

IN THE FOURTH DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

CASE No. 4D23-1606  
LT No. 502022CA002967

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J2 INVESTMENTS LLC,

*Appellant,*

v.

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION  
and MITCHELL ROGER PAGEREY,

*Appellees.*

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ANSWER BRIEF OF APPELLEE  
JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

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ON APPEAL FROM A NON-FINAL VACATUR ORDER ENTERED  
IN THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

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## INTRODUCTION

The crux of the matter lies in the trial court's discretionary decision to set aside a foreclosure sale based on the enforcement of a settlement agreement between the bank and its borrower. Courts, of course, have the authority to exercise discretion in favor of setting aside foreclosure sales, particularly when equitable considerations prevail. In this case, the contracting parties (the borrower and the bank) reached an agreement to vacate the foreclosure sale, in lieu of further and ongoing litigation which might have led to litigation of the entire case anew. And the third-party purchaser at the sale (the appellant here) was made whole through a full return of its deposit.

The trial court, having exercised its discretion after a full accounting of the equities applied to *all* involved parties, cannot be said to have committed a *gross* abuse of discretion — which, by the way, is this Court's standard of review.

## STATEMENT OF THE CASE AND FACTS

### I. A FINAL JUDGMENT OF FORECLOSURE IS ENTERED FOLLOWING SERVICE BY PUBLICATION.

JPMorgan Chase Bank, National Association, ("Chase"), initiated foreclosure proceedings against Mitchell Roger Pagerey to foreclose on real

property located in Palm Beach County. A:5–33.<sup>1</sup> Unable to personally serve Pagerey, Chase resorted to service by publication. A:46. Pagerey did not appear in the proceedings and, eventually, an uncontested final summary judgment of foreclosure was entered in favor of Chase. A:35–40 (the “Final Judgment of Foreclosure”).

Still without Pagerey appearing, the property was scheduled for judicial sale and eventually sold on May 17, 2023, to J2 Investments LLC (“J2 Investments”). A:43. The Certificate of Sale issued the same day. *Id.*

## **II. THE BORROWER MOVED TO VACATE THE JUDGMENT AND SUBSEQUENT SALE.**

Six days after the sale, Pagerey appeared in the trial court and moved to vacate the Final Judgment of Foreclosure and the subsequent foreclosure sale. A:45–67. *And see* A:71–72 (Pagerey’s affidavit supporting motion). Pagerey alleged that the Final Judgment was void because of a failure of process: Pagerey argued that the returns of service were facially insufficient and Chase’s service by publication was inadequate. A:46–47. Pagerey claimed that he “only learned that his property was sold this past weekend”

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<sup>1</sup> J2 Investments filed an Amended Appendix to its Initial Brief on August 20, 2023. Citations to that appendix will be made in the form of “A:\_\_\_” and will direct the Court to the PDF page of the document.

as he “was not served with judicial process and was totally unaware that the foreclosure case was proceeding against him.” *Id.*

These failures, argued Pagerey, meant that the Final Judgment of Foreclosure — and the subsequent foreclosure sale — were void *ab initio*. A:47–48. Which is to say, they never had any legal effect.

Pagerey served its motion to vacate on Chase and the third-party purchaser, J2 Investments. A:50.<sup>2</sup>

Chase, faced with the prospect of relitigating the entire case if Pagerey’s motion were to be granted, initially opposed Pagerey’s motion. A:86–92. Chase defended its service of process, claiming that its service by publication was valid given the circumstances. A:91–92.

The trial court set a hearing for the motion on May 30, 2023. Admittedly, although J2 Investments was served with Pagerey’s motion to vacate and Chase’s opposition to the motion, the trial court does not appear to have served the notice of hearing on J2 Investments. See A:75. However, on May 25<sup>th</sup>, Chase filed *two* certificates of mailing wherein Chase indicated

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<sup>2</sup> This is relevant because J2 Investments has claimed a failure of notice in this appeal.

that it served the trial court's order setting hearing on J2 Investments. AA:4–43.<sup>3</sup>

Apparently aware of the proceedings and upcoming hearing, J2 Investments' counsel filed a notice of appearance on May 26<sup>th</sup> — days prior to the scheduled hearing. AA:14–15. And the day of the hearing, J2 Investments submitted a Notice of Filing of a purported agreement with Pagerey to a cash for keys turnover of the property. A:95–96.

