

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

Case No. 4D2024-1828  
L.T. Case No. 502022CA009318XXXXMB

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JJD REALTY, LLC,

Appellant,

vs.

JESSICO, LLC, ANESHA ALI,  
ISHAR ALI, and FIZAM ALI,

Appellees.

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**INITIAL BRIEF OF APPELLANT**

(On review of a final order of the Circuit Court of the Fifteenth  
Judicial Circuit in and for Palm Beach County, Florida)

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## **PREFACE**

This Initial Brief is filed on behalf of Appellant, JJD REALTY, who is the Plaintiff in the underlying civil court proceeding. Appellant is referred to in this brief as “Appellant” or “JJD Realty”.

Appellees, JESSICO, LLC, ANESHA ALI, ISHAR ALI, and FIZAM ALI, are the Defendants in the underlying civil court proceeding. Appellees are referred to in this brief as “Appellees” or “Defendants”, or “Jessico” to refer to JESSICO, LLC and “the Alis” to refer to the remaining Appellees or to each individually where appropriate.

Artesa Homeowners Association, Inc. is referred to as “the Association” or “the HOA”.

The Record on Appeal also contains relevant documents from two related foreclosure actions regarding the subject property: (1) *Adrienne Torsiello vs. Barrington Barnes, LLC*, Case No. 50-2017-CA-011529-XXXX-MB, and (2) *Artesa Homeowners Association, Inc. v. Barrington Barnes, LLC*, Case No. 50-2018-CA-007494-XXXX-MB.

References to the Record On Appeal, including the transcript of the May 6, 2024 hearing on Plaintiff’s Motion for Summary Judgment (R. 525-589), are made as follows:

(R.\_\_) = Record On Appeal, consisting of pages 1-824.

## **STATEMENT OF THE CASE AND FACTS**

This is Plaintiff JJD Realty’s appeal of the “Order Denying Plaintiff’s Motion for Summary Judgment and Entry of Judgment in Favor of Defendants” rendered June 14, 2024. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(b)(1)(A).

### **A. Introduction.**

This appeal stems from an action to quiet title to certain residential real estate located in Boynton Beach, Florida (“the Property”). (R. 11). The Property was the subject of two foreclosure actions relevant to this appeal: one by a mortgage lender, and the other by the homeowner’s association for the Property. (R. 621-811). Consistent with the appealed order, the two related foreclosure actions are referred to in this brief as “the Lender’s Foreclosure Action” and “the HOA’s Foreclosure Action”.

### **B. The Lender fails to join the HOA as a party to its foreclosure action and JJD Realty purchases the Property at judicial sale in the HOA’s Foreclosure Action.**

A description of the history of conveyances, encumbrances, and foreclosure actions on the Property is necessary. A timeline of relevant events is included as Exhibit A at the conclusion of the brief for ease of reference.

In 2015, the then-owner of the Property, Barington Barnes LLC (“Barnes”), executed a mortgage with Lord Mortgage and Loan, Inc. that was recorded November 17, 2015. (R. 23). On November 19, 2015, the HOA recorded a Claim of Lien on the Property for non-payment of assessments that was contemporaneously recorded. (R. 34). On December 10, 2015, Lord Mortgage recorded an assignment of its interest in the mortgage to Adrienne Torsiello (the “Lender”). (R. 715).

On October 19, 2017, Torsiello initiated a foreclosure action of the mortgage. (R. 699). A lis pendens was recorded on November 7, 2017. (R. 36). Torsiello did not name the HOA as a defendant in the action notwithstanding the HOA having a recorded Claim of Lien on the Property. (R. 699).

On June 13, 2018, the HOA recorded an amended Claim of Lien to correct a scrivener’s error in the original Claim of Lien. (R. 39). On

June 14, 2018, the HOA initiated a foreclosure action of the assessment lien. (R. 624). A lis pendens was recorded on June 15, 2018. (R. 41).

On September 13, 2018, the trial court in the Lender's Foreclosure Action entered a Final Judgment of Foreclosure. (R. 43). The Lender's Final Judgment of Foreclosure was recorded on September 17, 2018. (R. 43). The Final Judgment of Foreclosure in the Lender's Foreclosure Action stated:

On the filing of the Certificate of Sale, Defendant's [Barrington Barnes, LLC] right of redemption as prescribed by Fla. Stat. Section 45.0315 shall be terminated and the Defendant and all persons claiming an interest in the subject property or claiming under or against Defendant since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the subject property, except as to claims or rights under Chapter 718 or Chapter 720, Fla. Stat., if any.

(R. 45, at ¶ 7).

On September 24, 2018, the trial court in the Lender's Foreclosure Action entered an Amended Final Judgment of Foreclosure. (R. 49). The Amended Final Judgment of Foreclosure was recorded September 25, 2018. (R. 49). Neither the Final Judgment nor the Amended Final Judgment in the Lender's

Foreclosure Action was entered against the HOA as the HOA was never named as a defendant in the lawsuit despite having a recorded Claim of Lien prior to the initiation of that foreclosure suit.

On October 24, 2018, the trial court in the HOA's Foreclosure Action entered a Final Summary Judgment of Foreclosure. (R. 55). The Final Summary Judgment of Foreclosure was recorded October 25, 2018. (R. 55). The Final Summary Judgment of Foreclosure in the HOA's Foreclosure Action stated:

In accordance with Section 45.0315, Florida Statutes, upon the Clerk filing the Certificate of Sale, Defendants shall forever be barred and foreclosed of any and all equity or right of redemption in and to the property. Subsequently, upon the Clerk filing the Certificate of Title, the sale shall stand confirmed and Defendants and all persons claiming an interest in the property since the filing of the Notice of Lis Pendens, shall be foreclosed of all other estate or claim in the property, and the purchaser at the sale shall be let into possession of the property, and the Clerk shall issue a Writ of Possession upon the request of said purchaser, his representatives or assigns, upon further order of this Court.

(R. 57, at ¶ 7).

