

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

CASE NO.: 4D2023-2293
L.T. CASE NO.: COSO21-713

MASELAH SURMATY,
Appellant,

v.

COURTSIDE AT WESTON HILLS
COUNTRY CLUB CONDO ASSOC.,
et al.,
Appellee(s)

ON APPEAL FROM A TRIAL COURT ORDER ON REHEARING THAT
SET ASIDE AN EX-PARTE ORDER, STRUCK A SATISFACTION OF
JUDGMENT AND RATIFIED A FORECLOSURE SALE

APPELLEE RICHARDSON'S ANSWER BRIEF

Submitted by:

MARK E. BUECHELE, ESQ.
Florida Bar No. 906700
Counsel for Appellee
Calva Richardson
P.O. Box 552135
Davie, Florida 33355-2135
Telephone: (305) 926-7455
Facsimile: (954) 236-6455
E-mail: MarkBuechele@msn.com

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
PREFACE	xiii
STATEMENT OF THE CASE AND FACTS	1
A. Nature Of The Case & Standard Of Review	1
B. Detailed Facts And Proceedings Before The Trial Court	2
SUMMARY OF THE ARGUMENT	12
ARGUMENT	14
I. The trial court had jurisdiction and properly vacated the <u>Ex-Part Order Vacating Sale</u> and properly struck the <u>Satisfaction of Judgment</u>.	14
A. <i>The trial court never lost jurisdiction under Fla.R.Civ.P. 1.530, and had complete jurisdiction over the court registry and alternatively under Fla.R.Civ.P. 1.540(b); and made decisions well within its authority and discretion.</i>	14
i. <i>The trial court had jurisdiction under the timely Fla.R.Civ.P. 1.530 and 1.540(b) motions</i>	14
ii. <i>The trial court had jurisdiction over the sale proceeds in the court registry and distribution of those funds.</i>	20

	<u>Page</u>
iii. <i>The <u>Satisfaction of Judgment</u> could not affect the court registry funds or Richardson’s right to the surplus.</i>	22
iv. <i>Trial court properly vacated the <u>Ex-Parte Order Vacating Sale</u> and struck the <u>Satisfaction of Judgment</u></i>	26
B. <i>The trial court struck the <u>Satisfaction of Judgment</u> because the <u>Judgment</u> was no longer satisfied, and not because of any rescission argument that Buyer never presented</i>	33
II. Proceedings in the first mortgage foreclosure case were irrelevant to the trial court’s jurisdiction in this case.	37
III. The trial court did not abuse its discretion by vacating the <u>Ex-Parte Order Vacating Sale</u> and ratifying the Foreclosure Sale.	41
CONCLUSION.	50
CERTIFICATE OF SERVICE.	51
CERTIFICATE OF COMPLIANCE.	52

TABLE OF CITATIONS

<u>Case Authority</u>	<u>Page</u>
<u>Abdoney v. York,</u> 903 So.2d 981 (Fla. 2d DCA 2005)	24, 40
<u>AG Grp. Invs., LLC v. All Realty Alliance Corp.,</u> 106 So.3d 950 (Fla. 3d DCA 2013)	21, 23, 24, 38, 40
<u>Arp Acquisitions Corp. v. PHH Mortg. Corp.,</u> 337 So.3d 873 (Fla. 3d DCA 2022).	19
<u>Allstate Fire and Casualty Insurance</u> <u>Company v. Hoffman,</u> 351 So.3d 7 (Fla. 4 th DCA 2022)	18
<u>American Cas. Co. v. Coastal Caisson Drill Co.,</u> 542 So.2d 957 (Fla. 1989)	37
<u>Arsali v. Chase Home Finance LLC,</u> 1221 So. 3d 511 (Fla. 2013)	6, 30, 44, 49
<u>Avi-Isaac v. Wells Fargo Bank,</u> 59 So.3d 174 (Fla. 2d DCA 2011)	30
<u>Avila v. HMC Assets, LLC,</u> 273 So.3d 1134 (Fla. 5 th DCA 2019)	29
<u>Balmoral Condo. Ass'n v. Grimaldi,</u> 107 So.3d 1149 (Fla. 3d DCA 2013).	26
<u>Bank of America, N.A. v. Fogel,</u> 192 So.3d 573 (Fla. 4 th DCA 2016)	28
<u>Bayview Loan Servicing, LLC v. Dzidzovic,</u> 249 So. 3d 1265 (Fla. 2d DCA 2018).	28

