Filing # 208183037 E-Filed 10/03/2024 10:31:28 AM

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

CASE NO. 4D2024-2045

L.T. CASE NO. 2022-CA-2420

MARK G. KEEGAN,

Appellant,
v.
TRACEY C. NEFF AND FIFTH THIRD BANK,

Appellees.

APPELLANT MARK G. KEEGAN'S INITIAL BRIEF

ON NONFINAL APPEAL FROM THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

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STATEMENT OF THE CASE AND FACTS

The Lineup

References to the Appendix are designated by A. and the page number.

Appellant, Mark G. Keegan, is referred to as Keegan.

Appellee, Tracey C. Neff, is referred to as Neff.

Appellee, Fifth Third Bank, is referred to as Fifth Third Bank or Fifth Third.

The house at 1502 Highland Lane, Delray Beach, Palm Beach County, Florida is "the House".

Non-party judicial sale bidder Spotlight Residential Real Estate LLC, and its beneficial owner Amanda Zachman[1] a/k/a Amanda Zuckerman are "Zachman".

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[1] ***AG Moody Takes Legal Action Against Amanda Zachman/MV Realty*** https://www.myfloridalegal.com/newsrelease/ag-moody-takes-legal-action-against-mv-realty

AG Moody's Complaint Against Amanda Zachman/MV Realty https://www.myfloridalegal.com/files/pdf/page/E9E4A2F7281415CE85258909007259EC/Web+Link.pdf

AG Moody takes new action against Amanda Zachman/MV Realty https://www.actionnewsjax.com/news/investigates/investigates-

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Keegan seeks review and reversal of (1) the lower court's non-final order (A.25) entered July 9, 2024, overruling Keegan's objection to non-party mortgagee Fifth Third Bank's standing to claim partition sale proceeds and denying Keegan's motion to strike Fifth Third Bank's notice of intent to claim sale proceeds, and (2) the lower court's non-final order entered July 22, 2024 (A.30), granting Fifth Third Bank's notice of intent to claim sale proceeds and directing clerk to disburse funds.

Both orders were entered by the Hon. Carolyn Bell, Circuit Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

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florida-attorney-general-takes-new-action-against-mv-realty-it-files-bankruptcy/IMWSU3WHNFB3RK7NBY4XHPK2JU/

Amanda Zachman/MV Realty files for bankruptcy, accused in lawsuit of 'swindling' homeowners across the country https://wsvn.com/news/investigations/mv-realty-files-for-bankruptcy-protection-accused-in-lawsuit-of-swindling-homeowners-across-the-country/

AG Moody wants court order to make Amanda Zachman/MV Realty remove documents accused of clouding titles on hundreds of Florida homes https://www.msn.com/en-us/news/crime/hillsborough-judge-could-force-mv-realty-to-remove-documents-clouding-titles-on-hundreds-of-florida-homes/ar-BB1nprlC

More Attorneys General File Complaints Against Amanda Zachman/ MV Realty https://www.alta.org/news-and-publications/news/20221220-More-Attorneys-General-File-Complaints-Against-MV-Realty

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Nature of the Case

Partitions are not a new concept. Florida's partition laws, located in chapter 64 of the Florida statutes, were first enacted in 1844 and have remained relatively unchanged since. Chapter 64 is written in plain English, with clear and concise terms enabling the reader to easily understand the Legislature's intent simply by reading the statutory text.

Chapter 64 is strictly and narrowly construed with a reach limited to certain classes of co-owners requiring the government's assistance to partition jointly owned property.

The first use of statutory partition actions to resolve Florida property disputes occurred one year before Florida (pop. 66,000) became the 27th state admitted to the Union, two years before the first baseball game on American soil, 30 years before the invention of the hot dog, 32 years before Alexander Graham Bell brought us the telephone, 44 years before the invention of peanut butter, 45 years before Karl Benz invented the automobile, 59 years before the Wright Brothers invented the airplane, 66 years before the invention of the radio, 68 years before Willis Carrier invented electric air conditioner, 84 years before television, 125 years before

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man walked on the moon, and 126 years before Florida's official nickname became the "Sunshine State."

A partition case is not filed because the co-owners missed mortgage payments, or forgot to pay the property taxes, or couldn't' pay their condominium assessments, or because the property is underwater since the mortgage balance exceeds the property's fair market value.

To the contrary, as is the case here where all household accounts were current at case initiation, co-owners file partition cases because they cannot agree between themselves how to liquidate move-in ready Florida real estate valued at $2 million with $1.5 million+ in equity.

Once filed, the government must make an initial attempt to partition the property "in kind" or, as the word partition" suggests, physically divide the property and award each former co-owner separate, individually owned interests in the now-divided property proportionate to their original ownership share.

If, and only if, expert testimony proves a negative by establishing the property cannot be physically divided without prejudice to the owners, is the government authorized to sell the property for the highest possible sale price, using one of the sales procedures specifically identified in chapter 64. The

government is responsible for maximizing the property's sale price to ensure maximum profits for the co-owners.

Like all other judicial sales of Florida real estate, a partition sale is "buyer beware". Since the government expressly disclaims any guarantees of clear or marketable title, the buyer enters the judicial sale auction on full constructive notice of the public records and court file, including all matters of record in the case. *In re Estate of Long*, 267 So. 2d 211 (Fla. 4th DCA 1972) (court file); *Townsend v. C.T. Box*, 291 So. 3d 114, 116 (Fla. 4th DCA 2020) ("recording a [mortgage] constitutes constructive notice of [the mortgage as] a prior encumbrance on the property".) (public records).

Chapter 64 partition actions have several unique features that are absent other areas of Florida law containing a judicial sale component. First, in a partition case only titled owners may be parties to the lawsuit, to the exclusion of all others. *Yager v. North & South Alafia River Phosphate Co.*, 82 Fla. 38, 89 So. 340 (1921) (Titled owners are the only parties to a partition action.).

Second, in a typical mortgage or condominium lien foreclosure the prior owners do not receive any sale proceeds unless there is money left after the post-sale claims process, where a foreclosing lienholder's judgment is satisfied from the sale proceeds, and any junior lienholders, whose liens

have been foreclosed, are then paid in full of the sale proceeds. Conversely, there is no post-sale claims process after a partition sale. Instead, the sale proceeds are immediately distributed to the parties/former co-owners. §64.071, Fla. Stat. (2024) ("…and the money arising from such sale paid into the court to be ***divided among the parties*** in proportion to their interest.").

Third, any non-ownership interests in the property, such as a deed that is not before the court for adjudication, easement, condominium lien for unpaid assessments, or first mortgage, remain as they were and are unaffected by a partition action. Unlike a mortgage foreclosure where the primary goal is to sell the property at judicial sale, so the lender is made whole-either by receiving the foreclose property or payment in full, the primary goal of a chapter 64 partition is to *avoid* selling the house if possible.

