA 2017) (trial court did not include in judgment a specific finding of entitlement and instead retained jurisdiction to determine issue of fees).

In the Deficiency Judgment, the Court determined that the “remaining amount owed under the Partial Summary Judgment as principal, interest, property taxes paid and insurance paid (not including attorneys’ fees, expenses, and costs) is \$841,437.15.” (R.4751.) In other words, in entering the Deficiency Judgment, the Circuit Court recognized the amounts owed under the Partial Summary Judgment included attorneys’ fees, expenses, and costs. The amount had not been set, so the Circuit Court made clear that the \$841,437.15 portion of the amount owed did not include attorneys’ fees, costs, and expenses. The Circuit Court’s unequivocal holding that SEPH was entitled to fees in the Partial Summary Judgment was thus incorporated into the Deficiency Judgment. The fact that the Circuit Court used the phrase “if appropriate” in its reservation of jurisdiction does not show that the Circuit Court had not determined that SEPH was **entitled** to recover its attorneys’ fees and expenses, but rather that it would later determine a reasonable amount, which is the only logical way to read the prior orders on this issue when the Court previously held as law of the case that SEPH was **entitled** to them. *See BJ of Leesburg, Inc. v. Coffman*, 642 So. 2d 83, 84 (Fla. 5th DCA 1994) (“If the language employed in a judgment is plain and unambiguous, there is no room for construction or interpretation and the language must be given its literal meaning.”).

Therefore, while SEPH's claims for pre-Deficiency Judgment fees and expenses and the Partial Summary Judgment may have been modified by the Deficiency Judgment, the Partial Summary Judgment's finding of entitlement to fees was incorporated into the Deficiency Judgment itself by its terms. Therefore, given that every judgment in this case incorporated the finding that SEPH is entitled to fees and expenses, SEPH respectfully asserts that the Circuit Court erred as a matter of law in holding that SEPH was required to file a motion for attorneys' fees under Rule 1.525 with respect to any proceedings in this matter.⁷ Defendants were aware from the entry of the Partial Summary Judgment that SEPH was entitled to recover its attorneys' fees and costs, and thus they cannot claim unfair surprise. Furthermore, any suggestion that Defendants were surprised by the amount of SEPH's attorneys' fees and expenses should be rejected under both the law and facts of this case, given that it was Defendants' continued efforts to avoid satisfying their obligations that led to thirteen (years) of protracted litigation. (See 11/4/2022 Tr., pp. 163-64.) Therefore, SEPH requests that

⁷ The Circuit Court, for instance, held that Rule 1.525 required SEPH to file a motion with respect to judgments of garnishment as well, even if SEPH is entitled under the loan documents to recover garnishment fees. (R.7129-30.) This finding is improper because the Circuit Court had already held SEPH was entitled to recover its reasonable costs and attorneys' fees under the loan documents.

the Court reverse the Attorneys' Fees Judgment, reverse the Circuit Court's ruling with respect to Rule 1.525, and remand the case for further proceedings below.

II. The Circuit Court Erred In Holding that under § 57.115, Fla. Stat., SEPH was Only Entitled to Recover Fees and Costs in Aid of Execution Incurred After Entry of the Deficiency Judgment.

SEPH asserted that § 57.115, Fla. Stat., permitted it to recover all fees in aid of execution on the Partial Summary Judgment, not just the fees incurred in execution of the Deficiency Judgment. (R.6497-99.) However, the Circuit Court held that § 57.115 only permitted SEPH to recover fees and costs incurred in aid of execution on the Deficiency Judgment, and the Circuit Court noted that the Partial Summary Judgment "appears to be a non-final and non-appealable order because it did not dispose of all pending claims." (R.7103-04, 7107-08.) The Circuit Court's holding with respect to the application of § 57.115 is reviewed *de novo*, as set forth above.

Section 57.115 provides:

- (1) The court may award against a judgment debtor reasonable costs and attorney's fees incurred thereafter by a judgment creditor in connection with execution on a judgment.
- (2) In determining the amount of costs, including attorney's fees, if any, to be awarded under this section, the court shall consider:
 - (a) Whether the judgment debtor had attempted to avoid or evade the payment of the judgment; and

(b) Other factors as may be appropriate in determining the value of the services provided or the necessity for incurring costs in connection with the execution.