<u>Case Authority</u>	<u>Page</u>
<u>BDO Seidman, LLP v. British Car Auctions, Inc.</u> , 789 So. 2d 1019 (Fla. 4th DCA 2001)	16
<u>Benavente v. Ocean Vill. Prop. Owners Ass’n, Inc.</u> , 260 So.3d 313 (Fla. 4 th DCA 2018)	29
<u>Brown v. Vermont Mut. Ins. Co.</u> , 614 So.2d 574 (Fla. 1 st DCA 1993)	36
<u>Bucsit v. Bucsit</u> , 229 So.3d 430 (Fla. 1 st DCA 2017)	26, 42
<u>Bullard v. Sharp</u> , 407 So.2d 1023 (Fla. 4 th DCA 1981)	37
<u>Cabral v. City of Miami Beach</u> , 76 So. 3d 324 (Fla. 3d DCA 2011).	33
<u>Canakaris v. Canakaris</u> , 382 So.2d 1197 (Fla. 1980)	42-43
<u>Can Financial, LLC v. Niklewicz</u> , 307 So.3d 33 (Fla. 4 th DCA 2020)	7, 9, 10, 30, 34, 36, 44, 48, 49
<u>Cape Royal Realty, Inc. v. Kroll</u> , 804 So.2d 605 (Fla. 5 th DCA 2002)	19
<u>Carollo v. Carollo</u> , 920 So.2d 16 (Fla. 3d DCA 2004)	26
<u>CCC Props., Inc. v. Kane</u> , 582 So.2d 159 (Fla. 4th DCA 1991)	45
<u>Challenger Inv. Group, Lc v. Jones</u> , 20 So.3d 941 (Fla. 3d DCA 2009)	23, 26, 31

<u>Case Authority</u>	<u>Page</u>
<u>Clearwater Federal Sav. and Loan Ass'n v. Sampson,</u> 336 So.2d 78 (Fla. 1976)	16
<u>Commonwealth Land Title Ins. Co. v. Freeman,</u> 884 So.2d 164 (Fla. 2 nd DCA 2004)	17
<u>Cone v. State Ex Rel. Crane,</u> 187 So. 593, 136 Fla. 828 (Fla. 1939).	37
<u>Crimson 27, LLC v. Taylor Made Lending, LLC,</u> 341 So.3d 419 (Fla. 3d DCA 2022)	30
<u>Demir v. Schollmeier,</u> 273 So.3d 59 (Fla. 3d DCA 2018)	29
<u>Derma Lift Salon, Inc. v. Swanko,</u> 419 So.2d 1180 (Fla. 3d DCA 1982).	17
<u>Dudlar v. Mortg. Elec. Registration Sys., Inc.,</u> 338 So.3d 375 (Mem) (Fla. 3d DCA 2022)	21
<u>Emanuel v. Bankers Tr. Co.,</u> 655 So. 2d 247, 250 (Fla. 3d DCA 1995).	44
<u>Estate of Willis v. Gaffney,</u> 677 So.2d 949 (Fla. 2d DCA 1996).	18
<u>Ford Motor Credit Co. v. Simmons,</u> 421 So.2d 698 (Fla. 2d DCA 1982)	27, 31
<u>Fugazy Travel Bureau, Inc. v. State by Dickinson,</u> 188 So.2d 842 (Fla. 4th DCA 1966)	26
<u>Garcia v. Stewart,</u> 906 So.2d 1117 (Fla. 4 th DCA 2005)	21, 23, 38

<u>Case Authority</u>	<u>Page</u>
<u>Ginsburg v. Carney</u> , 514 So.2d 1153 (Fla. 2d DCA 1987)	25
<u>Golindano v. Wells Fargo Bank</u> , 913 So.2d 614 (Fla. 3d DCA 2005)	30
<u>Hastings v. Hastings</u> , 45 So.2d 115 (Fla. 1950).	28
<u>Herskowitz v. Herskowitz</u> , 513 So.2d 1318 (Fla. 3d DCA 1987)	17, 42
<u>Hill v. Hill</u> , 65 So.3d 143 (Fla. 5 th DCA 2011)	19
<u>Household Fin. Serv. Inc. v. Bank of America</u> , 883 So.2d 346 (Fla. 4 th DCA 2004)	21, 23, 29, 30, 38
<u>Huff v. State</u> , 569 So. 2d 1247 (Fla. 1990)	42
<u>IndyMac Fed. Bank FSB v. Hagan</u> , 104 So. 3d 1232 (Fla. 3d DCA 2012),	44
<u>In re: Neely</u> , 256 B.R. 322 (Bankr.S.D.Fla. 2000)	40
<u>Jackson v. State</u> , 572 So.2d 31 (Fla. 5 th DCA 1991)	29, 35
<u>Jankowski v. Dey</u> , 64 So.3d 183 (Fla. 2d DCA 2011)	35
<u>J.B. v. Fla. Dep't of Children & Family Servs.</u> , 768 So.2d 1060 (Fla. 2000).	28