Fourth, the government's authority-and the judiciary's subject matter jurisdiction- ends with the partition sale and distribution of proceeds to the parties/former co-owners, after which the case is closed. Chapter 64 is silent on and therefore prohibits the clerk from issuing a "certificate of title" following a partition sale, prohibits the property appraiser from updating its ownership records based on a void "certificate of title" that conveys no ownership interests, prohibits the judiciary from authorizing a writ of possession following a partition sale, prohibits the clerk from issuing a writ of

possession following a partition sale, and prohibits the sheriff from executing a writ of possession issued after a partition sale.

Course of the Proceedings

Keegan, a 23-year + Florida civil trial attorney who represents himself, initiated the case below on March 15, 2022, to partition an automobile and the homestead residence he co-owns in fee simple with Neff as joint tenants with full rights of survivorship, located at 1502 Highland Lane, Delray Beach, Palm Beach County, Florida.

At case initiation in March 2022, the property taxes were paid, the mortgage and all household accounts were paid as agreed, and the only encumbrance was the first mortgage balance of approximately $440,000.

Despite Keegan's best efforts to avoid litigating his private affairs in a public forum, this chapter 64 partition case was necessitated only by Neff's refusal to engage in **any** settlement discussions with Keegan to achieve a quick private sale of their jointly owed $2 million residence in east Delray Beach after Keegan ended their nine-year relationship in January 2022. The house is a 3-bedroom, 3-bathroom pool home, located in a desirable residential neighborhood of non-HOA single family homes just north of Atlantic Ave. and less than a mile from the beach.

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The real estate market at in early-2022 was scorching hot. At that time, the house would have sold within days, likely to a cash buyer for above asking price, and closed within 30 to 45 days. Had Neff cooperated, she and Keegan could have gone their separate ways by the end of March 2022. Since all household expenses were evenly split, it should have been easy: after the $440,000 Fifth Third mortgagee was satisfied, Keegan and Neff would evenly divide the profits-likely in the $1.5 to $1.6 million range-each walking away with a check for at least a $750,000 in hand, a nice reward for their timely investment in Florida real estate.

When Keegan filed the partition, he thought it would nudge Neff to the settlement table. He thought wrong. Neff instead hired lawyers who first delayed the case with baseless motions to dismiss, and motions for extensions of time, and objections to all of Keegan's discovery requests. It was not until October 2022, when Neff finally answered the complaint and asserted her own counterclaim, which was merely a regurgitation of Keegan's complaint but in reverse.

On March 28, 2023, Keegan reached an oral settlement with Neff's then attorney, the late Mr. Sosin, on the same terms Keegan had repeatedly proposed since January 2022: (1) Neff picks a realtor to list and sell the house for a 5% or less total commission, with she and Keegan splitting the

proceeds 50/50, (2) Keegan gets the golf car, (3) Neff gets possession of dogs “Remy” and “Dublin”, subject to a dog-sharing agreement where Keegan gets the dogs two weekends a month and four weeks a year, plus either Thanksgiving or Christmas on an alternating schedule, and (4) Neff and Keegan cover their own attorney’s fees and costs.

Neff initially cooperated-it was her task to select two realtors, and Keegan would pick one-but after a few rounds of emails where Neff repeatedly mentioned the “settlement”, she ghosted Keegan and was silent until the April 21, 2023, evidentiary hearing on her counterclaim (A.36) where she lied under oath, claiming she never authorized Mr. Sosin to make a settlement despite her own emails referencing “the settlement”.

While Neff did mention the Fifth Third mortgage in her counterclaim, the mortgage was not an exhibit at the April 21, 2023, hearing (A.34). The mortgage was not admitted into evidence (A.38) and no testimony was elicited regarding the mortgage. The circuit judge made no findings on the record and requested the parties submit proposed findings of fact and conclusions of law, which Keegan did on May 5, 2023. (A.39).

Keegan did not receive Neff’s proposed findings nor does the record reflect she filed any. On May 16, 2023 (A.45), the trial court entered a

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nonfinal, nonappealable order setting the judicial sale[2] of the house and the automobile. The sale of the automobile took place on July 17, 2023, and the

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[2] The only issue before the Court in the prior nonfinal appeal filed November 1, 2023, was whether the trial court committed reversible error by confirming the mechanics of the September 5, 2023, judicial sale in its October 18, 2023, order. The Court held: "We affirm the circuit court's post-judgment order denying appellant's objection and motion to vacate a judicial sale of property in the underlying partition action." *Keegan v. Neff,* 388 So. 3d 11, 12 (Fla. 4th DCA 2024), *review denied,* SC2024-0955, 2024 WL 3590757 (Fla. July 31, 2024). The dicta on judgment finality caused a manifest injustice below:

> the judgment constituted a final order. *See Perez v. Jaimot*, 326 So. 3d 748, 749 (Fla. 3d DCA 2021) ("[A]n order of partition is final at such time as the court directs the sale of the property."). The order was final even though the court retained jurisdiction to divide the proceeds. *See Morrison v. Smolarick*, 334 So. 3d 675, 676 (Fla. 2d DCA 2022) ("A partition order directing the sale of property is final even when the court retains jurisdiction for the purpose of adjusting, by a further decree, the accounts between the parties.")

Id. The dicta from *Keegan v. Neff* relies on dicta from *Jaimot* and *Morrison* even though neither holding addressed judgment finality nor was judgment finality an issue in either appeal. *Perez v. Jaimot*, 326 So. 3d 748 (Fla. 3d DCA 2021) (holding: where two plenary appeals of final judgments ending the judicial labor and ordering property sold by commissioners were dismissed for lack of prosecution, the court lacked jurisdiction to consider third appeal filed more than 30 days after entry of final judgment) and *Morrison v. Smolarick,* 334 So. 3d 675, 676 (Fla. 2d DCA 2022) (held that entry of money judgment in partition action was improper); *State ex rel. Biscayne Kennel Club v. Bd. of Bus. Regul. of Dept. of Bus. Regul. of State*, 276 So. 2d 823, 826 (Fla. 1973) (holding "obiter dictum" included in the appellate court's opinion "was not essential to the decision of that court and is without force as precedent").

