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

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

JJD REALTY, LLC,

Appellant,

vs.

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

Appellees.

REPLY 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 Reply 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".

References to the Record on Appeal and appellate briefs are made as follows:

(R.__) = Record On Appeal, consisting of pages 1-824;

(IB.__) = Initial Brief of Appellant filed October 14, 2024;

(AB.__) = Answer Brief of the Alis filed November 12, 2024;

(AB2.__) = Answer Brief of Jessico filed November 19, 2024.

SUMMARY OF THE ARGUMENT

Whether or not JJD Realty exercised due diligence is irrelevant. Florida law is clear that when a junior lienholder is omitted as a party to the foreclosure of a senior lien, the junior lienholder is unaffected by the judgment. Accordingly, the Final Judgment in the Lender's Foreclosure Action failed to extinguish the HOA's rights where the HOA was not named as a party to that action. Appellees' attempts to fault JJD Realty for bidding on the property in the HOA's Foreclosure Action fail to alter the operation of Florida law.

Jallali is distinguishable. This Court in *Jallali* held only that the filing of a notice of lis pendens by the first mortgage holder did not bar an association's foreclosure action based upon a claim of lien for unpaid assessments filed after the notice of lis pendens, though the association's action was inferior. Here, the HOA's claim of lien in this case was recorded before the lis pendens in the Lender Foreclosure Action. Regardless, the priority of the lien interests does not resolve the issue of whether the HOA's rights survived the Lender's Foreclosure Action and sale. *Jallali* does not support the assertion

that the Final Judgment or sale in the Lender's Foreclosure Action extinguished the HOA's rights.

The Declaration did not operate to extinguish the HOA's rights. The language of the Declaration made the sale or transfer of any lot the relevant event purporting to extinguish an assessment lien. Here, the sale did not occur until after the HOA's Claim of Lien had already merged into the Final Judgment in the HOA's Foreclosure Action by operation of law. Nor could the Amended Final Judgment in the Lender's Foreclosure Action purporting to bar or foreclose the HOA's lien operate to do so where the HOA was not a party to that action.

Res judicata and collateral estoppel do not apply where the identity of parties and issues litigated do not align. Appellees' arguments only highlight the problems caused by the Lender's failure to join the HOA as a party in the Lender's Foreclosure Action. Additionally, the trial court in the Lender's Foreclosure Action denied the HOA's request to intervene, and thus had no ability to adjudicate the nonparty HOA's rights regarding its lien.

Appellees' remaining arguments in the Answer Brief fail to establish grounds to affirm the appealed order. JJD Realty has legal title, or undoubtedly at minimum retains an interest in the Property.

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 Mortgage foreclosure action.

A. Whether JJD Realty exercised due diligence is irrelevant because the Final Judgment in the Lender's Foreclosure Action failed to extinguish the HOA's lien where the HOA through which JJD Realty claims was not named as a party to that action.

Appellees attempt to avoid the application of settled black-letter Florida law unfavorable to their position by focusing on the "red herring" issue of whether JJD Realty exercised due diligence. Appellees' assertions regarding due diligence are completely inapposite because the issue of notice does not affect the result in this matter. This Court should dismiss such distractions and adhere to the dispositive settled principles of law.

As explained in the Initial Brief (IB. 21-29), Florida law is quite clear that when a junior lienholder is omitted as a party to the foreclosure of a senior lien, the junior lienholder is unaffected by the judgment. *Quinn Plumbing Co. v. New Miami Shores Corp.,* 129 So. 690 (Fla. 1930); *MST Corporation v. Caribe Ins. Agency Corp.,* 314 So. 3d 432, 433 (Fla. 3d DCA 2020); *Abdoney v. York,* 903 So. 2d 981, 983 (Fla. 2d DCA 2005); *Willoughby Estates v. BankUnited*, 2015 WL 5472506 (Fla. 15th Cir., June 23, 2015). It makes no difference whether the junior lienholder had notice of the proceeding to foreclose the senior lien if the junior lienholder was not a party to the action to foreclosure the senior lien.