On November 29, 2018, a judicial sale was conducted in the HOA's Foreclosure Action and JJD Realty purchased the Property.

(R. 63). On December 4, 2018, the former owner of the Property, Barnes, filed an Objection to the Sale and Motion to Quash Service of Process, rendering the Clerk unable to issue a Certificate of Title to JJD Realty despite its winning bid. (R. 653-654). On December 31, 2018, Barnes filed a Motion to Exercise Redemption. (R. 655).

On January 3, 2019, the trial court in the HOA's Foreclosure Action entered an Agreed Order pursuant to agreement of the parties, providing Barnes until 3:30 p.m. on January 4, 2019 to pay the HOA in full or have his objections deemed waived. (R. 656). The Agreed Order provided that, if Barnes timely redeemed, JJD Realty would receive a 100% refund of its successful bid. (R. 656).

On January 4, 2019, Barnes attempted and failed to make the redemption payment at the Clerk's office, arriving at 3:28 p.m. with an insufficient amount of funds to satisfy the payoff amount. (R. 658, 671). On January 5, 2019, Barnes filed a Motion to Extend Redemption Period. (R. 658). Yet despite Barnes's continuing efforts to have the sale and judgment in the HOA's Foreclosure Action overturned, with only two days left before the public sale in the

Lender's Foreclosure Action, the docket in that case reflects that Barnes had still made no effort to stop that sale. (R. 675-678).

On January 8, 2019, a judicial sale was conducted in the Lender's Foreclosure Action and Jessico, LLC purchased the Property. (R. 791). The docket in the Lender's Foreclosure Action shows no similar objections or motions filed by Barnes regarding that sale to those he filed pertaining to the sale in the HOA's Foreclosure Action. (R. 675-678). On January 11, 2019, just three days after the sale in the Lender's Foreclosure Action, Barnes withdrew the Motion to Extend Redemption Period in the HOA's Foreclosure Action. (R. 679).

On January 21, 2019, JJD Realty filed a Motion to Vacate Sale and to Return Funds Paid to Purchase Property, in the HOA Foreclosure Action. (R. 660). JJD Realty recounted the relevant history of Barnes' actions described above and warned that failing to vacate the sale in the HOA Foreclosure Action could further complicate the matter, especially if the Clerk issued JJD Realty of Certificate of Title after the Clerk in the Lender Foreclosure Action issued one to the purchaser in that case. (R. 660-663). JJD Realty

pointed out that the Association would suffer no harm if the sale were vacated and JJD Realty refunded its full amount paid, as there were more than ample surplus funds for the Association to recover the full amount of its judgment and any post-judgment amounts owed based on the winning bid and judgment in the Lender Foreclosure Action. (R. 663-664). JJD Realty argued it would be inequitable for Barnes to be rewarded at JJD Realty's expense given Barnes' conduct. (R. 664-665).

On January 24, 2019, a Certificate of Title was issued to Jessico, LLC in the Lender Foreclosure Action and recorded. (R. 61).

On February 26, 2019, the Association moved to intervene in the Lender's Foreclosure Action by filing a Motion to Authorize Disbursement of Surplus Funds. (R. 782). On July 11, 2019, the trial court in the Lender's Foreclosure Action denied the Association's Motion to Authorize Disbursement of Surplus Funds. (R. 810).

On October 23, 2019, the trial court in the HOA Foreclosure Action denied JJD Realty's Motion to Vacate Sale. (R. 680).

On October 25, 2019, a Certificate of Title was issued to JJD Realty and recorded the same day. (R. 63). However, the Certificate

of Title issued October 25, 2019 was erroneously issued *nunc pro tunc* to January 11, 2019, which would have been prior to that issued to Jessico, LLC in the Lender's Foreclosure Action. (R. 63, 66-67); *JJD Realty, LLC v. Artesa Homeowners' Association, Inc.*, 307 So. 3d 51 (Fla. 4th DCA 2020).

On April 16, 2019, after the judicial sale in the HOA's Foreclosure Action but before the Certificate of Title issued, Jessico LLC sold the Property to Anesha Ali and Ishar Ali. (R. 69). A Special Warranty Deed was executed and recorded on April 16, 2019. (R. 69). On June 3, 2019 (also after the judicial sale in the HOA's Foreclosure Action but before the Certificate of Title issued), Anesha Ali executed a Quitclaim Deed to Ishar Ali and Fizam Ali. (R. 72). The Quitclaim Deed was recorded on June 6, 2019. (R. 72).

On November 12, 2020, this Court reversed the *nunc pro tunc* order directing the clerk to issue a certificate of title for the Property. (R. 66-67); *JJD Realty, LLC*, 307 So. 3d at 52. This Court noted that there was no action on the pending motion to issue certificate of title filed on January 7, 2019 until the order on October 23, 2019. *Id.* As

such, entry of a *nunc pro tunc* order was impermissible and erroneous. *Id.*

On August 23, 2022, a new Certificate of Title was issued to JJD Realty pursuant to this Court's mandate and was not *nunc pro tunc*. (R. 74).

**C. JJD Realty files an action to quiet title to the Property and the Alis counterclaim to quiet title; JJD Realty later seeks summary judgment in its favor.**

On September 20, 2022, JJD Realty filed an action against Jessico and the Alis seeking to quiet title to the Property. (R. 11). JJD Realty recited the deraignment of title and facts surrounding its purchase of the Property through the HOA Foreclosure Action. (R. 12-16). JJD Realty asserted that title to the Property was vested in JJD Realty as the HOA's foreclosure action survived the Lender's Foreclosure Action and the Defendants had constructive notice of the HOA's Foreclosure Action. (R. 16).

After the trial court denied Defendants' motions to dismiss (R. 103, 105), the Alis filed an Answer, Affirmative Defenses and Counterclaim seeking to quiet title to the Property in the Alis. (R. 107). Jessico filed its Answer and Affirmative Defenses. (R. 115).