<u>Case Authority</u>	<u>Page</u>
<u>Jenkins v. Silver Pines Ass’n, Inc.</u> , 328 So.3d 1144 (Mem) (Fla. 5 th DCA 2021)	43
<u>JP Morgan Chase Bank v. U.S. Bank Nat.</u> , 929 So.2d 651 (Fla. 4 th DCA 2006).	21, 23, 38
<u>Kelly v. Bankunited</u> , 125 So.3d 981 (Fla. 4 th DCA 2013).	2
<u>K-Mart Corp. v. State, Dept. of Transp.</u> , 636 So.2d 131 (Fla. 2d DCA 1994).	36
<u>Magnum Towing, Inc. v. Sunbeam Television Corp.</u> , 781 So. 2d 379 (Fla. 3d DCA 1998).	19
<u>Marsh & McLennan, Inc. v. Aerolineas Nacionales Del Ecuador</u> , 530 So.2d 971 (Fla. 3d DCA 1988)	17, 27, 42
<u>McCrea v. Deutsche Bank Nat. Trust Co.</u> , 993 So.2d 1057 (Fla. 2d DCA 2008)	28
<u>Melfi Const., Inc. v. Coastal Theaters, Inc.</u> , 279 So.2d 341 (Fla. 4 th DCA 1973)	34
<u>MERS v. Mahler</u> , 928 So.2d 470 (Fla. 4 th DCA 2006)	23
<u>Mistretta v. Mistretta</u> , 31 So.3d 206 (Fla. 1 st DCA 2010)	17
<u>Moforis v. Moforis</u> , 977 So.2d 786 (Fla. 4 th DCA 2008)	18, 20
<u>Mora v. McDonough</u> , 934 So.2d 587 (Fla. 1 st DCA 2006)	1

<u>Case Authority</u>	<u>Page</u>
<u>Moran-Alleen Co. v. Brown,</u> 98 Fla. 203, 123 So. 561 (Fla. 1929)	44
<u>Morris North American, Inc. v. King,</u> 430 So.2d 592 (Fla. 4 th DCA 1983)	25, 31
<u>Meyer v. Bricklayers, Masons & Plasterers Union,</u> 144 Fla. 401, 198 So. 78 (Fla. 1940)	22
<u>Miller v. Fortune Insurance Co.,</u> 484 So.2d 1221 (Fla.1986)	25
<u>Nardi v. Continental Nat. Bank,</u> 559 So.2d 307 (Fla. 3d DCA 1990)	19
<u>Nat’l Equity Recovery Servs., Inc.</u> <u>v. Imperial Fund Trust 2019-I,</u> 361 So.3d 876 (Fla. 4 th DCA 2023)	22
<u>O’Sullivan v. City of Deerfield Beach,</u> 232 So.2d 33 (Fla. 4 th DCA 1970)	25
<u>Pino v. Bank of New York,</u> 121 So.3d 23 (Fla. 2013)	9, 15, 24
<u>Popescu v. Laguna Master Ass’n, Inc.,</u> 126 So.3d 449 (Fla. 4 th DCA 2013)	16
<u>Popescu v. Laguna Master Ass’n, Inc.,</u> 184 So.3d 1196 (Fla. 4 th DCA 2016)	36
<u>Progressive Plumbing, Inc. v. Dixie Const. Products,</u> 912 So.2d 646 (Fla. 5 th DCA 2005)	27, 32