All parties, Chase, Pagerey, and *J2 Investments*, appeared at the hearing. AA:16–58 (transcript). At the outset of the hearing, counsel for Chase and Pagerey announced that they had “reached a tentative agreement” that was “contingent upon it being adopted by the Court” to vacate the foreclosure sale, provide J2 Investments a “full reimbursement of their deposit”, and in exchange Pagerey would “waive any defects that he maintained in the service of process” of the underlying judgment. AA:22–23. In other words, the parties had reached a settlement where the Final Judgment of Foreclosure would remain in place but Pagerey would remain

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<sup>3</sup> Chase has provided the Court with an additional appendix of relevant documents along with this Answer Brief. Citations to Chase's appendix will be made in the form of “AA:\_\_\_” and will direct the Court to the Bates stamped and PDF page of the document.

in the property and “pay [Chase] off within a few days and reinstate the loan.” AA:23.

The trial court noted that it did not “want to disrupt” what it perceived as a “reasonable settlement” between Chase and Pagerey. AA:23.

J2 Investments opposed the relief arguing that it “want[ed] the property” because it “purchased it” at the foreclosure sale. AA:24. Of note, J2 Investments did not, at any point, raise an issue with insufficient service of the motion or any other defect in the trial court’s notice of hearing. AA:16–58. And at no point did any party specifically request an evidentiary hearing on Pagerey’s motion to vacate. AA:16–58.

At the conclusion of the hearing, the trial court requested that the parties further brief the issue and provide, within 10 days, an agreed order or a responsive brief on “the issues.” AA:37–38.

Here is the trial court’s request:

**The Trial Court's Concluding Statements at the May 30<sup>th</sup> Hearing:**

THE COURT: Why don't you guys in 10 days either submit an agreed order to me or file -- or an order setting a briefing schedule to brief the issues. Inform me what issues are remaining, what you honed the issues down to, what's agreed or disagreed amongst yourselves. I'm really not trying to make a big work product out of this.

AA:37.

Ten days after the hearing, the only party to file a responsive document with the trial court was Pagerey — with Chase's acquiescence. A:99–104. J2 Investments **did not** comply with the trial court's directive to either file a proposed order or a brief on the issues. J2 Investments **filed nothing in the trial court.**<sup>4</sup>

On June 12<sup>th</sup>, having received only a response from Pagerey, the trial court stated that it "reviewed the Motion, the Court file, the briefs submitted

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<sup>4</sup> J2 Investments never formally opposed the relief requested by Pagerey in writing; rather, the only substantive document it filed was the "Notice of Filing" the day of the hearing.

and further being advised that Plaintiff does not oppose the Motion or the entry of this Order,” the trial court granted in part and denied in part Pagerey’s motion to vacate by enforcing the parties’ settlement agreement. A:106–107. The trial court vacated the foreclosure sale and certificate of sale issued to J2 Investments and ordered that all funds be returned to J2 in connection with the foreclosure sale, including any clerk’s fees which would have to be refunded directly by Pagerey. A:106. And the trial court acknowledged Pagerey’s ratification of the Final Judgment of Foreclosure as a condition of the parties’ settlement agreement. A:106.

From this order, J2 Investments appealed.

## **SUMMARY OF ARGUMENT**

J2 Investments raises two errors on appeal. Neither is borne out by the record or caselaw.

### **FAILURE TO PRESERVE ALLEGED ERRORS FOR APPEAL**

First, J2 Investments contends that the trial court erred in failing to serve it with notice of the May 30<sup>th</sup> hearing, and then erred by not setting an evidentiary hearing. However, J2 Investments raises this issue for the first time on appeal; it was not preserved in the trial court.

J2 Investments appeared at the May 30<sup>th</sup> hearing (having been twice served the notice by Chase) and then failed to object to the notice of the non-evidentiary hearing or specifically request an evidentiary hearing during the trial court proceedings, which means these complaints are not preserved for appellate review. And when given the opportunity by the trial court to brief the issues, including ostensibly to request an evidentiary hearing, J2 Investments forwent the chance to brief the trial court. That is waiver.