JJD Realty later filed a Motion for Summary Judgment. (R. 293). JJD Realty argued that the lis pendens in the HOA Foreclosure Action was never withdrawn, and so remained in effect until the Certificate of Title issued in the HOA Foreclosure Action on October 25, 2019. (R. 299-300). The Certificate of Title in the HOA Foreclosure Action issued after the Certificate of Title to Jessico and the deed from Jessico to Anesha Ali and Ishar Ali, and from Sihar Ali and Fizam Ali. (R. 300). JJD Realty argued that all Defendants had notice of the pending HOA Foreclosure Action due to the lis pendens. (R. 300).

JJD Realty argued further that, assuming it was a junior lienholder, its rights were unaffected by foreclosure of the senior mortgage because it was not named as a party to the Lender's Foreclosure Action. (R. 301). Accordingly, title to the Property vested in JJD Realty when the Certificate of Title issued in the HOA Foreclosure. (R. 301-302).

Jessico filed a Response arguing that the Lender's Foreclosure Action was already pending before the filing of the HOA Foreclosure Action. (R. 379). Jessico argued that JJD Realty's interest purchased at the foreclosure sale in the HOA Foreclosure Action was

subordinate to the first mortgage holder's interest that was pending its own foreclosure sale. (R. 380). The Alis also filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. (R. 384). The Alis argued that the HOA Foreclosure Action was subordinate and inferior to the lender Foreclosure Action so that JJD Realty's ownership rights in the Property were also subordinate and inferior. (R. 386).

**D. The trial court denies JJD Realty's Motion for Summary Judgment and enters Final Judgment for Defendants ruling that JJD Realty has no right or interest in the Property.**

The Defendants did not file their own motions for summary judgment. (R. 442). However, the parties stipulated that the trial court could enter summary judgment for the Plaintiff, or for the Defendants, pursuant to Fla. R. Civ. P. 1.510(f). (R. 442). They requested that the trial court grant summary judgment for one side or the other. (R. 442).

The trial court held a hearing on Plaintiff's Motion for Summary Judgment. (R. 525). The court noted at the outset that the parties had stipulated to the facts and that the case was right for summary judgment for one side or the other. (R. 530-531). The court also

expressly stated that the court had reviewed the case files from the two related foreclosure actions. (R. 530). The parties' counsels presented argument.

On June 14, 2024, the trial court entered its "Order Denying Plaintiff's Motion for Summary Judgment and Entry of Judgment in Favor of Defendants". (R. 513). The trial court found the mortgage of Lord Mortgage that was assigned to the Lender and foreclosed in the Lender's Foreclosure Action to be an institutional mortgage. (R. 518). The trial court also rejected as "misplaced" JJD Realty's argument that Article 7.3 of the Declaration was inapplicable because the foreclosure sale in the HOA Foreclosure Action occurred before the foreclosure sale in the Lender's Foreclosure Action. (R. 518).

The trial court found that "Jessico's acquisition of the Property at the foreclosure sale in the Lender's Foreclosure Action—and not JJD Realty's purchase of the Property in the HOA's Foreclosure Action—extinguished the Claim of Lien." (R. 518). The trial court found that Jessico foreclosed on all persons' interests upon filing the Certificate of Sale in the Lender Foreclosure Action, several months prior to the Certificate of Title being filed in the HOA Foreclosure

Action. (R. 519). The trial court found that Jessico's purchase of the Property in the foreclosure sale, and the filing of its Certificate of Sale, extinguished the Claim of Lien as to unpaid assessments and foreclosed JJD Realty's interest. (R. 520). The trial court found that JJD Realty was on constructive notice of the superior lien on the Property. (R. 520).

The trial court denied JJD Realty's Motion for Summary Judgment and dismissed all of JJD Realty's claims against the Defendants with prejudice. (R. 520-521). The trial court granted summary judgment in favor of the Defendants and entered final judgment in their favor. (R. 521). The trial court quieted title in the Alis and found that "Plaintiff JJD Realty, LLC and all persons claiming under them, have no estate, right, title, lien, or interest in or to the Property or any part of the Property." (R. 521).

This appeal follows.

## **SUMMARY OF THE ARGUMENT**

The trial court erred in denying JJD Realty's Motion for Summary Judgment and entering final judgment in favor of the Appellees. The Association had a recorded Claim of Lien prior to the initiation of the Lender's Foreclosure Action and in any event, the Association had recorded the Amended Claim of Lien and lis pendens prior to the sale to Jessico, LLC. JJD Realty's interest survived the sale in the Lender's Foreclosure Action due to the Association (through which JJD Realty claimed) not being named as a defendant. Accordingly, title to the Property vested in JJD Realty when the Certificate of Title from the sale in the HOA's Foreclosure Action issued. Title continued to be vested in JJD Realty and JJD Realty was entitled to summary judgment in its favor.

Even if title was not vested in JJD Realty, it was squarely erroneous under settled Florida foreclosure law to enter judgment quieting title in the Alis and find that JJD Realty had no right or interest in the Property. The central issue is whether the Lender's Foreclosure Action foreclosed the Association's lien. The answer to that question is no. The Association's Claim of Lien was recorded

prior to the Lender's Foreclosure Action *lis pendens*, and the Association was never made a party to that action. Florida law is clear that, in such a situation, the rights of JJD Realty (claiming through the Association) survive the mortgage foreclosure sale. Appellees' only remedy would be to file a re-foreclosure action in which JJD Realty would have a right to redeem.

The trial court also erroneously concluded that the Certificate of Sale issued in the Lender's Foreclosure Action extinguished the HOA's Claim of Lien, under Article 7.3 of the Declaration. The Association had already obtained Final Judgment of Foreclosure as to its Claim of Lien in the HOA's Foreclosure Action prior to the sale in the Lender's Foreclosure Action. Where a lienholder forecloses its lien and obtains a foreclosure judgment, the lien merges into that judgment and is thereby extinguished. Accordingly, the Final Judgment of Foreclosure already obtained by the HOA in the HOA's Foreclosure Action prior to that time extinguished the Claim of Lien by merger into the Final Judgment.