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When Morrison and *Jaimot* are peeled back, at their core is *Camp Phosphate Co. v. Anderson*, 37 So. 722, 726 (Fla. 1904), where our Supreme Court determined a trial court order which finally adjudicated all the merits of the controversy, condemned the property to conversion and the owner's title to divestiture, and left nothing further to be done but the execution of it was a final, appealable judgment. The forced sale or conveyance of property was not ***the*** determining factor, it was ***a*** determining factor in the finality analysis. *Camp Phosphate* relied on the seminal case of *Forgay v. Conrad*, 47 U.S. 201, 204–05 (1848), which instructs:

> A decree of the court below, that certain deeds should be set aside as fraudulent and void; that certain lands and slaves should be delivered up to the complainant; that one of the defendants should pay a certain sum of money to the complainant; that the complainant should have execution for these several matters; that the master should take an account of the profits of the lands and slaves, and also an account of certain money and notes, and then said decree concluding as follows, viz. 'and so much of the said bill as contains or relates to matters hereby referred to the master for a report is retained for further decree in the premises, and so much of the said bill as is not now, nor has been heretofore, adjudged and decreed upon, and which is not above retained for the purposes aforesaid, be dismissed without prejudice, and that the said defendants do pay the costs,'-was a final decree within the meaning of the acts of Congress, and an appeal from it will lie to this court.

Id. Caufield v. Cantele, 837 So. 2d 371, 375 (Fla. 2002) (An order is final, and a plenary appeal may be taken when "the order ... constitutes an end to the judicial labor in the cause, and nothing further remains to be done by the court...")

But that is not the case here. The May 16, 2023, order did not-as evidenced by the 400+ docket entries since-end the judicial labor. The order did not resolve all issues between Keegan and Neff. Keegan's entire complaint remains unadjudicated. Neff's claims were only partially adjudicated, and the

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court did not make a detailed determination of the parties' rights and interests in the use, ownership and possession of the house. Use and possession were not even touched on. Ownership was barely touched on. Critically, the court cannot convey anything via judicial sale because Keegan's warranty deed is not before the trial court for consideration, and neither party requested the cancellation of the deed in a pleading. The trial court ordered the house sold under its supervision and the money paid into the court, where it remains under the court's supervision.

The May 16, 2023, order is a non-final interlocutory order. *Forgay* is determinative:

> ***But a decree that money shall be paid into court, or that property shall be delivered to a receiver, or that property held in trust shall be delivered to a new trustee appointed by the court, is interlocutory only, and intended to preserve the subject-matter in dispute from waste or dilapidation, and to keep it within the control of the court until the rights of the parties concerned can be finally adjudicated. From such a decree no appeal lies.***
>
> The attention of the Circuit Courts is called to the propriety of merely announcing their opinion in an interlocutory order, and withholding a decree setting aside titles and conveyances until the case is ready for a final decree.

Forgay v. Conrad, 47 U.S. 201, 202 (1848) (Emphasis added). When the May 16, 2023, order is analyzed using the *Forgay* test, it squarely falls within the "nonfinal" order category: the court ordered the public sale of the house while maintaining control over both the house and the proceeds which the clerk deposited in its bank account post-sale. Over a year after the sale, the circuit court remains in control of the sale proceeds and is still adjudicating the rights and interests of the parties.

judicial sale of the house occurred on September 5, 2023, where a total of two bidders attended the live auction of a house with $1.5 million in equity.

Spotlight Residential Real Estate LLC, whose sole beneficial owner is Amanda Zachman a/k/a Amanda Zuckerman ("Zachman"), submitted the winning "bid" of $725,100.00. (A. 49). Since Zachman purchased the property with notice of both the public records and the court files, and subject to all liens, encumbrances, deeds and other interests, Zachman assumed the first mortgage balance of approximately $440,000. Zachman's total liability was approximately $1,165,000, over $800,000+ less than the house's fair market value. (A.49).

Keegan timely objected to the sale and the lower court set an evidentiary hearing for October 10, 2023. Neff's exhibit list (A.52) was silent on and contained no entries relating to the Fifth Third Mortgage.

As the October 10, 2023, hearing transcript (A.55) confirms, no one elicited any testimony regarding the Fifth Third mortgage being paid from Neff and Keegan's sale proceeds, and no one introduced any evidence relating to the Fifth Third mortgage.

Mr. Caleb MacDonnell is a licensed realtor affiliated with Sotheby's International Realty, and a veteran of the Delray Beach residential housing

market who sold 100% of his listings since 2001, and, incredibly, sold 91% of his listings for above asking price, [3]

20	Q Now, Mr. McDonnell, this house was sold at
21	auction back on September 5th around $725,000, what were
22	your thoughts on that number, is it high, is it low?
23	MR. GOLDBLATT: Objection. Relevance.
24	A You lost a lot of money, to be honest.
25	THE COURT: Overruled.

(A.86). Keegan's cross-examination of Mr. MacDowell confirmed Keegan's belief that something was terribly wrong with the September 5, 2023, auction and the winning "bid."

What is even more perplexing is Neff's opposition to Keegan's efforts to establish the $725,100 sale price was grossly inadequate. In other words, unless something shady were occurring behind the scenes, why would a seller of real estate fight tooth and nail to ensure the property sold for the ***lowest*** possible sale price?

Both the clerk's notes (A.126) and the clerk's exhibit list (A.129) from the October 10, 2023, hearing confirm no exhibits were introduced regarding the Fifth Third mortgage. At the end of the October 10, 2023, hearing the

[3] https://calebmcdonnell.onesothebysrealty.com/profile

circuit judge made no findings on the record but instead ordered the parties to submit competing orders by Friday, October 13, 2023.

Keegan submitted his proposed order sustaining his objections (Keegan is unable to locate a copy), with a copy to Neff's counsel. Keegan never received a copy of the proposed order Neff submitted to the circuit court and was not until the circuit court issued its October 18, 2023, order (A.131) the reason became readily apparent.

In Keegan's extensive statewide experience as counsel of record for plaintiffs. defendants, and third-party purchasers in cases involving judicial sales of real estate and post-sale proceedings/distribution of sale proceeds, which includes over 1000 cases in the Palm Beach County Courthouse, there are several factors present in every single case he has handled:

1. Sellers of real estate want more profits from the sale, not less. This is likely the first time in Florida's 180-year history that one co-owner of real estate actively litigated so her jointly owned house would sell for the lowest possible sale price, and actively opposed the other co-owner's efforts to obtain the highest possible sale price, all of which reduced the sale proceeds which would be evenly split between the co-owners, and consequently reduced her net profit. When does a seller of real estate want the smallest possible profits from the sale?

In Keegan's experience, a co-owner selling real estate does not actively try to obtain the lowest sale price, unless the co-owner is in cahoots with the third-party purchaser and others to defraud both the court and the other co-owner. Co-owners of real estate, here the plaintiffs but usually the defendants such as in a mortgage or condominium lien foreclosure, are lockstep in seeking the highest possible sale price at the judicial sale. In a partition, a higher sale price leads to increased profits since, using this case as an example, the sale proceeds would be evenly divided between Neff and Keegan.