<u>Case Authority</u>	<u>Page</u>
<u>Residential Mortgage Servicing Corp.</u> <u>v. Winterlakes Prop. Owners Ass'n, Inc.</u> , 169 So.3d 253 (Fla. 4 th DCA 2015)	45
<u>Reyes v. Aqua Life Corp.</u> , 209 So. 3d 47 (Fla. 3d DCA 2016)	28
<u>River City Wholesale Florist, Ltd. v. Equiflor Corp.</u> , 864 So.2d 21 (Fla. 3d DCA 2003).	34
<u>Romano v. Mechaia Investments, LLC</u> , 201 So.3d 4 (Fla. 3d DCA 2009)	27
<u>Rosen v. Dorn-Kothe, Inc.</u> , 126 Fla. 717, 171 So. 646 (Fla. 1936)	21, 22, 23, 38
<u>Ross v. Wells Fargo Bank</u> , 114 So.3d 256 (Fla. 3d DCA 2013)	20, 40, 41
<u>Sanchez v. Fernandez</u> , 915 So.2d 192 (Fla. 4 th DCA 2005)	1
<u>Sarhan v. H&H Investors, Inc.</u> , 88 So.3d 219 (Fla. 3d DCA 2011)	35
<u>Schroth v. Cape Coral Bank</u> , 377 So.2d 50 (Fla. 2d DCA 1979)	30
<u>Shelby Mut. Ins. Co. of Shelby, Ohio v. Pearson</u> , 236 So.2d 1 (Fla. 1970)	17
<u>Shlishey the Best v. Citifinancial Equity</u> , 14 So.3d 1271 (Fla. 2d DCA 2009)	28, 29, 31
<u>Skelton v. Lyons</u> , 157 So. 3d 471 (Fla. 2d DCA 2015)	44

<u>Case Authority</u>	<u>Page</u>
<u>Smith v. Smith,</u> 90 Fla. 824, 107 So. 257 (Fla. 1925)	37
<u>Spencer v. DiGiacomo,</u> 56 So.3d 92 (Fla. 4 th DCA 2011)	15, 23, 25, 26
<u>SPS Corp. v. Kinder Builders, Inc.,</u> 997 So.2d 1232 (Fla. 3d DCA 2008).	32
<u>Stella v. Craine,</u> 281 So.2d 584 (Fla. 4 th DCA 1973), cert. denied, 289 So.2d 731 (Fla. 1974).	19
<u>Sunset Harbour Condo. Ass'n v. Robbins,</u> 914 So.2d 925 (Fla. 2005).	34
<u>SunTrust Mortgage v. Torrenqa,</u> 153 So.3d 952 (Fla. 4 th DCA 2014)	2
<u>SVI Capital, LLC v. Bank of Am., N.A.,</u> 164 So.3d 36 (Fla. 4 th DCA 2015)	30
<u>Trease v. State,</u> 768 So. 2d 1050 (Fla. 2000)	42
<u>Tucker v. Dianne Elec., Inc.,</u> 389 So.2d 683 (Fla. 5 th DCA 1980)	19
<u>Tucker v. LNV Corp.,</u> 363 So.3d 1095 (Fla. 4 th DCA 2023)	32
<u>U.S. Bank Nat'l Ass'n v. Anthony-Irish,</u> 204 So.3d 57 (Fla. 5 th DCA 2016).	33
<u>U.S. Bank, N.A. v. Vogel,</u> 137 So.3d 491 (Fla. 4 th DCA 2014).	2, 32-33, 43

Case Authority Page

Viets v. Arei,
922 So.2d 1090 (Fla. 4th DCA 2006) 28

Volynsky v. Park Tree Invs. 21, LLC,
322 So.3d 714 (Fla. 3d DCA 2021) 48

Waybright v. Turner,
129 Fla. 310, 176 So. 424 (Fla. 1937) 21, 23, 38

Wechsler v. Novak,
157 Fla. 703, 26 So.2d 884 (Fla. 1946) 37

White v. Loschiavo,
597 So.2d 373 (Fla. 4th DCA 1992) 28, 29

YEMC Contr. & Dev. v. Inter Ser USA Inc.,
884 So.2d 446, 448 (Fla. 3d DCA 2004) 36, 45

Zwakhals v. Senft,
206 So.2d 62 (Fla. 4th DCA 1968) 32

Other Authority Page

Fla.Stat. §45.031 22, 43, 44

Fla.Stat. §45.0315. 20, 36

Fla.Stat. §45.032 7, 22

Fla.R.App.P. 9.020 17

Fla.R.App.P. 9.110 1

<u>Other Authority</u>	<u>Page</u>
Fla.R.Civ.P. 1.420	25
Fla.R.Civ.P. 1.530	1, 2, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24, 26, 27, 32, 38, 39, 41, 42
Fla.R.Civ.P. 1.540	1, 2, 7, 9, 13, 14, 15, 18, 19, 20, 24, 25, 26, 27, 31, 32, 33
Fla.R.Gen.Prac.&Jud.Admin. 2.505.	35

PREFACE

The Appellant has not referenced the Record on Appeal as required, but rather only Appellant's Appendix To Initial Brief which omits many important and relevant documents necessary for the resolution of this appeal. Therefore, Appellee Richardson shall reference primarily the Record on Appeal, as supplemented by an Appellee's Appendix To Richardson's Answer Brief for court filings not included in the Record on Appeal; and with additional references to the Appellant's Appendix To Initial Brief as necessary or relevant.