§ 57.115, Fla. Stat. Awarding fees under this statute is discretionary. *Tower Cranes of Am, Inc. v. Monte Campbell Crane Co.*, 627 So. 2d 1350 (Fla. 4th DCA 1993). The Circuit Court's reasoning is not entirely clear, but it seems the Circuit Court cut off SEPH's right to recover fees and costs in aid of execution on the Partial Summary Judgment because it was not the final judgment on Vision Bank/SEPH's claims in the Complaint.

This determination was legally improper because the Partial Summary Judgment in this case was an executable judgment under Florida law. The Circuit Court acknowledged that SEPH "has the right to pursue both a claim for foreclosure of the mortgage and a claim for damages on the note." See *Hammond v. Kingsley Asset Mgmt., LLC*, 144 So. 3d 673, 675 (Fla. 2d DCA 2014). (R.7101.) Furthermore, "[i]t has long been the common law that, to collect money owed on a note, a mortgagee may pursue its legal and equitable remedies simultaneously, until the debt is satisfied." *Royal Palm Corp. Ctr. Ass'n v. PNC Bank, NA*, 89 So. 3d 923, 929 (Fla. 4th DCA 2012). "[T]he reason that an action at law on a note may be pursued simultaneously with the equitable remedy of foreclosure is that the two remedies are not inconsistent." *Id.* at 932. As such, when a judgment for damages is entered

on a note while a claim for foreclosure remains pending, the judgment for damages is final and collectible even if the foreclosure count has not been reduced to judgment or if a foreclosure sale has not been held. See *Hammond*, 144 So. 3d at 675. The proper method of proceeding in such a circumstance is to permit the creditor to pursue all available legal and equitable remedies; however, once a foreclosure sale is held, no execution on the note is permitted until a deficiency judgment is entered. See *id.* at 675-76.

Here, SEPH and its predecessor in interest Vision Bank followed the appropriate process. SEPH/Vision Bank obtained an executable Partial Summary Judgment. (R.271-73.) SEPH/Vision Bank then attempted to pursue its legal remedies first and obtain satisfaction through executing on its damages judgment, as discussed more fully above. When those efforts did not result in satisfaction after several years and after bankruptcy proceedings delayed collection efforts as to JF< and Thacker, SEPH then foreclosed on the property and then later obtained the Deficiency Judgment.

SEPH's attempts to execute upon the judgment before entry of the Deficiency Judgment required it to incur fees and costs in connection with

proceedings supplementary,⁸ garnishments, the bankruptcy proceedings, and several appeals at both the state and federal level. Because SEPH was entitled to execute upon the Partial Summary Judgment, these fees and costs should be recoverable under § 57.115. For example, in *Webber for Keitel v. D'Agostino*, 251 So. 3d 188, 192 (Fla. 4th DCA 2018), the Fourth DCA held that continued litigation in state courts and bankruptcy courts with respect to the validity of the underlying judgment “were in connection with execution on the judgment.” Here, the bankruptcy proceedings involved SEPH having to establish the continued validity of the Partial Summary Judgment given Thacker’s objection to its claim and assertions the debt had been satisfied. (See R.6842, 6859-63.) SEPH also obtained a judgment denying Thacker his discharge, meaning SEPH could continue collection efforts against him, as discussed below. (R.6896-6920.) SEPH obtained more than \$600,000 in distributions from the trustee in Thacker’s bankruptcy case to satisfy the Partial Summary Judgment. (R.6662-67.) These collection efforts were made after entry of an executable final judgment on SEPH’s legal claims, and therefore, it was improper to cut off SEPH’s right to recovery under § 57.115. Therefore, SEPH requests that the Court

⁸ Notably, the Circuit Court held that SEPH was entitled to recover fees incurred in the proceedings supplementary related to Thacker’s fraudulent transfers. (R.7107.)

reverse the Attorneys' Fees Judgment to the extent the Circuit Court held that § 57.115 only entitled SEPH to recover fees incurred in aid of execution on the Deficiency Judgment.