Article 7.3 thus had no operation as against the HOA's interest on which it had obtained judgment. The issuance of the Certificate of

Sale in the Lender's Foreclosure Action failed to extinguish the HOA's Claim of Lien, and those rights survived. Even if its interest was subordinate, it was not extinguished under Article 7.3 of the Declaration and JJD Realty retained a right of redemption.

Summary judgment in favor of Defendants was not appropriate on any grounds argued by the parties not relied upon by the trial court. Scrivener's errors throughout the chain of title do not change the outcome. JJD Realty's actions in the Lender's Foreclosure Action do not change the outcome as they do not provide grounds for a valid estoppel argument.

## **STANDARD OF REVIEW**

This Court should apply a de novo standard of review to the trial court's order on summary judgment. *Blew v. Blew*, 358 So. 3d 1232, 1234 (Fla. 4th DCA 2023) ("The standard of review on a motion for summary judgment is de novo.") (citing *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000)). See also *Brown v. Regan*, 368 So. 3d 3, 4 (Fla. 4th DCA 2023); *Smith v. Babcock*, 365 So. 3d 510, 514 (Fla. 6th DCA 2023).

## ARGUMENT

**I. The trial court erred in denying JJD Realty’s Motion for Summary Judgment and entering Final Judgment for Defendants ruling that JJD Realty has no right or interest in the Property, where JJD Realty’s interest survived the mortgage foreclosure sale due to the Association not being named as a defendant in the Lender’s Foreclosure Action.**

**A. The Lis Pendens did not expire and was not discharged until the Certificate of Title was issued in the HOA’s Foreclosure Action.**

Florida law is clear that a recorded lis pendens gives notice to a prospective purchaser and protects the interests of a claimant against a subsequent bona fide purchaser. *Chiusolo v. Kennedy*, 614 So. 2d 491, 492 (Fla. 1993). A lis pendens “is simply a notice of pending litigation.” *Westburne Supply, Inc. v. Community Villas Partners, Ltd.*, 508 So. 2d 431, 434 (Fla. 1st DCA 1987).

“The purpose of a notice of lis pendens is . . . ‘to alert creditors, prospective purchasers and others to the fact that the title to a particular piece of real property is involved in litigation.’” *Schachter v. Krzynowek*, 958 So. 2d 1061, 1064 (Fla. 4th DCA 2007) (quoting *S & T Builders v. Globe Props., Inc.*, 944 So. 2d 302, 303 n.1 (Fla. 2006)). See also *Westburne Supply, Inc.*, 508 So. 2d at 434 (describing

purpose as “to notify prospective purchasers and encumbrancers that any interest acquired by them in the property in litigation is subject to the decree of the court.”). “The notice merely serves to protect the interests of a lien claimant against a subsequent bona fide purchaser by giving constructive notice of the claim of lien where actual notice has not been given.” *Id.* at 435.

Accordingly, consistent with the recognized purpose of a *lis pendens*, “persons acquiring an interest in property that is a subject of litigation are bound by, or entitled to the benefit of, a subsequent judgment.” *Petkovich v. Sandy Point Condo. Apartments Ass’n Inc.*, 325 So. 3d 201, 203 (Fla. 3d DCA 2021) (citing *Golden State Bottling Co., Inc. v. N.L.R.B.*, 414 U.S. 168, 179 (1973)). Section 48.23(1)(d), Fla. Stat. provides that “[a] valid recorded notice of *lis pendens* of such [foreclosure] proceedings prosecuted to a judicial sale remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment unless it expires, is withdrawn, or it is otherwise discharged.”

Here, the *lis pendens* in the HOA’s Foreclosure Action was not withdrawn and was not otherwise discharged during the pending

foreclosure actions. That *lis pendens* also did not expire because a foreclosure suit for unpaid assessments is founded upon a duly recorded instrument – the Association Declaration and Claim of Lien. § 48.23(2), Fla. Stat.; § 720.301(4), Fla. Stat. Accordingly, the *lis pendens* remained in effect until the Certificate of Title was issued in the HOA’s Foreclosure Action, which is after the Certificate of Title issued to Jessico LLC and both of the subsequent deeds.

The HOA’s *lis pendens* remained in effect at the time of the sale in the Lender’s Foreclosure Action. The purchasers therefore had notice of the HOA Foreclosure Action and judicial sale to JJD Realty. Additionally, Jessico LLC had notice of the HOA’s lien and foreclosure action as both the Amended Claim of Lien and *lis pendens* were recorded prior to the sale. All Defendants were on notice of the pending HOA Foreclosure Action due to the validly recorded *lis pendens*. Thus, the Property was sold subject to the HOA’s pending foreclosure action.

The HOA had a recorded Claim of Lien prior to the initiation of the Lender’s Foreclosure Action and in any event, the HOA had recorded the Amended Claim of Lien and *lis pendens* prior to the sale

to the Appellees. Since the HOA's rights through which JJD Realty obtained its interest survived the sale in the Lender's Foreclosure Action due to the HOA not being named as a defendant, title to the Property vested in JJD Realty when the Certificate of Title from the HOA's Foreclosure Action issued. Title should have been quieted against the Defendants whose interest was foreclosed by the Certificate of Title in the HOA Foreclosure Action.

**B. JJD Realty's rights and interest survived the foreclosure sale in the Lender's Foreclosure Action where the HOA through which it claimed was not named as a defendant.**

It was squarely erroneous under settled Florida foreclosure law to enter judgment quieting title in the Alis and find that JJD Realty had no right or interest in the Property.

The Florida Supreme Court has clearly held that, where a senior mortgage has been foreclosed and a junior lienholder was not made a party to that action, the decree is binding as to those who were joined as parties but does not affect the rights of the junior lienholder who was omitted. *Quinn Plumbing Co. v. New Miami Shores Corp.*, 129 So. 690 (Fla. 1930); *Abdoney v. York*, 903 So. 2d 981, 983 (Fla. 2d DCA 2005). Thus, when a party holding a subordinate lien is omitted

as a party to the foreclosure of a senior mortgage, the junior lienholder is unaffected by the judgment:

[F]or a junior lien to be wiped out as a result of senior lien foreclosure, the senior lien holder must join the junior lien holder as a defendant to the senior lien foreclosure action; a failure to do so leaves the junior lien intact and the junior lien holder in the same position as if no foreclosure took place.