Abdoney illustrates the foregoing point well, in circumstances where the omitted junior mortgagee was keenly aware of the proceeding to foreclose the senior mortgage. Abdoney was previously a defendant in the action to foreclose the senior mortgage prior to his buying out the first mortgage, being voluntarily dismissed as a defendant, and being substituted as plaintiff. 903 So. 2d at 982. Abdoney later sued to foreclose his *junior lien* on the property, and the defendant made the same argument as Appellees here, that

Abdoney was barred due to his status as a junior lienholder with notice of the prior proceeding to foreclose the senior mortgage. *Id.* at 982. The appeals court squarely rejected the argument that Abdoney's notice of the prior foreclosure affected his interest, despite his admission that his actions were intentional:

> This case presents an unusual set of facts in that Abdoney, in his capacity as the senior mortgagee, omitted himself as a junior mortgagee from the original foreclosure action. Abdoney has admitted that this omission was intentional, but we cannot find any authority that would justify departing from the general rule that the lien of a junior mortgagee is not affected by a judgment of foreclosure to which he was not a party. Although Abdoney had notice of, and participated in, the judicial sale, he did so in his capacity as senior mortgagee and not as a junior mortgagee. Moreover, the evidence is undisputed that York was aware that Abdoney's junior mortgage was not listed in the final judgment of foreclosure.

Id. at 984 (emphasis added).

Accordingly, it is wholly irrelevant whether JJD Realty's bid at the sale in the HOA Foreclosure Action was a calculated decision made after informed consideration of the relevant facts, a mistake made without doing due diligence, or something else. The result of the Lender's failure to name the HOA as a defendant is that the HOA's

interest was unaffected. Appellees' numerous assertions that JJD Realty's interest could be extinguished if JJD Realty acted as "[a] result of lack of due care" or if JJD Realty "negligently and recklessly bid" on the property are off the mark. (AB. 14, 16-17). Appellees' attempts to assign fault to JJD Realty for bidding on the property in the HOA Foreclosure Action are simply insufficient to alter the operation of Florida law. Appellees' "straw man" characterization of JJD Realty's argument, "that [JJD Realty] lacked notice of the lender foreclosure action because it was not named as a party defendant" is obviously inaccurate. (AB. 17).

Abdoney explains the parties' interests resulting from a foreclosure where a junior lienholder is omitted. The HOA's lien was unaffected by the judgment in the Lender's Foreclosure Action. *Id.* at 983. Jessico LLC, as purchaser at the sale in the Lender's Foreclosure Action, at best became "virtually an equitable assignee of the mortgage and of the debt it secured." *Id.* Jessico LLC occupied the position of the Lender. Its remedies against the Association or anyone claiming through it were to move to compel redemption, or re-foreclose. *Id.*

Appellees' reliance upon this Court's decisions regarding equitable factors sufficient to set aside foreclosure sales, and excusable neglect for setting aside judgments under Fla. R. Civ. P. 1.540(b), is clearly misplaced. *Can Financial, LLC v. Niklewicz*, 307 So. 3d 33 (Fla. 4th DCA 2020) is distinguishable on the facts and legal issues. *Niklewicz* involved whether a third-party purchaser's claim of mistake was sufficient to set aside the purchase at a foreclosure sale. 307 So. 3d at 36-37. *Niklewicz* did not involve the question of whether the foreclosure of a senior mortgage extinguished the liens of junior mortgagees. The statements in *Niklewicz* that "a purchaser at a junior lien foreclosure sale takes the property subject to the superior lien" fail to resolve the instant appeal. *Id.* at 36. Similarly inapposite is *Suntrust Mortg. v. Torrenga*, 153 So. 3d 952, 953-955 (Fla. 4th DCA 2014) (holding that mortgage company established excusable neglect where its counsel failed to attend trial due to clerical error).

B. *Jallali* does not support the assertion that the Lender's Foreclosure Action extinguished the HOA's rights, as superiority of the Lender Foreclosure Action would still not extinguish the HOA's rights.

Jallali v. Knightsbridge Village Homeowners Association, Inc., 211 So. 3d 216 (Fla. 4th DCA 2017) is distinguishable and also provides no support for the assertion that the Final Judgment or sale in the Lender's Foreclosure Action extinguished the HOA's rights.