2. After a judicial sale, co-owners of real estate fight tooth and nail to obtain for themselves the maximum distribution of sale proceeds. Unless something nefarious is occurring, one co-owner of real estate does not positionally align with a third-party purchaser-and against the other co-owner- to relieve the third-party purchaser of its obligation to service the mortgage by misleading the court to disburse sale proceeds-which by statute may only be disbursed to the co-owners -to a lender who had not even made a claim for the proceeds and was a complete stranger to the litigation, which in turn unjustly enriches the third party purchaser to the tune of over $455,000, unjustly enriches the lender with a surprise donation of over $455,000 it was not even asking for, and significantly decreases the pot

of sale proceeds available for distribution to she and her co-owner from $725,100 to under $275,000. As mentioned above, why is Neff trying to make sure everyone, but Keegan, receives sale proceeds?

3. Reputable, ethical, experienced attorneys do not withdraw from cases within weeks of appearing unless their client is committing a crime, is committing a fraud, or is committing both. Keegan's experience as lead counsel in several thousand high stakes civil actions at all levels of Florida's state and federal courts over the past 23 years has taught him a lot, one thing is that in non-contingency, hourly billed cases: Top notch lawyers with reputations as skilled practitioners and good ethics do not withdraw from representation shortly after appearing unless their client is perpetrating a crime, fraud, or both.

On September 7, 2023-two days after the judicial sale-Jay Swistak, Esq., a local real estate litigation attorney with a strong reputation as an ethical practitioner, appeared on Zachman's behalf. (A.19, DE 131). Mr. Swistak's only conceivable task could have been to oppose Keegan's objection to the sale, obtain a certificate of title for Zachman and then close his file. Absent a contingent event, Swistak is almost certain to have an hourly billing contract with a pre-paid trust deposit in the range of $2500-$5000.

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Without taking any record action in the case, and presumably not because of billing related issues since he almost certainly had sufficient trust funds to cover any amounts due for work he performed between September 7-30, 2023, on October 4, 2023, Attorney Swistak was suddenly off the case. Mr. Swistak was replaced by attorney Steven Platzek, an experienced real estate litigator and partner in the Boca Raton based firm Graner Platzek & Allison, P.A. (A. 18, D.E. 149), whose only record activity would be a notice adopting (A.150) Neff's opposition to Keegan's objection to and motion t(]o vacate the judicial sale.

Steven Eisenbrand, one of Mr. Platzek's partners, appeared at the October 10, 2023, hearing on Zachman's behalf. (A.58). Curiously, however, Attorney Eisenbrand did not participate in the hearing; did not call any witnesses, did not examine any witnesses, did not make any arguments, and did not request any relief from the court. Instead, it was Mr. Goldblatt, Esq, Neff's attorney, who made Zachman's argument as is he represents Zachman, not Neff.

If things were on the "up and up", Neff and Mr. Goldblatt, Esq would be joining Keegan's request for a new sale. Instead, Neff and Goldblatt vigorously opposed Keegan and argued on behalf of Zachman, requesting

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confirmation of the September 5, 2023, sale that stole at least $800,000 in equity owned by Keegan and Neff and gifted it to Zachman.

Curiously, there is no record evidence attorney Eisenbrand submitted a proposed order to the circuit court on behalf of his client Zachman after the October 10, 2023, hearing. Unless Zachman and Neff have a secret side deal, which Keegan believes they do, why did Zachman cede total control of both the October 10, 2023, evidentiary hearing and the drafting of a proposed order thereon-matters of critical importance to Zachman-to Neff, her supposed litigation opponent? Why did Zachman's attorneys at the Graner Platzek & Allison, P.A. firm file a motion to withdraw on October 24, 2023 (A.17, D.E. 178)? Was Zachman seeking counsel on an anticipated fraud or crime?

Turning back the October 18, 2023, order which contains several findings based on evidence that Neff did **not** introduce at the October 10, hearing, and on testimony that Nef did **not** elicit at the October 10, 2023, hearing, and on arguments Neff's attorney did **not** make at the October 10, 2023, hearing. The biggest red flag in the October 18, 2023, is:

iii) The Clerk shall obtain the assistance of Neff and/or Keegan to the extent necessary) a current payoff amount from the mortgagee of the Property, issue payment to the mortgagee forthwith out of the sale proceeds held in the Court Registry in full satisfaction of the mortgage, and have filed with the Clerk and recorded a Satisfaction and/or Cancellation of Mortgage;

iv) The Court retains jurisdiction for the purposes of making all further orders and judgments as may be necessary and proper to completely resolve the parties' partition claims regarding the Property, including but not limited to the adjudication

In the absence of any record evidence, and without anyone requesting such relief, and without the court allowing such relief in the May 16, 2023, "final judgment", and without any supporting evidence or testimony during the October 10, 2023, hearing, how did the circuit court make a finding that the Fifth Third mortgage should be satisfied from Keegan's sale proceeds?

There is only one plausible explanation: Neff inserted that provision in her draft order, which she never sent to Keegan, who had no chance to object, which likely misled the circuit judge into the mistaken belief that Keegan was ok with Neff's proposed order-that Neff did not send to Keegan.

Why would Neff, a co-owner of the house, insert such a blatantly unethical provision in the draft order, all to confirm the legitimacy of the

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September 5, 2023, sale, for at least $800,000 less than fair market value, and to donate over $450,000 of sale proceeds?

One day after Keegan appealed the non-final October 18, 2023, order, Fifth Third finally came out of the shadows and filed a 'Notice of Intent to Claim Sale Proceeds". (A. 137). Either you make a claim, or you don't; what is a notice of "intent" to make a claim? Is it a way for Fifth Third's experienced attorneys to walk a fine line and create plausible deniability if the court applies the law and realizes that Fifth Third Bank has no claim? And their lawyers knew or should have known that? If that happens, does couching the claim as an "intent" to make a claim give Fifth Third Bank protection from civil and criminal liability by enabling them to assert no claim was ever made?

On March 5, 2024, Keegan filed his motion to strike Fifth Third's bogus notice of "intent" to claim sale proceeds (A.139).

On April 30, 2024, (A.165) Keegan submitted his brief arguing why the circuit court lacked jurisdiction to award sale proceeds to anyone but Neff and Keegan-be they Fifth Third bank or otherwise.

On June 30, 2024, the lower court held a hearing on Fifth Third's notice of "intent" to claim sale proceeds. (A.177).

Following the June 3, 2024, hearing, Keegan submitted a proposed order which set forth the correct points of law. (A.182).

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The lower court held another hearing on June 17, 2024, where additional legal arguments were made. (A.186).

Disposition of the Lower Tribunal

On July 9, 2024, (A.25) the lower court overruled Keegan's objection to non-party mortgagee Fifth Third Bank's standing to claim partition sale proceeds and denying Keegan's motion to strike Fifth Third Bank's notice of intent to claim sale proceeds.

On July 22, 2024, the lower court (A,30) granted Fifth Third Bank's notice of intent to claim sale proceeds and directing clerk to disburse funds.

On July 24, 2024, (A.190) the clerk disbursed $455,490.95 to Fifth Third Bank.