*Willoughby Estates v. BankUnited*, 2015 WL 5472506 (Fla. 15th Cir., June 23, 2015). *See also Abdoney*, 903 So. 2d at 983.

In *Abdoney*, a junior lienholder was dropped as a party to a foreclosure action because he was not named in the amended complaint. 903 So. 2d at 982. The trial court entered a final judgment and the property was sold at a judicial sale. *Id.* The junior lienholder later filed a new foreclosure action with a different case number, seeking foreclosure and redemption. *Id.* The purchaser of the property in the sale resulting from the prior action sought to bar the junior lienholder's foreclosure action. *Id.* The trial court ruled that the junior lienholder's lien was extinguished by the certificate of sale in the prior foreclosure action and that he was barred from bringing the subsequent action. *Id.*

The appeals court reversed, holding that the junior lienholder's rights were unaffected by the prior sale and explaining the effects on the various interests involved:

When a junior mortgagee is omitted as a party to the foreclosure of a senior mortgage, the lien of the junior mortgagee is unaffected by the judgment. . . . The lien of the senior mortgagee is likewise not extinguished by the irregular foreclosure action; instead, the purchaser at the foreclosure sale "becomes virtually an equitable assignee of the mortgage and of the debt it secured." *Quinn Plumbing*, 129 So. at 692. The purchaser "occupies the same position as the first mortgagee, ... which may be enforced by such purchaser against the junior mortgagee to the same extent as they could have been enforced in the original foreclosure, had the junior mortgagee been made a party thereto." *Id.*

The only remedies of the purchaser against the omitted junior mortgagee are moving to compel redemption or re-foreclosure in a suit de novo. See *Kurz v. Pappas*, 116 Fla. 324, 156 So. 737, 741 (1934); *Quinn*, 129 So. at 692. The omitted junior mortgagee may defend in the same manner as if the foreclosure had not happened. *Quinn*, 129 So. at 692.

The remedies of the omitted junior mortgagee against the purchaser are redemption and foreclosure. Nelson, *supra*, § 7.15, at 573–74. Foreclosure by the junior mortgagee with a resulting sale is subject to the first mortgage, which is revived. The purchaser will take the property subject to the first mortgage. *Id.* at 574. Pursuant to section 45.0315, the omitted junior mortgagee cannot independently

exercise the right to redeem in the original foreclosure action after the certificate of sale has been filed. *Burns v. Bankamerica Nat'l Trust Co.*, 719 So. 2d 999, 1001 (Fla. 5th DCA 1998). If redemption is accomplished, the junior mortgagee holds both a senior and junior mortgage on the property, and he may foreclose either or both of them. Nelson, *supra*, § 7.15, at 575.

*Id.* at 983-984 (Emphasis added).

Here, the Property was sold subject to the rights and interest of the HOA because the HOA was not named in the Lender's Foreclosure Action despite having a recorded Claim of Lien on the Property at the time the lawsuit commenced. The rights of the HOA that was omitted from the Lender's Foreclosure Action, "remain[ed] precisely as they were before the proceedings were instituted [and were] neither enlarged nor diminished by the defective foreclosure." *Quinn Plumbing Co.*, 129 So. at 692. The situation was the same as if no foreclosure had occurred. *Id.* Under well-established Florida law, the HOA's rights and interest (and thus JJD Realty's) survived the foreclosure sale in the Lender Foreclosure Action.

In *MST Corporation v. Caribe Ins. Agency Corp.*, 314 So. 3d 432, 433 (Fla. 3d DCA 2020), the holder of a first mortgage on real property sued to foreclose its mortgage but omitted a junior

mortgagee from the action. The trial court entered final judgment of foreclosure in the amount of \$183,378. *MST Corporation*, 314 So. 3d at 433. MST acquired the property for \$302,100. *Id.* The junior mortgagee later sued to foreclose its junior mortgage. MST counterclaimed to re-foreclose the first mortgage and argued that the junior mortgage holder would have to pay it the \$302,000 it had paid for the property plus interest to exercise the right of redemption. *Id.* The trial court ruled that the junior lienholder was only required to pay \$183,378 as the redemption amount, and MST appealed. *Id.*

The appeals court reaffirmed that an omitted junior mortgagee retains a right of redemption. *Id.* The appeals court affirmed the trial court's determination of the redemption amount. *Id.* at 433-434. The appeals court held that "the trial court correctly determined that [omitted junior mortgagee] Caribe is entitled to pay the redemption amount it would have been required to pay if it had been joined in the 2012 foreclosure action and had elected to redeem promptly upon the filing of the first foreclosure." *Id.* (citing *Quinn Plumbing Co.*, 129 So. at 693; *Tejedo v. Sec'y of Veteran Affairs*, 673 So. 2d 959, 960

(Fla. 3d DCA 1996); *Miami-Dade Cty. v. Imagine Props., Inc.*, 752 So. 2d 129 (Fla. 3d DCA 2000)).

Here, Appellant did not explicitly concede that the HOA was a junior lienholder but Appellant maintained for purposes of the Motion for Summary Judgment that the result is the same as the HOA's rights survived the foreclosure sale in the Lender Foreclosure Action. (R. 300 n.1). If the HOA is a junior lienholder, its right of redemption remained intact. JJD Realty retains a right to redeem or foreclose on the Property.

The Alis relied upon this Court's opinion in *Jallali v. Knightsbridge Village Homeowners Association, Inc.*, 211 So. 3d 216 (Fla. 4th DCA 2017) in opposition to JJD Realty's Motion for Summary Judgment. (R. 389). There are two pivotal distinguishing factors between the present case and *Jallali*. In *Jallali*, the HOA's claim of lien was recorded *after* the lis pendens in the Lender Foreclosure Action. 211 So. 3d at 217. In contrast, in the present case, the HOA's claim of lien was recorded *before* the lis pendens in the Lender Foreclosure Action. (R. 34, 39). Additionally, the lender in *Jallali* had named the association as a defendant in the lender's

foreclosure action. *Id.* Here, the HOA was not named as a defendant in the Lender Foreclosure Action.