To the extent the Circuit Court's holding with respect to Rule 1.525 applied to these collection efforts, SEPH respectfully submits that the Circuit Court erred on that ground, as well. Nothing in the language of § 57.115 provides that a motion to assess fees and costs under that statute must be brought within thirty (30) days or that Rule 1.525 applies to claims for attorneys' fees and costs under § 57.115. Rule 1.525 provides that a motion must be filed within thirty (30) days of entry of a judgment concluding an action as to party. Logically, it would make no sense to apply Rule 1.525 to fees in aid of execution which in most cases will occur after entry of the judgment concluding an action. The execution of a judgment is different from obtaining the judgment itself; by its plain terms, Rule 1.525 should be viewed as applying only to fees incurred in obtaining a judgment on the underlying claims. As such, any restriction on the fees awarded based on failing to file a motion within thirty (30) days of the conclusion of the various collection proceedings in this matter should be rejected as a matter of law.

III. The Circuit Court Erred in Holding that It Could Not Award Fees and Costs Incurred in Bankruptcy Proceedings and Related Appeals.

The Circuit Court held that only the Bankruptcy Court could award fees incurred in connection with the Thacker and JF< bankruptcy proceedings. (R.7107.) Notably, the Circuit Court had already previously awarded SEPH fees incurred in the JF< bankruptcy proceeding in the Foreclosure Judgment. (See R.1890-1924, 2003-08.) The Circuit Court's contradictory holding in the Attorneys' Fees Order that Florida state courts cannot generally award fees incurred in bankruptcy proceedings is a legal conclusion reviewed *de novo*.

The Circuit Court cited *Fla. Fed. Sav. & Loan Ass'n v. Sanchez*, 553 So. 2d 1254, 1255 (Fla. 3d DCA 1989) in support of this holding. (R.7107.) In *Sanchez*, the Third District Court of Appeals affirmed the trial court's denial of post-judgment fees incurred by the creditor in a bankruptcy case that had been initiated the day the creditor obtained its judgment. *Id.* Specifically, the Court held that because the bankruptcy court could have awarded fees incurred in the bankruptcy, "[i]t was for the bankruptcy court to determine whether appellant was entitled to attorney fees incurred in the bankruptcy proceeding and, if so, what a reasonable fee should have been." *Id.* The Third District Court of Appeal has applied this "general rule" from *Sanchez*,

as has the Fifth District Court of Appeal. See, e.g., *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007); *Dvorak v. First Family Bank*, 639 So. 2d 1076, 1079 (Fla. 5th DCA 1994). However, it does not appear that either the Supreme Court of Florida or this Court has addressed this issue.

While some courts suggest that Florida state courts cannot award fees incurred in connection with bankruptcy proceedings, the Fourth District Court of Appeals has affirmed a trial court's decision to award attorneys' fees incurred in a bankruptcy proceeding. See *Webber*, 251 So. 3d at 192-93 (Fla. 4th DCA 2018). In that case, the contract at issue provided that the lender was entitled to recover attorneys' fees incurred in collecting on the note. See *id.* at 191. The trial court held that this provision entitled the lender to recover fees incurred in a bankruptcy proceeding, including fees incurred for defending the validity of the judgment. See *id.* at 191-92 ("The lender's subsequent action to defend the final judgment in motions in state court, on appeal, and in bankruptcy court was in fact to 'collect' on the note."). Additionally, the Bankruptcy Court for the Northern District of Florida has stated that generally, a bankruptcy court has "limited authority to award attorney's fees." See *In re Shearer*, 124 B.R. 862, 863 (Bankr. N.D. Fla. 1990).

In Thacker's bankruptcy case, SEPH obtained a judgment denying Thacker his discharge. (R.6936-47.) When a debtor is denied a discharge, the automatic stay imposed under the Bankruptcy Code is lifted as of the date of denial, and creditors are free to continue collecting debts owed by the debtor. See 11 U.S.C. § 362(c)(2)(C). Therefore, the denial of discharge as to Thacker had a significant impact on SEPH's ability to collect the indebtedness in this case because it resulted in the lifting of the stay and permitted continued collection efforts against Thacker.