### **THE TRIAL COURT'S DECISION TO SET ASIDE THE FORECLOSURE SALE REFLECTS A PROPER BALANCING OF THE EQUITIES**

Second, J2 Investments contends that the trial court abused its discretion by enforcing the settlement agreement between Chase and Pagerey, which led to the vacatur of the foreclosure sale. But here, the trial court, sitting as a court of equity, may exercise their discretion to set aside

foreclosure sales and allow for the reinstatement of loans when equitable circumstances warrant it.

Settlement agreements between litigants in foreclosure cases are favored, and it is often an abuse of discretion to *deny* vacatur of a foreclosure sale when the parties agree to it. The trial court, in this case, considered the equities involved, including potentially relitigating the entire foreclosure case from scratch (which would have resulted in vacatur of J2 Investments' purchase anyway), and enforced the settlement, which ultimately made J2 Investments whole.

At bottom, the trial court's decision was not arbitrary, fanciful, or unreasonable, and it cannot be said to constitute a gross abuse of discretion.

## ARGUMENT

### I. STANDARD OF REVIEW.

J2 Investments contends that the applicable standard of review is merely the “abuse of discretion standard.” Appellant’s Initial Brief with Appendix (“IB”) at 2. There’s more to it. This Court has held that a trial court’s “ruling on a motion to set aside a foreclosure sale is reviewed for a gross abuse of discretion.” *Opportunity Funding I, LLC v. Otetchestvennyi*, 909 So. 2d 361, 362 (Fla. 4th DCA 2005) (emphasis added). *And see HSBC Bank USA, Nat. Ass’n v. Nixon*, 117 So. 3d 430, 431 (Fla. 4th DCA 2012) (same); *Texas Commerce Bank Nat. Ass’n v. Nathanson*, 763 So. 2d 1107, 1109 (Fla. 4th DCA 1999) (same).

The definition of an abuse of discretion has been provided by the Florida Supreme Court in *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980), and is reproduced below:

Discretion ... is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.

*Id.* at 1203.

Accordingly, courts have found that the “gross abuse of discretion standard” requires something “more egregious than a typical abuse of

discretion.” *Allstate Floridian Ins. Co. v. Ronco Inventions, LLC*, 890 So. 2d 300, 302 (Fla. 2d DCA 2004). *And see Emmer v. Brucato*, 813 So. 2d 264, 265 n.1 (Fla. 5th DCA 2002) (hypothesizing that a gross abuse of discretion is “an action that only an extremely unreasonable judge would take” given the circumstances).

In addition, J2 Investments contends that the “de novo” standard applies to its claim that it was “denied procedural due process.” IB at 2 (*citing Residential Mortg. Servicing Corp. v. Winterlakes Prop. Owners Ass’n, Inc.*, 169 So. 3d 253 (Fla. 4th DCA 2015)). That may be true; however, J2 Investments’ due process claim — for reasons that will be explained below — has not been preserved for appellate review and thus there is nothing for this Court to review de novo.

## **II. THE APPELLANT FAILED TO PRESERVE ANY ALLEGED ERRORS WITH PROCESS FOR APPEAL.**

J2 Investments first argues that the trial court “erred in failing to set an evidentiary hearing” thus depriving J2 Investments the opportunity “to be heard.” See IB at 3. The due process argument appears to be twofold: (i) J2 Investments takes issue that the trial court’s notice of hearing “did not include Appellant on the notice” and (ii) J2 Investments maintains that it should have been “able to challenge the [parties] assertions at an evidentiary

hearing.” See IB at 5–6. J2 Investments is raising this issue for the first time on appeal; neither facet of the argument was preserved in the trial court. A review of the transcript of the hearing that was held — at which counsel for J2 Investments appeared and argued without impediment — will show that affirmance on this point is required.

“As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.” *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005). Indeed, “reviewing courts will not consider claims of error which are raised for the first time on appeal because it is the function of the appellate court to review errors allegedly committed by the trial court, not to entertain for the first time on appeal issues which the complaining party **could** have, **should** have, but **did not**, present to the trial court.” *Herskovitz v. Hershkovich*, 910 So. 2d 366, 367 (Fla. 5th DCA 2005) (citations omitted) (emphasis added). “For an issue to be preserved for appeal ... it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation if it is to be considered preserved.” *Anderson v. Wagner*, 955 So. 2d 586, 590 (Fla. 5th DCA 2006) (internal citations and quotations omitted).