The other cases cited by the Alis in opposition to JJD Realty's Motion for Summary Judgment involved plaintiffs seeking to quiet title despite lacking title to all or part of a parcel of real property. *Hill v. Da Costa*, 61 So. 750, 751 (Fla. 1913); *Barclay v. Robert C. Malt & Co., Inc.*, 985 So. 2d 53, 54 (Fla. 4th DCA 2008). Those cases are obviously distinguishable from the instant case. JJD Realty has a Certificate of Title conveying the subject property to it and has not reconveyed this property to another party.

If the Association's lien was an inferior lien, it would need to be foreclosed like any other inferior interest. This never happened. The Association was not named as a party to the Lender Foreclosure Action and therefore, the Association's rights survived the mortgage foreclosure sale. Again, it is well established that the remedies of a purchaser at a foreclosure sale against an omitted junior lienholder is a motion to compel redemption by the junior, or re-foreclosure in a suit de novo. *Abdoney*, 903 So. 2d at 983; *Marina Funding Group, Inc. v. Peninsula Prop. Holdings, Inc.*, 950 So. 2d 428, 430 (Fla. 4th

DCA 2007). Thus, if indeed the HOA lien is an inferior lien, there is a process to remove the inferior lien that was omitted in the foreclosure in the form of filing a re-foreclosure action. Appellees pursued neither of these available established remedies and instead went through the back door to wrongly strip JJD Realty of its right of redemption. Nor did Appellees pay off the HOA's lien, despite having the opportunity.

In a re-foreclosure action, the omitted junior mortgagee may defend in the same manner as if the initial foreclosure had not happened. *Id.* Appellees do not want JJD Realty's right of redemption to see the light of day. Instead, they want to argue that JJD Realty has already been foreclosed even though the Association was never made a party to the Lender Foreclosure Action and had a claim of lien recorded prior to the mortgage foreclosure lis pendens. The Ali Defendants intentionally did not assert a count for re-foreclosure in their counterclaims because (1) they are not entirely sure whether the HOA lien is an inferior lien; and (2) a re-foreclosure action would provide a right of redemption to JJD Realty (which it would certainly exercise). So instead, the Ali Defendants are posturing in a way to strip JJD Realty of its right of redemption by arguing that JJD Realty

has already been foreclosed notwithstanding the fact that the Association's lien was recorded prior to the mortgage foreclosure's lis pendens and the Association was not named as a party to that action.

**C. Article 7.3 of the Declaration did not apply to extinguish the HOA's rights and interest where the Final Judgment and Certificate of Sale in the HOA Foreclosure Action issued prior to the Certificate of Sale in the Lender's Foreclosure Action and the assessment lien merged into the Final Judgment.**

The basis for the trial court's ruling on appeal lies in Section 7.3 of the Association's Declaration of Covenants, Restrictions and Easements dated October 26, 2001 ("Declaration") pertaining to the Property. (R. 518-519). But the Declaration fails to support the trial court's ruling. Article 7.3 of the Declaration provides:

7.3 Subordination of the Lien to Institutional Mortgage

Anything herein to the contrary notwithstanding, the lien securing Assessments provided for in this Declaration shall be subordinate to the lien of any Institutional Mortgage, which is arms-length, made in good faith and not intended to avoid said lien, and recorded prior to the date on which a Notice of Lien is recorded. The sale or transfer of any Lot shall not affect the Assessment Lien. However, the sale or transfer of any Lot pursuant to foreclosure of such Institutional Mortgage or deed in lieu thereof (if such Institutional Mortgage was recorded prior to the recording of a Notice of Lien) shall extinguish the

Assessment Lien as to installments and other sums which became due prior to such sale or transfer. Such sale or transfer shall also extinguish the personal liability for such Assessments as to such transferees; provided, however, no sale or transfer shall relieve such Lot from liability for any installments of Assessments thereafter becoming due or from the lien thereof.

(R. 517, 636-637) (Emphasis added).

Neither Appellees nor the trial court cited any case law supporting the assertion that the language in the Declaration would mean that a foreclosing lender does not need to name an association in order to foreclose its interest and foreclose its lien. Yet even assuming arguendo such an assertion could be true, it would not determine the result under the facts of this case because Article 7.3 does not apply. The trial court's conclusion regarding the applicability of Article 7.3 of the Declaration misconstrues, or simply ignores, the effect of determinative events in the procedural history of the case.<sup>1</sup>

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<sup>1</sup> The trial court rejection of JJD Realty's argument that the mortgage foreclosed in the Lender's Foreclosure Action was not an "institutional mortgage" under Article 1.17 of the Declaration becomes irrelevant in light of the inapplicability of Article 7.3.

The foreclosure sale is the triggering event under the plain language of Article 7.3. The language of the Final Judgment in the Lender’s Foreclosure Action states that “[o]n the filing of the Certificate of Sale”, the Defendant’s right of redemption would terminate and “the Defendant and all persons claiming an interest in the subject property or claiming under or against Defendant since the filing of the Notice of Lis Pendens shall be foreclosed.” (R. 45, at ¶ 7). But Jessico purportedly acquired the Property at the foreclosure sale in the Lender’s Foreclosure Action on January 8, 2019. (R. 791). By that time, the HOA had already obtained a Final Judgment on its Claim of Lien in the HOA’s Foreclosure Action, and a judicial sale had occurred at which JJD Realty purchased the Property. (R. 63).