In *Jallali*, a lender sued for foreclosure and filed a lis pendens. The association filed its own foreclosure suit and obtained a default judgment while the lender's suit was still pending. 211 So. 3d at 217. The property owner later tried unsuccessfully to vacate the association's judgment. The issue this Court addressed on appeal was "whether the filing of the notice of lis pendens by the first mortgage holder constitutes a bar to the Association's foreclosure action based upon a claim of lien for unpaid assessments filed after the notice of lis pendens." *Id.* at 217-218. This Court held that there was no such bar, although the association's action was inferior to the foreclosure of the first mortgage. *Id.* at 217.

Jallali is distinguishable from the instant case. Unlike *Jallali*, the HOA's Claim of Lien the instant case was recorded *prior* to the

Lender filing the lis pendens regarding the Lender Foreclosure Action. (R. 34, 36). Also, unlike here, in *Jallali* "[t]he Lender named the Association as a defendant." *Id.*

Appellees do not rely upon *Jallali* to assert that the Final Judgment or sale in the Lender's Foreclosure Action extinguished the HOA's interest. Rather, Appellees simply argue that *Jallali* "confirms that the first-filed lender foreclosure action is superior to the later-filed lien foreclosure action." (AB. 19). However, the priority of interests does not resolve the crucial issue of whether the HOA's rights survived the Lender's Foreclosure Judgment and sale. On that issue, Appellees revert to their erroneous notice argument. (AB. 19-20) ("The fact that the HOA was not named as a defendant in the lender foreclosure action is irrelevant because the HOA was on constructive notice of the lender's recorded lis pendens and Amended Final Judgment.").

CCC Properties, Inc. v. Kane, 582 So. 2d 159 (Fla. 4th DCA 1991) also does not apply in the instant case. *CCC Properties* involved the issue of whether the appellants had constructive notice of the satisfaction of the lender's mortgage prior to the judicial sale at which

the appellants purchased the property. 582 So. 2d at 160-161. Again, whether JJD Realty had notice, constructive or actual, of the Lender's lis pendens and Amended Final Judgment in the Lender's Foreclosure Action does not resolve the issue of whether the HOA's rights survived the Lender's Foreclosure Judgment and sale.

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.

Crucial to this issue is the fact that the plain language of the Declaration made the "sale or transfer of any lot" under certain specified circumstances the relevant event purporting to extinguish an assessment lien. (R. 517, 636-637).

Here, the HOA obtained its Final Judgment and a judicial sale had occurred at which JJD Realty purchased the Property prior to the sale in the Lender's Foreclosure Action. (R. 55; 63; 791). The HOA's Claim of Lien had already merged into the Final Judgment the HOA obtained in the HOA's Foreclosure Action by operation of law. *Ferry v. E-Z Cashing LLC*, 361 So. 3d 905, 908 (Fla. 2d DCA 2023);

Mathieu v. City of Lauderdale Lakes, 961 So. 2d 363, 365 (Fla. 4th DCA 2007); *All State Plumbing v. Mut. Sec. Life Ins. Co.,* 537 So.2d 598, 599 (Fla. 3d DCA 1988). As a result, at the time the sale occurred in the Lender's Foreclosure Action it was already too late for Article 7.3 of the Declaration to operate to extinguish the HOA's Claim of Lien.

Appellees' reliance on the language of the Amended Final Judgment in the Lender Foreclosure Action (R. 50, at ¶ 4) purporting to bar or foreclose the HOA's lien is insufficient. Appellees notably fail to cite <u>any</u> case law to support their assertion that the Amended Final Judgment extinguished the HOA's lien. Again, the HOA was not a party to the Lender's Foreclosure Action, as would have been necessary in order for it to be bound by the Amended Final Judgment standing alone, or for it to seek relief from that judgment in the manner Appellees suggest the HOA should have done. (AB. 22). Thus, it does not matter that the Amended Final Judgment was final by operation of law as Appellees argue. (AB. 22). Neither the Amended Final Judgment nor the Declaration support Appellees' argument that the HOA's rights were extinguished.