The following references will be used in this Answer Brief:

Appellant MASELAH SURMATY will be referred to as the "Buyer" or "Appellant Buyer" (as appropriate).

Appellee CALVA RICHARDSON will be referred to as "Richardson" or "Appellee Richardson" (as appropriate).

Appellee COURTSIDE AT WESTON HILLS COUNTRY CLUB CONDO ASSOCIATION will be referred to as "Association" or "Appellee Association" (as appropriate).

The Record On Appeal shall be referred to as the "Record", and

references to the Record will appear using the format: (R.____).

References to the Appellant's Initial Brief appear herein using the format: (Initial Brief @____).

References to Appellant's Appendix To Initial Brief appear herein using the format: (A.____).

References to Appellee's Appendix To Richardson's Answer Brief appear herein using the format: (AR.____).

STATEMENT OF THE CASE AND FACTS

A. Nature Of The Case & Standard Of Review

This is an appeal under Fla.R.App.P. 9.110 of a trial court order on rehearing that vacated a prior ex-parte order, struck a satisfaction of judgment, and ratified a foreclosure sale. Appellee Association had obtained a judgment for \$48,700.66 on property that Appellant Buyer paid \$252,100 at the foreclosure sale. After the certificate of sale, Buyer tried to undo the foreclosure sale by tendering monies to the Association and obtaining an ex-parte order vacating the sale. Upon receipt of Buyer's money, the Association also filed a satisfaction of judgment. Timely motions were filed under Fla.R.Civ.P. 1.530 (and alternatively under Fla.R.Civ.P. 1.540(b)) to vacate the ex-parte order and satisfaction of judgment, and ratify the sale, which the trial court granted, and Buyer has now appealed.

Appellant claims the trial court lacked jurisdiction and abused its discretion by setting aside the ex-parte order and satisfaction of judgment and ratifying the foreclosure sale. Jurisdiction is a question of law reviewed de novo. Mora v. McDonough, 934 So.2d 587 (Fla. 1st DCA 2006); Sanchez v. Fernandez, 915 So.2d 192 (Fla.

4th DCA 2005). A rehearing under Fla.R.Civ.P. 1.530 is reviewed for an abuse of discretion. Kelly v. BankUnited, 125 So.3d 981 (Fla. 4th DCA 2013). An order granting relief under Fla.R.Civ.P. 1.540(b) is reviewed for an abuse of discretion. SunTrust Mortgage v. Torrenqa, 153 So.3d 952 (Fla. 4th DCA 2014). An order refusing to set aside a foreclosure sale is reviewed for a gross abuse of discretion. U.S. Bank, N.A. v. Vogel, 137 So.3d 491 (Fla. 4th DCA 2014).

B. Detailed Facts And Proceedings Before The Trial Court

On January 21, 2021 Appellee Courtside at Weston Hills Country Club Condo Association, Inc. (the "Association") filed an action to foreclose a lien on property located at 2817 Center Court Drive #1-26, Weston, FL 33332 (the "Property") R.16-30. The Association's Amended Complaint for Foreclosure (the "Amended Complaint") (R.31-45) named Appellee Richardson and Iron Condor Holdings, Inc. ("Iron Condor") as owners of the Property, with Roberto Angulo and Alba Lucia Angulo (the "Angulos") as persons claiming an interest. R.31-33. On August 12, 2021 the Angulos filed Defendant's Answer And Affirmative Defenses (R.55-59) claiming to be the rightful owners of the Property. R.58.

After failing to personally serve Richardson, on August 18, 2021 the Association filed an Affidavit of Diligent Search and Inquiry identifying Richardson's home address as 4986 SW 8th Street, Margate, FL 33068 ("Richardson's Home Address") (AR.05-07); and then obtained an Order of Court Default against Richardson and Iron Condor based upon service by publication. R.60-61.