Here, J2 Investments had the opportunity at the trial court level to raise many of the alleged defects it now seeks to redress. J2 Investments' failure to present a case to the trial court cannot be excused now on appeal:

An appeal has never been an evidentiary proceeding; it is a proceeding to review a judgment or order of a lower tribunal **based upon the record made before the lower tribunal**. An appellate court will not consider evidence that was not presented to the lower tribunal because the function of the appellate court is to determine whether the lower tribunal committed error based on the issues and evidence before it.

*Hillsborough Cnty. Bd. of Cnty. Comm'rs v. Pub. Emp. Relations Comm'n*, 424 So. 2d 132, 134 (Fla. 1st DCA 1982) (emphasis added).

At the May 30<sup>th</sup> hearing, counsel for J2 Investments appeared and argued on behalf of his client. See AA:20. The trial court did not preclude counsel from argument. And there was no contention by J2 Investments' counsel that he could not adequately prepare for the hearing.

The law dealing with defective notices (in a standard civil case and in other contexts) is clear that issues with a defective notice of hearing are waived where the party is ultimately able to appear and argue their case. That is what the record shows happened here.

In the standard civil context, an issue with a notice of hearing "is waived if the party does not object to insufficient notice" prior to the hearing, at the hearing, or in a motion for rehearing. *Azanza v. Private Funding Group, Inc.*,

24 So. 3d 586, 587 (Fla. 4th DCA 2009); *Vidal v. Liquidation Props., Inc.*, 104 So. 3d 1274, 1276 (Fla. 4th DCA 2013) (stating that a defect in the notice of a hearing “cannot be grounds for reversal on appeal” where that defect is not raised in an objection at the hearing); *Goncalves v. S. Tower at Point Condo., Inc.*, 347 So. 3d 1290, 1290 (Fla. 3d DCA 2022) (same). That is doubly true where a party attends the hearing and can “fully and adequately” present their case. See, e.g., *City of Jacksonville v. Huffman*, 764 So. 2d 695, 696–97 (Fla. 1st DCA 2000).<sup>5</sup>

At no point during the hearing did counsel raise his objection to the notice of hearing issued by the trial court. Thus, that issue must be deemed waived.

As to J2 Investments’ contention that the trial court erred by not setting the matter for an evidentiary hearing, that too is waived by J2 Investments’ failure to object to the non-evidentiary hearing or by not specifically

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<sup>5</sup> In the zoning context, where issues with notices are commonly seen, “a contesting party’s right to assert a defect in such notice may be waived if the party appeared at the hearing and was able to fully and adequately present his or her objections. The defense of waiver will be denied only if the party was unable to fully prepare for and present objections at the hearing or was otherwise prejudiced by the defective notice.” *City of Jacksonville v. Huffman*, 764 So. 2d 695, 696–97 (Fla. 1st DCA 2000). And see *Malley v. Clay Cnty. Zoning Comm’n*, 225 So. 2d 555 (Fla. 1st DCA 1969); *Schumacher v. Town of Jupiter*, 643 So. 2d 8 (Fla. 4th DCA 1994).

requesting an evidentiary hearing when it had the opportunity to be heard. See *Obregon v. Rosana Corp.*, 232 So. 3d 1100 (Fla. 3d DCA 2017) (holding appellant waived claim that trial court erred in failing to conduct an evidentiary hearing, where appellant attended hearing, had an opportunity to be heard, and failed to object to the non-evidentiary nature of the hearing); *In re F.J.G.M.*, 196 So. 3d 534 (Fla. 3d DCA 2016) (observing that because appellant did not object to the trial court’s failure to conduct an evidentiary hearing, the issue was not preserved for appellate review); *Piloto v. Lauria*, 45 So. 3d 565 (Fla. 4th DCA 2010) (holding appellant’s claim that the trial court erred in not conducting an evidentiary hearing before ruling on issue was not preserved for review, where appellant failed to request the trial court hold an evidentiary hearing).