D. Res judicata and collateral estoppel do not apply where the identity of parties and issues litigated do not align.

Appellees advance several underdeveloped res judicata and collateral estoppel arguments. None has merit.

The Florida Supreme Court has explained res judicata:

> A judgment on the merits rendered in a *former* suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.

Florida Dept. of Transp. v. Juliano, 801 So. 2d 101, 105 (Fla. 2001) (emphasis in original). "The doctrine of res judicata applies when four identities are present: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made." *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004).

A related concept is "[t]he doctrine of collateral estoppel (or issue preclusion) . . . [which] bars relitigation of the same issues between the same parties in connection with a different cause of action." *Topps*, 865 So. 2d at 1255.

Here, JJD Realty's Motion to Vacate Sale and to Return Funds Paid to Purchase Property (R. 660) in the HOA Foreclosure Action did not involve the same parties or issues raised in the quiet title action. JJD Realty described the suspicious and inequitable conduct of Barnes in its Motion. Specifically, Barnes had filed an Objection to the Sale and Motion to Quash Service of Process, and later a Motion to Exercise Redemption, rendering the Clerk unable to issue a Certificate of Title to JJD Realty. (R. 653-655). Despite his actions to have the sale and judgment in the HOA's Foreclosure Action overturned, Barnes made no similar attempts to stop or impede the sale scheduled in the Lender's Foreclosure Action. (R. 675-678). Thus, in its Motion to Vacate Sale, JJD Realty sought to vacate the sale based upon the conduct of Barnes. (R. 665).

The trial court order in the Lender's Foreclosure Action refusing to grant the HOA's Motion to Intervene (R. 810) is not a basis for application of res judicata where that order explicitly denied the HOA's attempt to appear as a party. This Court has held that it is error for a trial court to adjudicate the rights of a nonparty to a suit. *Ibanez v. 21st Mortgage Corporation*, 207 So. 3d 901, 902 (Fla. 4th

DCA 2017) (reversing order granting deficiency judgment to nonparty mortgage insurer who had not intervened as party). "The trial court may not adjudicate the rights of a non-party." *Rustom v. Sparling*, 685 So. 2d 90, 90 (Fla. 4th DCA 1997) (reversing portion of final judgment purporting to find invalid notes and mortgage prepared in favor of nonparty to the suit).

The trial court's statement in the Order Denying Entitlement to Surplus Funds clearly violates this restriction. The trial court in the same order denied the HOA's request to intervene. (R. 810). Having denied the HOA's request to intervene and become a party, the trial court had no ability to adjudicate the nonparty HOA's rights regarding its lien. The trial court's statement that the HOA was not a subordinate lienholder was therefore a nullity that may not now serve as a basis to apply res judicata against JJD Realty. Appellees' res judicata arguments only highlight the problems caused by the Lender's failure to join the HOA as a party in the Lender's Foreclosure Action.

JJD Realty did state that the HOA's interest in the property was subordinate to that of the first mortgage holder. (R. 663, at 14).

However, as explained in the Initial Brief (IB. 36-39), this may not form the basis of estoppel where "the positions taken involved solely a question of law." *Ramsey v. Jonassen*, 737 So.2d 1114, 1116 (Fla. 2d DCA 1999). It also does obviously not resolve the crucial question of whether the HOA's rights were extinguished by the Amended Final Judgment and sale in the Lender's Foreclosure Action. They were not, and it was squarely erroneous under settled Florida foreclosure law to enter judgment quieting title in the Alis and finding that JJD Realty had no right or interest in the Property. If the HOA was a junior lienholder, its right of redemption remained intact. As a result, JJD Realty retains a right to redeem or foreclose on the Property.

E. The remaining arguments D through F argued in the Answer Brief are without merit.

None of the remaining arguments (D through F) Appellees make in the Answer Brief has merit.

As to (D), section 702.036, Fla. Stat. provides no support for Appellees' position. JJD Realty did not try to set aside the Amended Final Judgment in the Lender's Foreclosure Action. JJD Realty sought to have the court adjudicate who has legal title under the facts of this case. An invalidation of the Amended Final Judgment is not

necessary for that determination to occur. Again, and as explained above, the finality of that Amended Final Judgment is irrelevant.