On September 21, 2022, the trial court entered a Final Summary Judgment Of Foreclosure And Order Taxing Costs And Attorney's Fees (the "Judgment") for \$48,700.66 and set a foreclosure sale for December 16, 2022. R.72-76. Paragraph 5 of the Judgment ordered the Clerk to distribute the sale proceeds by priorities and then hold remaining amounts pending future court order (R.74-75); and Paragraph 6 ordered that all equity and redemption rights in the Property shall be barred upon the Clerk filing the certificate of sale (the "Certificate of Sale"). R.75.

A foreclosure sale was held on December 16, 2022, but the third-party bidder defaulted. R.12. On January 25, 2023, Joshua Pinto ("Pinto"), as the defaulting third-party bidder, moved for a refund of his \$4,755 deposit because there was another mortgage on

the Property. R.81. On February 21, 2023 the trial court denied Pinto's motion, disbursed the forfeited deposit to the Association and rescheduled a new sale for March 24, 2023. R.82-83.

Appellant Buyer holds a Real Estate Sales License and a Real Estate Appraiser License. R.131-134. On March 24, 2023 Buyer was the highest bidder at the foreclosure sale paying \$252,100 (Initial Brief @3-4) (AR.11). The second highest bid was \$252,000. AR.10. On March 27, 2023, the Clerk filed the Certificate of Sale. AR.11, R.13. After paying the Clerk, Buyer discovered a superior mortgage and tried to undo the sale by tendering \$51,475.84 to the Association to have the sale vacated. R.103-104.

On March 28, 2023 (at 9:08 a.m.) the Association filed a Satisfaction of Judgment and Discharge of Lis Pendens (the "Satisfaction of Judgment") (R.84-85) and an Ex-Parte Motion To Vacate Foreclosure Sale And Order Directing Clerk To Reimburse Third Party Purchaser ("Ex-Parte Motion To Vacate Sale") (R.86-89) stating the Judgment had been paid on March 28, 2023, and that the sale should be vacated with the proceeds returned to Buyer. R.86-89. The Ex-Parte Motion To Vacate Sale was mailed to Richardson's

Home Address, but not served on the Angulos or Pinto. R.87. That same day, the Association uploaded ex-parte an Order On Plaintiff's Ex-Parte Motion To Vacate Foreclosure Sale And Order Directing Clerk To Reimburse Third Party Purchaser (the "Ex-Parte Order Vacating Sale") (R.90-91), which was entered on March 28, 2023 at 3:13 p.m. R.90. The Ex-Parte Order Vacating Sale was submitted to the court ex-parte, and without any notice or hearing. R.104.

Upon discovering the Ex-Parte Motion To Vacate Sale and Ex-Parte Order Vacating Sale, Richardson objected to the Association's attorney, who on March 31, 2023 filed Plaintiff's Emergency Motion To Vacate Order Dated March 28, 2023, Order Preventing The Clerk Of Courts From Disbursing The Funds Held In The Court Registry, Striking The Satisfaction Of Judgment Filed On March 28, 2023 And Ratifying The Foreclosure Sale Of March 24, 2023 (the "Motion To Vacate Ex-Parte Order") (R.92-102), arguing that the Ex-Parte Motion To Vacate Sale and Ex-Parte Order Vacating Sale were inadvertently filed ex-parte denying defendants an opportunity to be heard and requesting that the Ex-Parte Order Vacating Sale be vacated and the corresponding Satisfaction of Judgment be stricken. R.92-93.

On April 3, 2023, Appellant Buyer filed his Third Party Bidder's Objection To Plaintiff's Emergency Motion To Vacate Order Dated March 28, 2023, Order Preventing The Clerk Of Courts From Disbursing The Funds Held In The Court Registry, Striking The Satisfaction Of Judgment Filed On March 28, 2023 And Ratifying the Foreclosure Sale Of March 24, 2023 (the "Objection To Motion To Vacate Ex-Parte Order") (R.103-116) arguing that after Buyer paid his bid, he learned of a senior mortgage in another action (R.103), made a deal with the Association to, "*pay off the FJ and essentially make the Plaintiff whole without any delays or obstacles that could occur would an objection to the sale be filed by one of the four defendants*", and then wire transferred \$51,475.84 to Association's counsel which was received on March 28, 2023. R.104 at ¶¶3-4. Buyer's Objection To Motion To Vacate Ex-Parte Order admits the Ex-Parte Order Vacating Sale was submitted ex-parte and without notice or a hearing (R.104); but argued that no-one was entitled to notice or a hearing (R.104-106); that the trial court had authority to set aside the sale under Arsali v. Chase Home Finance LLC, 1221 So. 3d 511 (Fla.