This Court has recognized that “[w]here a lienholder forecloses its lien and obtains a foreclosure judgment against the property owner, the lien merges into that judgment and the lienholder becomes a judgment creditor.” *Mathieu v. City of Lauderdale Lakes*, 961 So. 2d 363, 365 (Fla. 4th DCA 2007) (citing *All State Plumbing v. Mut. Sec. Life Ins. Co.*, 537 So.2d 598, 599 (Fla. 3d DCA 1988) and *Nassau Realty Co. v. City of Jacksonville*, 144 Fla. 754, 198 So. 581

(1940)). “In judgments and decrees rendered in suits foreclosing a preexisting lien the establishment of the lien is accomplished by the judgment or decree and the lien foreclosed is by the judgment of the court merged into the judgment or decree.” *Ferry v. E-Z Cashing LLC*, 361 So. 3d 905, 908 (Fla. 2d DCA 2023) (quoting *Nassau Realty Co.*, 198 So. at 582). *See also Nack Holdings, LLC v. Kalb*, 13 So. 3d 92, 94 n.2 (Fla. 3d DCA 2009) (“The [foreclosed] mortgage is merged into the judgment, is thereby extinguished, and “loses its identity.”).

Here, the HOA’s assessment lien had already merged into the Final Judgment of Foreclosure obtained in the HOA Foreclosure Action prior to Jessico LLC obtaining any interest in the Property. Accordingly, the trial court’s rejection of JJD Realty’s argument that “there was no lien to foreclose” (R. 518) by the time Jessico LLC purported to purchase the property is clearly incorrect. The trial court’s ruling violates the principal that a foreclosed lien merges into the judgment and the lien is extinguished.

The Final Judgment of Foreclosure obtained in the HOA Foreclosure Action extinguished the lien by merger into the judgment. Jessico’s acquisition of the Property at the foreclosure sale

in the Lender's Foreclosure Action could not have done so. The trial court's conclusion that Jessico's purchase of the Property in the Lender's Foreclosure Action and the filing of the Certificate of Sale extinguished the Claim of Lien (R. 520) is erroneous. Nor did the language of Article 7.3 purport to extend to extinguish judgments based on such liens.

Whether JJD Realty had notice of the allegedly superior lien does not change the result. In *Abdoney*, the junior lienholder was actually aware of the allegedly superior lien, as he was initially a named party to the mortgage lender's foreclosure action before later buying out the first mortgage and dropping himself as a party in an amended complaint. 903 So. 2d at 982. The appeals court still firmly held that, having not been named, the junior lienholder's interest was not affected by the mortgage foreclosure sale. *Id.* at 983-984. Thus, the trial court's finding that "JJD [Realty] was on constructive notice of the superior lien on the property" is irrelevant to whether JJD Realty's interest was foreclosed by the sale in the Lender's Foreclosure Action. It was not.

**D. Summary Judgment was not appropriate for any grounds not relied upon by the trial court.**

To be thorough, JJD Realty will address several issues not mentioned by the trial court but addressed in the parties' filings.

**1. Scrivener's errors throughout the chain of title do not change the outcome.**

The original Claim of Lien recorded by the Association contained a scrivener's error in the name of the lienee. (R. 34). This scrivener's error was corrected by an Amended Claim of Lien that was recorded after the mortgage foreclosure lis pendens. (R. 39). However, there are several other scrivener's errors in the chain of title including in the name of the assignee in the mortgage assignment, legal description in the mortgage foreclosure lis pendens, legal description in the mortgage foreclosure complaint, legal description in the mortgage foreclosure final judgment, and legal description in the mortgage foreclosure certificate of title issued to Jessico. These errors do not change the outcome, as the Association's lien was never foreclosed by the mortgage foreclosure.

The assignment of the mortgage from Lord Mortgage & Loan, Inc. to Adrienne Torsiello misspelled the assignee's name as

“Adrienne Torciello”. (R. 715). The mortgage foreclosure case was then filed with the correct spelling of the assignee’s name as Adrienne Torsiello (R. 699), but the underlying assignment was never corrected. If indeed a scrivener’s error in a name renders a recorded document affecting title invalid, then the plaintiff in the mortgage foreclosure was never actually assigned the mortgage and had no standing to foreclose. However, this is not what is being argued and JJD Realty merely asserts that a scrivener’s error in a name does not affect the validity of a recorded document where the legal description of the property is correct.

Additionally, the mortgage foreclosure case had an incorrect legal description of the subject property by misspelling the subdivision’s name as “Jonathan’s Creel” when the correct name is “Jonathan’s Creek”. (R. 700). This scrivener’s error was carried into the lis pendens, complaint, final judgment, and certificate of title that was issued to Jessico. (R. 36; 700; 716; 726; 731). JJD Realty’s Certificate of Title has no such error. (R. 74).

In *Caddy v. Wells Fargo Bank, NA*, “there was a single numerical error in the deed description that was carried into the amended

complaint and consent judgment.” 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016). This Court held that “[b]ecause the erroneous legal description was discovered after the final judgment and foreclosure sale, the court could not simply correct the legal description in the judgment and certificate of title [and that] ‘[r]ather, reformation required vacating the final judgment, judicial sale, and issuance of title.” *Caddy*, 198 So. 3d 1149 (citing *Fed. Nat’l. Mortg. Ass’n. v. Sanchez*, 187 So. 3d 341, 343 (Fla. 4th DCA 2016)).

Again, if Appellees argue that the scrivener’s error somehow renders the Claim of Lien invalid, then all of the recorded documents with scrivener’s errors should be thrown out leaving the only valid relevant documents being the Association’s Amended Claim of Lien and JJD Realty’s Certificate of Title which contained no scrivener’s errors.

**2. JJD Realty’s actions in the Lender’s Foreclosure Action do not change the outcome.**

Jessico LLC made several arguments relating to JJD Realty’s actions or inactions taken in the mortgage foreclosure sale. JJD Realty’s actions in the Lender’s Foreclosure Action do not change the outcome. Either the mortgage foreclosure foreclosed the Association’s

lien or it did not. As discussed above, it did not because the Association was not a party to the action and the lien had merged into the Final Judgment obtained in the HOA Foreclosure Action by the time of the judicial sale to Jessico LLC.