Both orders were entered by the Hon. Carolyn Bell, Circuit Judge of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

SUMMARY OF THE ARGUMENT

Fifth Third Bank's has no standing to see because its mortgage lien traveled with the house, becoming Spotlight/Zachman's responsibility to service after the judicial sale. In other words, after the judicial sale Fifth Third could only pursue Spotlight/Zachman for payment of the mortgage since Spotlight/Zachman bid at the September 5, 2023, judicial sale with full constructive knowledge, of, and subsequent responsibility for, any liens,

deeds, encumbrances, or interests of record, none of which are affected by a chapter 64 partition.

Even if Fifth Third has standing, according to the mortgage contract it drafted Fifth Third Bank's only remedy in the event of a mortgage default is to file a mortgage foreclosure action in circuit civil court. The lower court reversibly erred and violated due process by rewriting the mortgage to add terms the parties did not bargain for.

Even if Fifth Third had standing, and even if its mortgage allowed it to claim partition sale proceeds as a remedy for default, the plain language of chapter 64 expressly limits the recipients of partition sale proceeds to Keegan and Neff, to the exclusion of all others. The lower court reversibly erred, violated separation of powers, ignored stare decisis, ignored strict construction, and violated due process by judicially rewriting chapter 64 to impermissibly add complete strangers like Fifth Third into a clear statute that has remained relatively unchanged in 180 years.

ARGUMENT

1. *The Judiciary Has a Duty to Administer Justice and Protect Constitutional Rights*

"The primary purpose for which courts are established is to administer justice, for which purpose all rules of procedure and practice have been established and are to be enforced. It is in no sense a wager of skill, or a

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device of legerdemain indulged in by counsel or litigants to award the prize to the one who the one who can forestall and stay off the administration of justice the longest." *Brownlee v. State*, 116 So. 618 (Fla. 1928).

One primary duty judges have is to ***protect Keegan's constitutional rights***. *See In re Sloop*, 946 So. 2d 1046, 1058–59 (Fla. 2006) ("A judge's fundamental responsibility is to protect the constitutional rights of others"). Another primary duty is to ***enter righteous judgments***. *Vilsack v. Gen. Commercial Sec. Corp.,* 143 So. 250, 251 (Fla. 1932) ("The first duty of courts is to render righteous judgments.").

2. *The Lower Court Reversibly Erred by Opening the Courthouse Doors to Fifth Third Bank, a Non-Party Stranger to the Action with No Stake in the Outcome.*

a. Responsibility for Servicing and Paying the Fifth Third First Mortgage Travels with The House and Transfers to a New Owner

A chapter 64 partition sale does not affect or foreclose any interests in the property and a purchaser acquires the property subject to a superior first mortgage. *Mattair v. Payne,* 15 Fla. 682, 685 (1876) (a partition sale would be subject to Finnegan's first mortgage).*See also Branch Banking & Tr. Co. v. Tomblin*, 163 So. 3d 1229, 1230–31 (Fla. 5th DCA 2015) (senior creditor's interest remains with the property after the sale."); *Garcia v. Stewart*, 906 So. 2d 1117, 1120 (Fla. 4th DCA 2005) (Judicial sale does not

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terminate interests in the real estate [T]he successful bidder at a judicial sale takes title subject to the prior liens.)

This is a commonsense rule because due process prevents a partition action between co-owners from foreclosing or eliminating a lien in a case where no liens are foreclosed, no interests are eliminated, and all preexisting liens and interests remain untouched. In anticipation of Neff's argument that the mortgage remained Keegan and Neff's responsibility after the September 5, 2023, judicial sale, Keegan asks: If not attached to the House what, then is the mortgage lien attached to? Did it vanish into thin air? Is the mortgage attached to the one bag of belongings in Keegan's possession that Neff, Zachman and the PBSO did not steal? Or to Keegan's two dogs that Neff stole on November 2, 2022? Or to Keegan's eleven-year-old truck he spent many a night sleeping in since December 7, 2023?

Instead, Zachman/Spotlight bid at the auction charged with the primary liability for the payment of prior mortgage to prevent loss of the property by foreclosure of the prior liens. A prospective purchaser such as Spotlight will subtract the amount of any outstanding senior liens from the reasonable value of the property in calculating its foreclosure bid.

When the government sells Florida real estate at a public auction ordered by a judge, the government makes no guarantees and, in fact,

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expressly disclaims responsibility for any liens, deeds, or other interests that may encumber the auctioned property. As Clerk Abruzzo instructs:

> title issued by the clerk after a judicial sale is not warranted to be free of any potential claims. BUYERS BEWARE! All properties are sold "AS IS". Bidders are responsible for conducting their own research as to the property being sold, its location or condition, the condition of any structures or fixtures thereon, its marketability, potential uses, zoning, or whether any other potential liens or other defects in title that may exist.

https://palmbeach.realforeclose.com/index.cfm?ZACTION=HOME&ZMETHOD=FORECLOSE The Clerk's disclaimer aligns with Florida case law establishing that a purchaser at a judicial sale takes the property subject to and with constructive, or implied, notice of the public records and court file, including all matters of record in the case. *In re Estate of Long*, 267 So. 2d 211 (Fla. 4th DCA 1972) (court file); *Townsend v. C.T. Box*, 291 So. 3d 114, 116 (Fla. 4th DCA 2020) ("recording a [mortgage] constitutes constructive notice of [the mortgage as] a prior encumbrance on the property".) (public records).

Had Zachman/Spotlight conducted a title search, which they deny doing, they would have found the mortgage and Keegan's deed. Spotlight's failure to inspect the public records does not permit it to ignore the documents in the public records. *See M/I Schottenstein Homes, Inc. v. Azam*, 813 So. 2d 91, 95 (Fla. 2002) ("Knowledge of clearly revealed

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information from recorded documents contained in the records constituting a parcel's chain of title is properly imputed to a purchasing party, based upon the fact that an examination of these documents prior to a transfer of the real property is entirely expected.”).

b. The Lower Court Reversibly Erred, Failed to Administer Justice, and Violated Keegan’s Constitutional Rights by Opening the Courthouse Doors to a Complete Stranger

As is discussed below, chapter 64 restricts the parties in a partition to the co-owners of jointly owned proper and limits the recipients of sale proceeds to only the parties, i.e., the owners, here Keegan and Neff. § 64.071, Fla. Stat. (2024) (“…and the money arising from such sale paid into the court to be ***divided among the parties*** in proportion to their interest.”); *Yager v. North & South Alafia River Phosphate Co.*, 82 Fla. 38, 89 So. 340 (1921) (Titled owners are the only parties to a partition action.).

To have standing, Fifth Third must “demonstrate a direct and articulable stake in the outcome of a controversy” to open the courthouse doors, *Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980).