Notably, none of the cases in which the Florida District Courts of Appeal have held bankruptcy fees can only be awarded by a bankruptcy court involved cases where a debtor was denied a discharge. See *Sanchez*, 553 So. 2d 1254 (fees incurred in obtaining relief from the automatic stay)⁹; *Martinez*, 951 So. 2d 902 (fees incurred in connection with bankruptcy proceedings that were dismissed without mentioning any discharge-related issues); *Dvorak*, 639 So. 2d 1076 (involving an oversecured creditor's claim for attorneys' fees under 11 U.S.C. § 506, which are within the exclusive jurisdiction of bankruptcy courts). Given that these cases do not involve a denial of discharge, this Court should not adopt a rule that bankruptcy fees

⁹ SEPH contends that *Sanchez's* denial of fees for obtaining relief from stay to foreclose on property is legally improper in any event.

are not recoverable in this case where SEPH obtained a judgment entitling it to continue collection efforts against Thacker.

Therefore, based on the above, SEPH respectfully asserts that the Court should follow the holding in *Webber* and reverse the Circuit Court's holding that it could not legally award bankruptcy-related fees and costs. JF< filed bankruptcy prior to the foreclosure judgment, and this bankruptcy case was ultimately dismissed before foreclosure. SEPH would necessarily have to incur some fees in the bankruptcy court to complete any effort to foreclose on the property, whether by having the case dismissed or moving for relief from the automatic stay to foreclose, and the Circuit Court has awarded such fees to SEPH already in this case (a finding that was not appealed by the Defendants). (See R.2003-08.) In addition to obtaining a judgment denying Thacker his discharge, SEPH was also paid more than \$600,000 from Thacker's bankruptcy estate. (R.6662-67.) The bankruptcy-related attorneys' fees should be recoverable under both § 57.115 and the plain terms of the attorneys' fee provisions of the note and guaranties, which explicitly reference bankruptcy proceedings. (See R.120, 122.)

SEPH's claims under the loan documents filed in the state court action include a claim for attorneys' fees and costs as set forth in the loan documents, and Defendants agreed to pay SEPH's bankruptcy fees in those

loan documents. (R. 84-89, 117, 120, 122.) As such, SEPH's claim for attorneys' fees and costs in the bankruptcy proceedings was properly before the Circuit Court, and the Bankruptcy Court in denying Thacker's discharge held that SEPH could continue pursuing its claims for such fees in the Circuit Court litigation. Therefore, it was an error of law and thus an abuse of discretion to deny SEPH's claim for those fees. Therefore, SEPH respectfully requests that the Court reverse the Attorneys' Fees Judgment with respect to its holding that bankruptcy fees were not recoverable as a matter of law.

IV. The Circuit Court Erred In Holding that the Merger Doctrine Prevented SEPH from Recovering Fees Incurred Prior to Entry of the Deficiency Judgment

Fletcher asserted below that the merger doctrine prevented SEPH from recovering pre-Deficiency Judgment fees on two grounds: (1) that SEPH's rights under the loan documents merged into the Deficiency Judgment; and (2) that SEPH's rights under the Partial Summary Judgment merged into the Deficiency Judgment. (See R.6515-16, 6522-23.) The Circuit Court held that Fletcher's merger argument was "compelling," but it is not clear which aspect (or both) of that argument impacted its decision. (See R.7103-05.) With respect to Fletcher's second argument, SEPH asserts that the Circuit Court erred in applying the merger doctrine to extinguish SEPH's

claim for pre-Deficiency Judgment fees for the same reasons set forth in Section I above. SEPH's entitlement to fees set forth in the Partial Summary Judgment survived the entry of the Deficiency Judgment because the language of the Deficiency Judgment incorporated the finding of entitlement, as set forth above. Thus, any "merger" into the Deficiency Judgment did not operate to extinguish SEPH's right to fees incurred through that date.