2013) (R.106-107); and that the trial court lacked jurisdiction because of the Satisfaction of Judgment. R.107.

Because of an inability to schedule a hearing with all counsel, on April 4, 2023 the trial court entered an Order And Notice To Clerk Of Court To Stay Disbursement Of Funds Pending Hearing (R.117-118) that stayed disbursement of the registry funds. R.92-102. On April 7, 2023, Amerifund Equity Group, as appointee of Iron Condor, filed a claim against the surplus. R.119-123.

On April 10, 2023, Appellee Richardson filed Defendant Calva Richardson's Motion For Rehearing And To Vacate 3/28/23 Ex-Parte Order ("Motion For Rehearing") under Fla.R.Civ.P. 1.530 and 1.540 seeking a rehearing and/or to vacate the Ex-Parte Order Vacating Sale. R.124-134. The Motion for Rehearing objected to the lack of notice and hearing (R.129); argued that Richardson was entitled to part of the surplus under Fla.Stat. §45.032 (R.126-127); that Buyer had no right of redemption or right to pay-off the Judgment after the Certificate of Sale was filed (R.128); that under Can Financial, LLC v. Niklewicz, 307 So.3d 33 (Fla. 4th DCA 2020) the Buyer had constructive notice of the superior mortgage and had no legal basis to

vacate the sale (R.128-129); and that the Ex-Parte Order Vacating Sale was void and/or should be vacated. R.128. On August 10, 2023, Richardson filed Calva Richardson's Claim For Mortgage Foreclosure Surplus claiming part of the surplus. R.135-139.

On August 14, 2023, Appellee Richardson filed Defendant Calva Richardson's Memorandum In Support Of Plaintiff's Emergency Motion (Filed 3/31/23) (the "Support Memorandum") (R.140-159) incorporating Richardson's Motion for Rehearing (R.143) and joining in the Association's Motion To Vacate Ex-Parte Order (R.148).

On August 21, 2023 the trial court held a hearing on the Association's Motion To Vacate Ex-Parte Order and Richardson's Motion for Rehearing (and Support Memorandum) with the transcript in the Record (R.205-248). At the start of the hearing, the trial court announced, "*Now, obviously I did review the motion that we'll be hearing today that was filed by Plaintiff. I am aware that there is a motion for re-hearing and to vacate the March 28th order that was filed by Defendant Calva Richardson. That motion will be addressed today simply because it's a matter that directly pertains to the issues*

that we are going to be addressing in the Plaintiff's motion.” R.211, A.077 (transcript page 7, lines 13-22).

At the August 21, 2023 hearing, the Association argued that it mistakenly filed the Ex-Parte Motion To Vacate Sale as an ex-parte matter, and should have noticed it for hearing so that interested parties could be heard (R.213-214, A.079-080); that the money tendered by the Buyer was undisbursed, held in a trust account, and should be returned to the Buyer (R.213-214,217, A.079-080,083); that under the Can Financial case the Ex-Parte Order Vacating Sale had no legal basis and was an abuse of discretion (R.214-217, A.080-083); and that the Satisfaction of Judgment should be stricken and/or removed from the public record because it was filed as part of the ex-parte order that should be vacated. R.217, A.083.

At the hearing Buyer argued that the Satisfaction of Judgment divested the trial court of any authority (R.219, A.085); that the Association was “trying to use 1.540(b) to undo their discharge of lis pendens and their satisfaction of judgment” which cannot be done under Pino v. Bank of New York, 121 So.3d 23 (Fla. 2013) (R.220, A.086); that because there was an agreement between the Buyer and

the Association that, “I'm going to pay you \$50,000, and you're going to undo this sale”, the Can Financial case was distinguishable (R.220-221, A.086-087); that, “[T]he Defendant might be upset that they are not going to get a surplus the way they wanted to get a surplus” (R.221, A.087); but that equity would empower this kind of arrangement and so there was no reason to follow Can Financial (R.222, A.088); that it didn't matter that everything was done ex-parte because the Satisfaction of Judgment was controlling (R.222, A.088); and therefore the Buyer was, “asking that the Court approve the order that was entered ex parte.” R.222, A.088.