In determining whether Fifth Third has such an interest in the judicial resolution of the action below, it is helpful to ask whether a decision in the case will resolve the rights and obligations of Fifth Third in which case standing likely exists, or simply will produce an advisory opinion, in which

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case it does not. *Warren Tech., Inc. v. Carrier Corp.,* 937 So. 2d 1141, 1142 (Fla. 3d DCA 2006).

There are two possible outcomes to the partition action. The first is that the property is divided in kind with Neff and Keegan receiving separate parcels both subject to the mortgage. Second, the house is sold at judicial sale. Under either scenario, Fifth Third's mortgage lien is unaffected or may be foreclosed as if the partition had never happened. Except under the second scenario, the new owner becomes responsible for paying the mortgage at the risk of having their property foreclosed and losing their entire investment.

The lower court erred in opening the courthouse doors to stranger and should be reversed.

3. *The Lower Court Reversibly Erred by Judicially Rewriting the Fifth Third Mortgage*

a. This Court Reviews the Trial Court's Interpretation of the Mortgage Contract De Novo

"The trial court's erroneous interpretation of the contract is a matter of law subject to a de novo standard of review." *Imagine Ins. Co. v. State ex rel. Dep't of Fin. Servs*., 999 So. 2d 693, 696 (Fla. 1st DCA 2008). Moreover, "a contract which is clear, complete, and unambiguous does not require judicial construction," *Id*. "If the facts of the case are not in dispute, the court

will also be able to resolve the ambiguity as a matter of law." *Id. Strama v. Union Fid. Life Ins. Co.*, 793 So. 2d 1129, 1132 (Fla. 1st DCA 2001).

b. Florida Courts Enforce Plain and Unambiguous Mortgage Contracts as Written

Courts must "give effect to the plain and ordinary meaning of its terms" and "[c]ourts may not rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties." *Choate v. RySurg*, LLC, 330 So. 3d 936, 942 (Fla. 4th DCA 2021); *Harrington v. Citizens Prop. Ins. Corp.,* 54 So. 3d 999, 1002 (Fla. 4th DCA 2010) (same). Parties to a contract may limit their remedies and those remedies need not be the same. *Ocean Dunes of Hutchinson Island Dev. Corp. v. Colangelo*, 463 So. 2d 437, 439 (Fla. 4th DCA 1985).

In *Choate*, the Fourth District rejected the trial court's rewriting of a contract on "fairness" and "equitable" grounds to include terms not agreed to by the parties:

> Appellees claim that it would not be "just and fair" and that it would be "inequitable" to hold only Choate, Inc., liable for return of the funds. Nevertheless, if appellees wanted Choate as an individual and Myco Industries to be liable with Choate, Inc., ***they should have negotiated that to be included in the final settlement agreement.***

Choate, 330 So. 3d at 942. Where a contract's terms "are clear and unambiguous, the parties' intent must be gleaned from the four corners of

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the document." *Levitt v. Levitt,* 699 So. 2d 755, 756–57 (Fla. 4th DCA 1997). An unambiguous contract must be enforced as written. *Harrington*, 54 So. 3d at 1001–02 (Fla. 4th DCA 2010).

c. ***Florida Courts Will Enforce Fifth Third Bank's Self-Imposed Limitations on Remedies.***

Fifth Third Bank's only contractual remedy after default is to accelerate the entire debt and foreclose the mortgage in a judicial proceeding. It is well settled 'that parties to a contract may agree to limit their respective remedies…" *DiMauro v. Martin*, 359 So. 3d 3, 7 (Fla. 4th DCA 2023). In the mortgage context, where the lender drafts the contract and does not allow modifications or counterproposals, Florida courts do not hesitate to limit the lender's remedies to those specifically identified in the mortgage. "In absence of ambiguity the actual language of a contract is the best evidence of the intent of the parties to that contract, and the actual language controls." *Perdido Key Island Resort Dev., L.L.P. v. Regions Bank*, 102 So. 3d 1, 6 (Fla. 1st DCA 2012) (limiting the lender to the remedies expressly stated in the mortgage.) *See also Creamer v. BAC Home Loans Servicing, LP,* 159 So. 3d 168, 169 (Fla. 2d DCA 2015) (declining to award attorney's fees because "relevant portions of the instant note and mortgage indicates that the parties did not contractually define costs to include attorney's fees.")

Section 22 of the mortgage provides:

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security

A review of the clear and unambiguous language of the Fifth Third Bank mortgage leads to only one possible conclusion: When Keegan and Neff defaulted on the mortgage, Fifth Third Bank was not permitted to make a claim for partition sale proceeds in the lower court, and it was reversible error for the lower court to grant Fifth Third relief it was not permitted to obtain. *Choate v. RySurg*, LLC, 330 So. 3d 936, 942 (Fla. 4th DCA 2021) (the trial court erred by rewriting the mortgage to add terms and meanings not present, even when it would be "just" and "fair" to do so.)

There are no cases from the Fourth District or the Florida Supreme Court contrary to *Levitt*, *Harrington* or *Choate*. Therefore, s*tare decisis* binds the outcome which requires reversing the trial court's orders allowing Fifth Third Bank's claim and disbursing over $450,000 of sale proceeds belonging to Keegan. *Metro. Dade Cnty. v. Dep't of Health & Rehab. Services*, 683 So. 2d 188, 189 (Fla. 3d DCA 1996) ("a trial court is obligated to follow

established law."); *Putnam County School Board v. Debose*, 667 So .2d 447, 449 (Fla. 1st DCA 1996) ("Under the doctrine of *stare decisis*, lower courts are bound to adhere to the rulings of higher courts when considering similar issues even though the lower court might believe the law should be otherwise."); *Wood v. Fraser,* 677 So. 2d 15, 19 (Fla. 2d DCA 1996)(allowing trial courts to deviate from stare decisis would result in uncertainty and unpredictability, and "[a]lthough they are free to express their disagreements with decisions of higher courts, trial courts are not free to disregard them in the adjudicatory process."); *Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985) ("courts of equity have no power to overrule established law.").

4. *The Lower Court Reversibly Erred by Judicially Rewriting Chapter 64 to Add Terms the Legislature Intentionally Omitted for the Past 180 Years*

a. The Trial Court's Misapplication of Chapter 64, Florida Statutes, is Subject to De Novo Review

In Florida, partition is a statutory remedy controlled by chapter 64, Florida Statutes. *See Garcia-Tunon v. Garcia-Tunon*, 472 So. 2d 1378, 1379 (Fla. 2d DCA 1985). "[S]tatutory interpretation is a question of law subject to de novo review." *GTC, Inc. v. Edgar,* 967 So. 2d 781, 785 (Fla. 2007).