At no point during the proceedings below did J2 Investments request an evidentiary hearing on the request to vacate the foreclosure sale and final judgment. In fact, when the trial court commented that the hearing set by the parties “wasn’t set as an evidentiary hearing with advance notice,” counsel for J2 Investments did not maintain that the trial court should reset the hearing to make it evidentiary in nature. T:12. Instead, J2 Investments maintained that the trial court *could rule* on the issue in the non-evidentiary hearing by referring to an exhibit. T:12–13.

The point is that J2 Investments neither objected to the notice of the non-evidentiary hearing or specifically requested a substitute evidentiary hearing. Those complaints are being raised for the first time on appeal which is inappropriate. See *Sunset Harbor Condo. Ass'n*, 914 So. 2d at 928; *Herskovitz*, 910 So. 2d at 367. The points have not been preserved for appellate review. See *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638 (Fla. 1999) (a claim not raised in the trial court will not be considered on appeal).

**III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY ENFORCING THE PARTIES' SETTLEMENT AGREEMENT AND SETTING ASIDE THE FORECLOSURE SALE.**

As to the merits of J2 Investments' argument on appeal, the trial court did not grossly abuse its discretion when it vacated the foreclosure sale pursuant to the agreement between Chase and Pagerey. Both Chase and Pagerey agreed to the vacatur of the foreclosure sale in lieu of vacatur of the underlying final judgment of foreclosure — which would have unwound the foreclosure sale anyway. The trial court, sitting in its capacity as a court of equity, weighed the equitable principles implicated by the situation, and deemed it appropriate to unwind the foreclosure sale. J2 Investments, the third-party purchaser, was made whole when its deposit was returned. The

equities of all parties being accounted for, it is not possible to say that the trial court grossly abused its discretion.

“It is well established that courts may exercise their discretion as courts of equity, to set aside foreclosure sales and allow mortgagors to exercise their statutory right of redemption where there has been some defect in the proceedings regarding notice of the foreclosure sale date, or other egregious matters, such as a grossly low bid by the purchaser and accident or mistake on the part of the mortgagor or an attorney representing the mortgagor, in failing to attend the foreclosure sale.” *Cicoria v. Gazi*, 901 So. 2d 282, 287 (Fla. 5th DCA 2005). If the objection to the sale is “based upon a cause which is adequate to justify the equitable relief” of setting aside the sale, the trial court may exercise its equitable powers to do so. *Skelton v. Lyons*, 157 So. 3d 471, 473 (Fla. 2d DCA 2015); *Residential Mortg. Servicing Corp. v. Winterlakes Prop. Owners Ass’n, Inc.*, 169 So. 3d 253, 256 (Fla. 4th DCA 2015). Indeed, the Florida Supreme Court in *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511 (Fla. 2013), expressly recognized that no allegations regarding how the “foreclosure sale was conducted” were needed when the issue concerned the equities of allowing a foreclosure sale to stand when the plaintiff and the borrowers had agreed to a reinstatement of the loan.

*Gavidia v. Specialized Loan Servicing LLC*, 301 So. 3d 413, 417 (Fla. 2d DCA 2020).

“Foreclosures are equitable proceedings under Florida law and settlements between litigants are favored.” *Wells Fargo Bank, N.A. v. Lupica*, 36 So. 3d 875, 876–77 (Fla. 5th DCA 2010). \Indeed, it is the “well-established policy in Florida that settlement agreements are highly favored in the law.” *Suess v. Suess*, 289 So. 3d 525, 529 (Fla. 2d DCA 2019). Courts have ruled that it constitutes an abuse of discretion to *deny vacatur* of a foreclosure sale where the parties have reached a settlement or agreement to reinstate the lending relationship. See *Lupica*, 36 So. 3d at 876–877. And see *Leroux v. Bank of Am., N.A.*, 192 So. 3d 546 (Fla. 5th DCA 2016) (finding abuse of discretion where trial court refused to grant “unopposed motion to vacate foreclosure sale”); *SVI Capital, LLC v. Bank of Am., N.A.*, 164 So. 3d 36, 38 (Fla. 4th DCA 2015) (acknowledging the principle); *Shipman v. Wells Fargo Bank, N.A.*, 300 So. 3d 313 (Fla. 3d DCA 2020) (same). It stands to reason that if it is an abuse of discretion to deny vacatur of a foreclosure sale where the parties agree to the relief, it can never be an abuse of discretion to allow vacatur under those identical circumstances.