To the extent the Circuit Court held that SEPH's right to recovery under the loan documents merged into the Deficiency Judgment,¹⁰ its holding would be an incorrect holding of law subject to *de novo* review. See *Webber*, 251 So. 3d at 191. In *Webber*, for example, the note provided that "[e]ach person liable hereon . . . agrees to pay all costs, including a reasonable attorney's fee, whether suit be brought or not, if, after maturity of this note or default thereunder, counsel shall be employed to collect this note." *Id.* The court held that this language was "broad enough to encompass extended litigation" that occurred after entry of the judgment. *Id.* Because the provisions of the note entitled the lender to recover post-judgment attorneys'

¹⁰ SEPH does not believe the Circuit Court intended to adopt this argument given that it held that the loan documents would have allowed SEPH to recover post-judgment garnishment fees if SEPH had filed a motion within thirty (30) days of entry of the garnishment judgments. (R.7130.) However, out of an abundance of caution, SEPH addresses Fletcher's other merger argument as well.

fees and expenses, the judgment did not extinguish lender's right to post-judgment attorneys' fees under the note. *Id.* at 191-92. See also *Federal Auto Ins., Inc. v. Business Acquisitions Brokerage, Inc.*, 839 So. 2d 767, 767-68 (Fla. 4th DCA 2003) ("The contractual attorney's fees provision is broad enough to encompass fees for execution on the judgment.").

Because the Partial Summary Judgment was an executable judgment, under the loan documents SEPH had a right to recover fees incurred after its entry in collecting on that judgment, as set forth in Part III above. This right was not in any way extinguished by entry of the Deficiency Judgment, particularly given that judgment's finding of entitlement to fees established in the Partial Summary Judgment. As such, the merger doctrine does not prevent SEPH from recovering its pre-Deficiency Judgment fees nor does it impact SEPH's right to recover fees after entry of the Deficiency Judgment. Any holding to the contrary is legally improper and must be reversed.

V. The Circuit Court Erred in Its Limited Factual Findings in the Attorneys' Fees Order.

The Circuit Court made limited factual findings in the Attorneys' Fees Order. However, the limited factual findings it did make were contrary to statements made at the November 4, 2022 hearing. As discussed further above, at the conclusion of the hearing, the Circuit Court stated that there was no evidence that any of SEPH's attorneys' fees or costs were

unreasonable. (11/4/2022 Tr., p. 163.) The Circuit Court also found that the protracted litigation (including collection efforts) and SEPH's attorneys' fees in excess of \$1 million were caused by the conduct of Defendants, not SEPH. (*Id.* at pp. 163-64.)

The Circuit Court made two factual findings in the Attorneys' Fees Order regarding the reasonableness of SEPH's attorneys' fees and costs that contradicted the statements made at the hearing. (See R.7106-08.) First, the Circuit Court generally questioned the reasonableness of SEPH's fees because it exercised its option to pursue collection on the note and guaranties for several years before it moved for summary judgment of foreclosure. (R.7106.) Second, the Circuit Court held that any fees incurred related to discovery efforts after entry the January 9, 2018 Order were unreasonable. (R.7108.) SEPH contends that the Circuit Court erred on both counts. As these were factual findings of the Court, they are reviewed for an abuse of discretion, but such findings "must be supported by competent, substantial evidence." *Webber*, 251 So. 3d at 191.

With respect to the delay in moving to foreclose, SEPH asserts that the Circuit Court abused its discretion. While the Foreclosure Judgment was not obtained until five years after the Partial Summary Judgment was entered, JF< was placed into a receivership and filed bankruptcy during that five-

year period. (See R.1619-20, 1729-49, 1756-62.) As a result of the bankruptcy, SEPH could not continue to pursue its claims as to JF<, which owned the property subject to the Foreclosure Judgment. (R.1619-20; 11/4/2022 Tr., pp. 163-64.) Therefore, the Circuit's Court conclusion that SEPH unreasonably waited too long to pursue foreclosure is baseless and contradictory to the evidence in the record. The Circuit Court found at the conclusion of the hearing that JF<'s bankruptcy proceedings and the required receivership proceedings caused SEPH's fees to increase and prolonged the litigation. (See 11/4/2022 Tr., pp. 163-64.) Those proceedings contributed to the delay in bringing a motion for summary judgment on the foreclosure count. The Circuit Court's stated skepticism in the Attorneys' Fees Order is thus not supported by evidence and is contrary to the Circuit Court's very own findings at the conclusion of the hearing.