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b. The Applicable Statutory Text

The specific legislative authority for a judicial partition sale has remained relatively unchanged since 1844, and is presently located at § 64.071, Fla. Stat. (2024) ("Sale where nondvisible")

> 64.071. Sale where nondivisible
> (1) Order of sale.--If the commissioners report that the lands of which partition is directed are so situated that partition cannot be made without prejudice to the owners and if the court is satisfied that such report is correct, the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk ***and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.***

§ 64.071, Fla. Stat. (2024) (emphasis added). The **only** recipients of sale proceeds could be Keegan and Neff, the only two parties to the partition, and indeed the only two who could be parties to the partition. § 64.071, Fla. Stat. (2024) ("…and the money arising from such sale paid into the court to be ***divided among the parties*** in proportion to their interest."); *Yager v. North & South Alafia River Phosphate Co.*, 82 Fla. 38, 89 So. 340 (1921) (Titled owners are the only parties to a partition action.).

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c. *Florida Law Requires Strict and Narrow Construction of the Partition Statutes*

Settled law commands that Florida courts shall narrowly and strictly construe Chapter 64 of the Florida Statutes. *Barden v. Pappas*, 532 So. 2d 707, 709 (Fla. 5th DCA 1988).

Trial courts, even those sitting in chancery or equity, are therefore forbidden from expanding the scope of, or adding terms to, Chapter 64 beyond the plain meaning of the clear and unambiguous terms drafted by the Legislature.

For example, in *Weed v. Knox*, 157 Fla. 896, 27 So. 2d 419 (Fla. 1946), our Supreme Court refused to judicially rewrite Chapter 64 to add terms that would expand the class of property owners entitled to seek partition, holding that one remainderman is not entitled to partition against the other where there is an outstanding life estate because such a right of partition is not specifically granted by statute. *See also Garcia-Tunon v. Garcia-Tunon*, 472 So. 2d 1378, 1379 (Fla. 2d DCA 1985) (refusing to add terms to or expand the scope of Chapter 64; holding that a partition action is not available to an owner of a life estate seeking to partition against remaindermen.); *Ferguson v. Skrupa*, 372 U.S. 726, 729 (1963) ("Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation."); *Orr v. Trask*, 464 So. 2d 131, 135 (Fla.

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1985) ("courts of equity have no power to overrule established law."); *State v. DiGuilio*, 491 So. 2d 1129, 1133 (Fla. 1986) ("Our responsibility as an appellate court is to apply the law as the Legislature has so clearly announced it.").

d. Justice Cannot be Administered, and the Public's Confidence in the Judiciary Erodes, When Lower Courts Ignore Stare Decisis.

"Under the doctrine of *stare decisis*, lower courts are bound to adhere to the rulings of higher courts when considering similar issues even though the lower court might believe the law should be otherwise." *Putnam County School Board v. Debose*, 667 So. 2d 447, 449 (Fla. 1st DCA 1996); *Wood v. Fraser,* 677 So. 2d 15, 19 (Fla. 2d DCA 1996)(allowing trial courts to deviate from *stare decisis* would result in uncertainty and unpredictability, and "[a]lthough they are free to express their disagreements with decisions of higher courts, trial courts are not free to disregard them in the adjudicatory process.").

Equity cannot override *stare decisis*. It is also well-settled that equity courts may not-even on "fairness" grounds-deviate from clear and unambiguous statutes or binding cases from higher courts. *Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985).

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d. Florida's Strict Separation of Powers Prohibits the Judiciary from Acting as Super Legislators

Art. II, § 3, Fla. Const. commands

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

Avatar Dev. Corp. v. State, 723 So. 2d 199, 201 (Fla. 1998) ("Article II, section 3 declares a strict separation of the three branches of government ...."). As our supreme court has instructed:

> If a Legislative enactment violates no constitutional provision or principle it must be deemed its own sufficient and conclusive evidence of the justice, propriety and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts.

Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So. 2d 452, 454 (Fla. 1992).

Courts may not second-guess the legitimacy of a legislative inquiry so long as it is not "plainly incompetent or irrelevant to any lawful purpose [of the Legislature] in the discharge of [its] duties." *Endicott Johnson Corp. v. Perkins*, 317 U.S. 501, 509,(1943). To do so would entangle the judicial branch in matters involving the exclusive prerogative of another branch in violation of Florida's strict separation of powers requirement. *See* Art. II, § 3,

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Fla. Const. *Metz v. MAT Media, LLC,* 290 So. 3d 622, 628 (Fla. 1st DCA 2020)

e. The Legislature's Mention of One Thing in Chapter 64 Implies the Exclusion of Another

Settled Florida law on statutory construction instructs

> It is of course, a general principle of statutory construction that the mention of one thing implies the exclusion of another: *expressio unius est exclusio alterius*. Hence, where a statute enumerates the things on which it is to operate…it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.

Thayer v. State, 335 So. 2d 815, 817 (Fla. 1976). The reason for this rule is that the Legislature must be assumed to know the meaning of words and to have expressed its intent using the words found in the statute. *State Dept. of Highway Safety & Motor Vehicles v. Killen*, 667 So. 2d 433, 435 (Fla. 4th DCA 1996); *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918) (The law clearly requires that the legislative intent be determined primarily from the language of the statute because a statute is to be taken, construed, and applied in the forms enacted.)

Partition of real estate is not a new concept; partitions have been occurring here since 1844, a year before Florida adopted its first constitution and became the 27th state admitted to the Union. *Camp Phosphate Co. v. Anderson,* 37 So. 722 (Fla. 1904) ("The statute relating to partition (sections

1490–1497, Rev. St. 1892), having been enacted in 1844, before the first Constitution was adopted, is valid…”).

Every year, for the past 180-+ years, the Florida legislature reenacted partition laws in relatively the same form, laws that subsequently became that year’s Florida statutes. The partition statutes have always contained legislative grants of authority for certain classes of property co-owners to participate in partition actions, and for those owners to receive distributions of sale proceeds, Keegan’s research did not locate any legislature grants allowing first mortgagees the right to either be a party to a partition action or to receive any post-sale proceeds. *See* § 64.071, Fla. Stat. (2024) (emphasis added). The **only** recipients of sale proceeds could be Keegan and Neff. § 64.071, Fla. Stat. (“…and the money arising from such sale paid into the court to be ***divided among the parties*** in proportion to their interest.”); *Yager v. North & South Alafia River Phosphate Co.*, 82 Fla. 38, 89 So. 340 (1921) (Titled owners are the only parties to a partition action.).

The only other authorized distributions found in chapter 64 are for costs, the parties’ attorney’s fees, and “All taxes, state, county, and municipal, due thereon at the time of the sale, shall be paid out of the purchase money.” § 64.081, Fla. Stat. (2024). The legislature certainly knows how to use the terms “mortgage” or “first mortgagee”, which appear

38 times in the 2024 Florida statutes. But those terms are absent from chapter 64, and the legislature's exclusion is deemed intentional.