This Court’s holding in *Wells Fargo Bank, NA v. Giglio*, 123 So. 3d 60 (Fla. 4th DCA 2013), is instructive. In *Giglio*, the bank — with the borrower’s

blessing — moved to vacate a successful foreclosure sale and an underlying judgment of foreclosure to facilitate a settlement reached between them. *Id.* at 60–61. The borrower had delivered enough funds to the bank to “reinstate the mortgage, thereby obviating the need to sell the collateral or continue with the litigation.” *Id.* at 60. The trial court allowed vacatur of the sale but refused to vacate the underlying final judgment of foreclosure. On appeal, this Court reversed, finding that the vacatur of the sale was proper and that the trial court should have also vacated the final judgment to “effectuate the parties’ settlement.” *Id.* at 61.

The trial court here was faced with a similar situation. The borrower, Pagerey, moved to vacate not only the foreclosure sale but also the underlying final judgment as being void for failure of service of process. A:47–49. A failure to properly serve Pagerey would have resulted in a final judgment that was a “legal nullity” capable of being “set aside as void at any time.” *Johnson v. State, Dept. of Revenue ex rel. Lamontagne*, 973 So. 2d 1236, 1238 (Fla. 1st DCA 2008). And indeed, Pagerey challenged that Chase’s service by publication was invalid because the attempts at personal service were “grossly inadequate.” A:48. Pagerey attached an affidavit to his motion to vacate, wherein he indicated he had not received service of process of the lawsuit or the foreclosure sale following the judgment. A:71

(“The news that my property had been sold was a complete surprise to me because I was never served with a copy of the lawsuit and was totally unaware that the foreclosure case was proceeding against me.”).

While Chase initially opposed the relief requested by Pagerey, see A:83–92, eventually the parties entered a settlement agreement to avoid further litigation — including, at minimum, an evidentiary hearing on Pagerey’s motion to vacate.

Faced with balancing those equities, the trial court enforced Chase and Pagerey’s settlement agreement. A:106–107. The trial court directed all funds “tendered in connection with the foreclosure sale” back to J2 Investments and determined that Pagerey would be “responsible to the third party bidder for any and all Clerk’s fees that are not refunded to the third party bidder.” A:106. And as part of the settlement, the trial court acknowledged Pagerey’s waiver of “any and all defenses he could have asserted in the foreclosure action including, but not limited to, defects in service of process.” *Id.*

On appeal, J2 Investments provides a circular argument regarding the propriety of the trial court’s acknowledgment and enforcement of the parties’ settlement agreement. J2 Investments suggests that “Pagerey waived the defense of defective service ... as noted in the June 11, 2023 order” and

thus there can be “no defective service ... to set aside the sale and the certificate of sale.” IB at 7. But that’s only because the trial court *enforced* the settlement between Chase and Pagerey. Had the trial court not enforced the settlement, there would be no waiver, and the parties would have been forced to litigate the issue. Potentially, the underlying final judgment would have been vacated and the foreclosure sale — and J2 Investments’ purchase of the property — would have been similarly unwound. See IB at 15 (J2 Investments conceding that it “is axiomatic that if Appellee Pagerey actually had no notice and service was defective, then the final judgment would need to be vacated”).

The point is that the equitable circumstances considered by the trial court expanded beyond only the vacatur of a foreclosure sale. The trial court had to consider the possibility of unwinding the entire case and the parties’ decision to find an alternate resolution to that outcome. No part of the trial court’s ruling was “arbitrary,” “fanciful,” or “unreasonable” given these circumstances. [Canakaris, 382 So. 2d at 1203](#). And certainly, the ruling was not egregiously erroneous as to constitute a gross abuse of discretion. [Allstate Floridian Ins. Co., 890 So. 2d at 302](#).

## CONCLUSION

The Vacatur Order should be affirmed.

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## CERTIFICATE OF SERVICE

I certify that, on October 2, 2023, pursuant to Fla. R. Gen. Prac. & Jud.

Admin. 2.516, this Brief was served via the Florida courts ePortal on:

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared in Arial, 14-point font, in compliance with Rule 9.045(b) of the Florida Rules of Appellate Procedure, and does not exceed 13,000 words, in compliance with Rule 9.210(a)(2)(B).

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