Additionally, the Circuit Court acknowledged in the Attorneys' Fees Order that a creditor is entitled to sue on note and guaranty and collect on the debt while also seeking foreclosure on the property securing the debt. (See R.7101). It would be unfair to creditors to hold that they cannot recover fees if they choose to exercise their rights and seek recovery of the debt through alternative means available to them, and the Circuit Court cited no Florida case law. The Circuit Court relied on *Bergen Builders, Inc. v. Horizon*

Developers, Inc., 210 A.2d 65 (N.J. 1965). However, in that case, the defendants asserted that the value of the property exceeded the debt such that pursuing foreclosure would have resulted in the debt being paid in full. *Id.* at 66 The court specifically held that, “[a]ssuming, as has been represented by the defendants, that the mortgage security was at all times wholly adequate and that the plaintiff could have been fully satisfied in foreclosure, inquiry should be made by the trial court as to why that course was not chosen and whether it would now be equitable to burden the defendants with legal fees beyond those which would have been included in a foreclosure proceeding judgment.” *Id.* (emphasis added).

In this case, there is zero evidentiary basis to conclude that the foreclosure could have satisfied the total debt. In fact, the Deficiency Judgment establishes that the mortgage security was wholly inadequate. (See R.4750-52.) Therefore, SEPH would have had to continue incurring attorneys’ fees in its pursuit to collect the debt. *Bergen* stands for the proposition that a creditor who can recover the full amount of the debt through the foreclosure process should potentially not be able to recover fees for taking unnecessary collections actions before seeking foreclosure. This is simply not the case here. The Circuit Court’s factual finding that SEPH unreasonably waited to pursue foreclosure is thus not supported by any facts

in the evidentiary record and constitutes punishing a creditor for exercising its rights to the full extent Florida law allows.

Finally, the Circuit Court's holding that SEPH's fees and costs in conducting discovery after January 9, 2018 were unreasonable is also not supported by evidence and thus is an abuse of discretion. During late 2017, the parties engaged in extensive motion practice regarding numerous discovery requests, deposition notices and non-party subpoenas. (See R.5004-5158, 5181-5259, 5261-65, 5369-5389.) These included motions for protective order. The Circuit Court set these matters for a hearing, and at the same time entered the subject stay order in advance of that hearing before any ruling on the various motions. (R.5390.) That hearing was held on January 23, 2018, and the Circuit Court entered an order on those discovery motions on February 6, 2018. In addition to granting certain motions by the parties for protective orders, the Court also overruled some aspects of the motions relating to discovery. (R.5592-93.) If all discovery continued to be stayed, there would be no need for the Court to rule on any motions related to discovery. Clearly, that discovery stay addressed the immediate issues relating to the motions before the Court at the time, and the Court's February 6, 2018 order adjudicating those motions can only reasonably be viewed as a "further order" mentioned in the stay order. (See R.5390, 5592-93.)

Therefore, both limited factual findings of the Circuit Court were not based on competent evidence and are wholly unreasonable given the evidence in the case. Therefore, the Circuit Court's factual findings in the Attorneys' Fees Order should also be reversed and the case remanded.

CONCLUSION

As set forth above, the Circuit Court made several errors of law and included wholly erroneous factual findings unsupported by the record. Therefore, SEPH respectfully requests that the Court reverse the Attorneys' Fees Judgment for the reasons set forth herein and remand this case for further proceedings in the Circuit Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to the following:

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Copies of the foregoing were furnished by email to the email addresses listed above on September 19, 2023. A copy of the foregoing was also served via the Florida E-Filing portal on September 19, 2023 on Joseph Silva, Jr. (Counsel for Appellees JF< Investments, Inc. and Jesse G. Fletcher) at the email address(es) listed above.

/s/ Richard M. Gaal
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**CERTIFICATE OF COMPLIANCE WITH
FONT REQUIREMENTS AND WORD COUNT LIMITS**

I hereby certify that this Initial Brief on the Merits was prepared using Arial 14-point font; that the word count, excluding the words in the caption, cover page, table of contents, table of citations, signature block, certificate of service, and certificate of compliance, is 12,855; and this brief complies with the font and word count requirements of Fla. R. App. P. 9.045 and 9.210(a). I relied upon the word count of the word processing system used to prepare this document.

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