The plain language of Chapter 64 evidences the legislature's intentional omission of any statutory authorization for courts to authorize a court to distribute partition sale proceeds in a Chapter 64 partition case to anyone but the parties. Who can only be co-owners. *See, e.g.,* §§ Fla. Stat. 64.011-64.091 (2024).

Certainly, if the legislature intended to authorize courts to distribute chapter 64 sale proceeds to a first mortgagee in a partition action, it would be clearly stated within Chapter 64. *Palm Beach Cnty. Health Care Dist. v. Everglades Mem'l Hosp., Inc*., 658 So. 2d 577, 580–81 (Fla. 4th DCA 1995). In other words, the mention of things within Chapter 64, taxes, costs, owners, implies the exclusion of others, mortgages and first mortgagees. *Thayer v. State*, 335 So. 2d 815 (Fla. 1976).

When the partition statutes are strictly and narrowly construed, *Barden v. Pappas,* 532 So. 2d 707, 709 (Fla. 5th DCA 1988), Fifth Third Bank's claim finds no support in the law. Fifth Third shall not take any proceeds from the partition sale because it did not own the house and therefore was prohibited from being a party to the partition action. *Cline v. Cline*, 101 Fla. 488, 134 So. 546 (1931) (the only authorized parties to a partition are the property

owners who hold the title of the property, to the exclusion of anyone else.); *Dallam v. Sanchez*, 56 Fla. 779, 47 So. 871 (1909) (statute only authorized the partition of land among those who had the title thereto.)

Where the legislature has provided such a process, courts are not free to deviate from that process absent express authority. *State v. DiGuilio,* 491 So .2d 1129, 1133 (Fla. 1986) ("Our responsibility as an appellate court is to apply the law as the Legislature has so clearly announced it. We are not endowed with the privilege of doing otherwise regardless of the view which we might have as individuals."); *Miami, LLC v. A.K. Gift Shop, Inc*., 77 So. 3d 785, 787 (Fla. 3d DCA 2011) ("The law is the law. It is not our job to carve exceptions into an otherwise clear and imperative statute.").

While the Court may have sympathy for Fifth Third Bank, "[c]ourts of equity have no power to overrule established law." *Orr v. Trask,* supra., The lower court just be reversed. *Ideal Farms Drainage Dist. v. Certain Lands*, 154 Fla. 554, 19 So. 2d 234 (1944).

CONCLUSION

The lower court ignores the binding law and instead takes us on a circular journey that travels far and wide but misses the mark. (A.27). Statutes dealing with the general enforcement of promissory notes are irrelevant when a specific statutes addresses the issues. There is no "general

rule" that a first mortgage given voluntarily by co-owners may be satisfied from partition sale proceeds. In fact, no Florida case supports that absurd proposition. The trial court's dangerous suggestion that there is nothing in the partition statutes preventing the lower court from satisfying the mortgage from partition sale proceeds is contradicted by the very same statute the lower court claims supports its baseless position.

Finally, the lower court's bias against-if not outright contempt for-Keegan, pops off the page:

> "To do [distribute partition sale proceeds only to Keegan and Neff] so would result in the absurd outcome that property owners could walk away without payment on a mortgage simply by subjecting the property to a partition action."

(A.28). First, for 180 years Florida partitions between co-owners have produced two possible outcomes-division of the real estate or judicial sale. If the real estate is divided, the co-owners maintain responsibility for the mortgage which is unaffected by the partition. Hardly a windfall for the co-owners.

If the property is sold at judicial sale, there are two possible outcomes. If the property is underwater, there will likely be no bidders at the judicial sale meaning the co-owners will remain the co-owners, with the same

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responsibility for the mortgage as before the partition case. Hardly a windfall for the co-owners.

If the property has equity, or $1.5 million in equity as here, third parties will factor the mortgage balance into their bid price and take the property subject to the mortgage. The co-owners split the proceeds-which is their equity that belongs to them, not Fifth Third. How is it a windfall when co-owners of real estate cash out the equity that belons to them? Why does a lender, or third-party purchaser, get to steal equity that is not theirs? Why would a circuit judge assist in awarding such unwarranted relief?

In the case below, the same circuit judge who condemns Keegan for seeking a windfall has created an unconstitutional windfall for everyone ***but*** Keegan.

Fifth Third gets a judicial rewrite of both its mortgage and an entire chapter of Florida statutes the legislature has left relatively unchanged for 180 years, resulting in a judicially created windfall and donation of $455,000+ of money belonging to Keegan.

Spotlight/Zachman receives a judicial rewrite of Florida's recording statutes and judicial sale procedures by obtaining a judicially created $455,000+ gift of Keegan's money to satisfy a mortgage that is solely the responsibility of Spotlight/Zachman.

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Tracey Neff-the first property owner in history to push for a low sales price and to give the proceeds away, none of which raises any suspicion-is about to receive a $2 million judicial gift-sole ownership of the House free and clear of the mortgage.

All while Keegan receives a judicially created "windfall" of ….nothing. His 50% ownership vanishes into thin air? When he should have received at least $750,000 in sale proceeds if the government had done its job with even the slightest level of competence. How can Keegan promote public confidence in the judiciary, as he has tirelessly done for 23 years, when the same judiciary he defended has not administered justice, eviscerated his constitutional rights, and obliterated public confidence in the judiciary by mishandling one case to the point of absurdity?

For the foregoing reasons, Appellant, Mark G. Keegan prays this Honorable Court: (1) reverse the lower court's non-final order (A.25) entered July 9, 2024, overruling Keegan's objection to non-party mortgagee Fifth Third Bank's standing to claim partition sale proceeds, and denying Keegan's motion to strike Fifth Third Bank's notice of intent to claim sale proceeds, (2) reverse the lower court's non-final order entered July 22, 2024 (A.30), granting Fifth Third Bank's notice of intent to claim sale proceeds and directing clerk to disburse funds, (3) order, or instruct the trial court to order,

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Appellee Fifth Third Bank forthwith return to the court registry the $455,750.95 disbursed on July 24, 2024 (A.190) plus interest at the statutory rate of 9.50%[4], from which the clerk shall not deduct any registry or other fees, and (4) for any other and further relief this Court deems just, proper, and equitable under the facts and circumstances of this case.

The lower court must be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was filed October 3, 2024, with the Florida courts e-filing portal which will automatically transmit a copy of same to all designated counsel of record or interested parties pursuant to Fla. R. Jud. Admin 2.516(b)(1): Brett Goldblatt, attorney for Appellee, Tracey Neff, brett@bgoldblattlaw.com; Jonathan Mesker, attorney for Fifth Third Bank, Jonathan.Mesker@brockandscott.com,

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[4] https://myfloridacfo.com/division/aa/audits-reports/judgment-interest-rates

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CERTIFICATE OF COMPLIANCE

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