JJD Realty made no admission that the 2022 Certificate of Title was "defective and inferior" as asserted by Appellees. (AB. 27). JJD Realty maintains that the 2022 Certificate of Title (R. 74) conveyed proper legal title to JJD Realty for the reasons explained in the trial court and in the Initial Brief. (IB. 18-21). An action to quiet title was therefore the proper cause of action.

Notwithstanding the foregoing, the style of JJD's Realty's demand for relief as a quiet title action is not dispositive. In Florida, "[e]very complaint will be considered to pray for general relief." Fla. R. Civ. P. 1.110(b). Moreover, "[a]ll pleadings must be construed so as to do substantial justice." Fla. R. Civ. P. 1.110(g).

"[G]enerally, courts of equity have the fullest liberty in molding decrees to the necessity of the occasion, regardless of the prayer." *Golden v. Woodward*, 15 So. 3d 664, 668 (Fla. 1st DCA 2009) (holding court could impose vendor's lien even though relief appellees requested was equitable lien) (quoting *Singer v. Tobin,* 201 So.2d 799, 800–01 (Fla. 3d DCA 1967)); *Ellisen v. Ellisen*, 150 So. 3d 1270, 1270-

71 (Fla. 5th DCA 2014). "Thus, the court must 'look to the facts alleged, the issues and proof, and not the form of the prayer for relief to determine the nature of the relief which should be granted.'" *Golden*, 15 So. 3d at 668 (quoting *Circle Finance Co. v. Peacock,* 399 So.2d 81, 84 (Fla. 1st DCA 1981)).

Here, JJD Realty's complaint for quiet title was sufficient for the trial court to adjudicate its rights regarding the Property. JJD Realty clearly had a cause of action, as the HOA's rights were not extinguished by the Amended Final Judgment and sale in the Lender's Foreclosure Action. JJD Realty therefore properly pled a cause of action for quiet title and for general relief.

As to (E), Appellees misstate JJD Realty's position. (AB. 27). JJD Realty agreed that entry of summary judgment was procedurally appropriate, as opposed to the necessity of a trial. (R. 442). JJD Realty obviously never agreed that entry of summary judgment *in Appellees' favor* was appropriate. This argument requires no further elaboration.

As to (F), JJD Realty addressed the scrivener's errors contained in the original Claim of Lien (R. 34) and elsewhere in the chain of title

in the interests of being thorough due to the "Tipsy Coachman" rule. *See Dade County School Bd. v. Radio Station WQBA*, 731 So. 2d 638 (Fla. 1999); *Johnson v. Christiana Trust*, 166 So. 3d 940 (Fla. 4th DCA 2015). Appellees make no arguments that the scrivener's errors support the trial court's ruling. (AB. 28). JJD Realty maintains that these errors do not change the outcome, and relies upon its arguments on this issue in the trial court and its Initial Brief. (IB. 34-36).

As to (G), Appellees rehash the same erroneous notice and res judicata arguments already disposed with above and in JJD Realty's Initial Brief. JJD Realty relies on its arguments above and in the Initial Brief in response to these arguments.

This Court should also note that Appellees' repeated notice arguments ring hollow in light of Appellees' own conduct. Jessico LLC knew or should have known of the pending HOA Foreclosure Action and JJD Realty's pending Motion to Vacate Sale and to Return Funds Paid to Purchase Property in that action. (R. 660). Jessico LLC could have resolved the HOA's claim simply by paying off the money owed to the HOA.

Instead, Jessico LLC purchased the Property at the sale in the Lender's Foreclosure Action despite its knowledge of the Certificate of Sale having been issued to JJD Realty. (R. 63; 791). Jessico LLC also must be deemed to have known that the HOA was not a party to the Lender's Foreclosure Action and the resulting consequence of that omission under Florida law in the failure to extinguish the HOA's rights. Appellees should not be rewarded for such conduct.

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 was not named as a defendant in that proceeding and the Association's lien had already merged into the Final Judgment in the HOA's Foreclosure Action at the time of the sale in the Lender's Foreclosure Action.

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.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that, on this 3rd day of January 2025, 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 **3,850**.