Jessico LLC further argues that JJD Realty mentioned in a motion that the Association's lien was inferior to the mortgage. In essence, this is an estoppel argument. But there are several reasons why this is not a valid estoppel. Most importantly, there can be no estoppel where "the positions taken involved solely a question of law." *Ramsey v. Jonassen*, 737 So.2d 1114, 1116 (Fla. 2d DCA 1999). JJD Realty's prior attorney's statements regarding the priority of the liens are conclusions of law and cannot form the basis for estoppel. Further, the elements of an estoppel defense require that:

(1) the party against whom estoppel is sought must have made a representation about a material fact that is contrary to a position it later asserts; (2) the party claiming estoppel must have relied on that representation; and (3) the party seeking estoppel must have changed his position to his detriment based on the representation and his reliance on it.

*Goodwin v. Blu Murray Ins. Agency, Inc.*, 939 So.2d 1098 (Fla. 5th DCA 2006).

Here, none of these elements are present. A statement by JJD Realty's prior counsel that the mortgage was a superior lien is a conclusion of law (a potentially incorrect one at that), not a statement of material fact. There was no assertion that anyone relied on that representation nor was there any indication that anyone changed their position to their detriment. There is no valid estoppel argument.

Additionally, it is confusing as to why JJD Realty's prior counsel would claim that the Association's lien is inferior in the referenced Motion to Vacate Sale when prior counsel asserted in the very same Motion in paragraph 15 that "the mortgage is not an institutional mortgage, rather the mortgagee/plaintiff is a private party named, Adrienne Torsiello." (R. 664). A cursory review of the Association's Declaration would show that the Declaration has a "relate back" provision that all liens for assessments relate back to the filing of the Declaration except in the case of institutional mortgages. If the subject mortgage is not an institutional mortgage, then the Association's lien would be a superior lien regardless of when a claim of lien is recorded because it would relate back to the recording date of the Declaration. This issue is purely academic though; this case

can be decided without having to decide whether the subject mortgage was an institutional mortgage because the Association's Claim of Lien was recorded prior to the mortgage foreclosure's lis pendens and therefore the Association was required to be named as a party in order for its lien to be foreclosed.

### **CONCLUSION**

The applicable law and facts compel the conclusion that title in the subject Property is vested in JJD Realty and JJD Realty is entitled to quiet title against the Appellees. Even if title is not vested in JJD Realty, well-settled Florida law compels the conclusion that JJD Realty's interest was clearly not foreclosed by the Lender's Foreclosure Action because the Association through which it claims was not named as a defendant in that proceeding.

WHEREFORE Appellant, JJD REALTY, LLC, respectfully requests that this Court reverse the "Order Denying Plaintiff's Motion for Summary Judgment and Entry of Judgment in Favor of Defendants" rendered June 14, 2024 with instruction summary final judgment be entered in favor of Appellant, and grant Appellant its appellate attorney's fees incurred in this proceeding.

## **EXHIBIT A**

### **Timeline of Events in Related Cases**

#### **2015**

- 11/17/2015 Barnes executes mortgage with Lord Mortgage and records it (R. 23).
- 11/19/2015 HOA records Claim of Lien. (R. 34).
- 12/10/2015 Lord Mortgage assigns mortgage to Torsiello (Lender) (R. 715).

#### **2017**

- 10/19/2017 Lender initiates foreclosure action without naming HOA as a defendant. (R. 699).
- 11/07/2017 Lender records lis pendens. (R. 36).

#### **2018**

- 06/14/2018 HOA initiates foreclosure action of the assessment lien (R. 624).
- 06/15/2018 HOA records lis pendens (R. 41).
- 09/13/2018 Final Judgment in Lender's Foreclosure Action (R. 43).
- 10/24/2018 Final Summary Judgment of Foreclosure in HOA's Foreclosure Action (R. 55).
- 11/29/2018 Judicial sale in HOA's Foreclosure Action, JJD Realty purchases the Property (R. 63).
- 12/04/2018 Barnes files various objections and motions to sale in the HOA Foreclosure while filing nothing

to stop the imminent sale in the Lender's Foreclosure Action. Barnes fails to redeem. (R. 656, 658, 671, 675-678).

## **2019**

- 01/08/2019 Judicial sale conducted in the Lender's Foreclosure Action and Jessico, LLC purchases the Property. (R. 791).
- 01/11/2019 Barnes withdraws Motion to Extend Redemption Period in HOA's Foreclosure Action. (R. 679).
- 01/21/2019 JJD Realty files Motion to Vacate Sale and Return Funds Paid to Purchase Property. (R. 660).
- 01/24/2019 Certificate of Title issued to Jessico in Lender Foreclosure Action and recorded. (R. 61).
- 10/23/2019 Trial court in the HOA Foreclosure Action denies JJD Realty's Motion to Vacate Sale. (R. 680).
- 10/25/2019 Certificate of Title issued to JJD Realty and recorded; erroneously *nunc pro tunc* to 01/11/2019. (R. 63).
- 04/16/2019 Jessico sells Property to Anesha Ali and Ishar Ali. (R. 69).

## **2020**

- 11/12/2020 This Court reverses *nunc pro tunc* order directing clerk to issue a certificate of title for

the Property. (R. 66-67); *JJD Realty, LLC v. Artesa Homeowners' Association, Inc.*, 307 So. 3d 51 (Fla. 4th DCA 2020).

**2022**

- 08/23/2022 Certificate of Title issued to JJD Realty pursuant to this Court's mandate (R. 74).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I CERTIFY that, on this 14th day of October 2024, a true and correct copy hereof was electronically filed and furnished pursuant to Fla. R. Jud. Admin. 2.516 via e-mail at the following e-mail addresses:

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### **CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY, pursuant to Rule 9.045(e), that this brief complies with the font and word-count limit requirements of Rule 9.045(b) and 9.210. This brief uses Bookman Old Style, 14-point typeface. As determined by the word-processing system used to prepare the document, the word count subject to the rule's limitations is **8,011**.