At the hearing Appellee Richardson argued that if the Buyer had bid rationally he could have made money while still leaving a surplus (R.223, A.089); that Buyer had no right to redeem the property (R.223-224, A.089-090); that all parties agree a hearing should have been held and that it was improper to enter the Ex-Parte Order Vacating Sale without a hearing (R.224-225, A.090-091); and that there was no legal basis for vacating the sale, and that the Buyer was just trying to circumvent the statutory procedures because he wasn't going to make the profit he expected. R.224-225, A.090-091.

The trial court then orally ruled that under the situation the court had no authority to vacate the foreclosure sale under existing legal authority (R.231, A.097); that a hearing should have been held on the Ex-Parte Motion To Vacate Sale stating, “it was improper for the March 28th motion and order to be done on an ex parte basis” and “though the motion could've certainly been filed and set for a hearing, it would have been inappropriate for that to be done on an ex parte basis preventing the other parties in this action from having any notice of the hearing or an opportunity to be heard” (R.232, A.098); and because the Ex-Parte Order Vacating Sale was void, the trial court had jurisdiction to correct issues relating to the Satisfaction of Judgment. R.232-233, A.098-099. The trial court then stated, “I'm going to vacate the March 28th ex parte order that was done inappropriately”, “ratify the certificate of sale nun pro tunc that was issued on March 27th” and “strike the Satisfaction of Judgment and Discharge of Lis Pendens that were issued on March 28th and subsequently recorded in the public records.” R.233, A.099. The trial court also ruled that Buyer's \$51,475.84 be

returned (R.233, A.099), and that the Clerk disburse the Judgment amount to the Association from the court registry (R.238, A.104).

On August 25, 2023 the trial entered its Order Granting Plaintiff's Emergency Motion To Vacate Order Dated March 28, 2023, Order Preventing The Clerk Of Courts From Disbursing The Funds Held In The Court Registry, Striking The Satisfaction Of Judgment Filed On March 28, 2023, And Ratifying The Foreclosure Sale Of March 24, 2023 (the "Order Vacating Ex-Parte Order"), which incorporated the court's oral ruling at the hearing. R.180-182. On August 28, 2023, Association's counsel sent Buyer a trust account check for \$51,475.84, which the Buyer negotiated on August 30, 2023. R.199, 250. On September 22, 2023, Buyer filed his Notice of Appeal, appealing the Order Vacating Ex-Parte Order. R.191-195.

SUMMARY OF ARGUMENT

Although Appellant claims the trial court lacked jurisdiction, the trial court never lost jurisdiction to vacate the Ex-Parte Order Vacating Sale and strike the Satisfaction of Judgment under *Fla.R.Civ.P. 1.530*. The trial court also had complete jurisdiction over the sale proceeds in the court registry, and jurisdiction under the

alternative *Fla.R.Civ.P. 1.540(b)* motions. The trial court properly exercised its broad discretion under Rule 1.530 to vacate the Ex-Parte Order Vacating Sale and strike the Satisfaction of Judgment since returning Buyer's \$51,475.84 meant the Judgment was no longer satisfied. The Satisfaction of Judgment could only affect the Association's right to collect, alter or amend the Judgment, and could not affect third party rights to the surplus in the court registry.

Although Buyer claims he had an agreement to pay the Judgment to undo the foreclosure sale, Buyer never sought to enforce his agreement and the trial court never made any rulings on this agreement. In any event, Buyer's agreement would violate the redemption and surplus statutes, due process, the Judgment, and prejudice the rights of third parties, including Richardson.

Although Appellant claims the first mortgage foreclosure case divested the trial court of jurisdiction, this is simply inaccurate because the Certificate of Sale transferred the parties' rights from the Property to the court registry over which the trial court had complete jurisdiction, and any relevant events in the other foreclosure case occurred *after* the Certificate of Sale was filed in this case.

Finally, the trial court did not abuse its discretion in rehearing the matter and entering the Order Vacating Ex-Parte Order. Nor did the trial court grossly abuse its discretion by ratifying the foreclosure sale when Buyer failed to show any defects in the sale process or provide any other valid reason for vacating the sale.

ARGUMENT

I. The trial court had jurisdiction and properly vacated the Ex-Part Order Vacating Sale and properly struck the Satisfaction of Judgment.

A. *The trial court never lost jurisdiction under Fla.R.Civ.P. 1.530, and had complete jurisdiction over the court registry and alternatively under Fla.R.Civ.P. 1.540(b); and made decisions well within its authority and discretion.*

Appellant Buyer argues that the trial court exceeded its jurisdiction when it set aside the Satisfaction of Judgment (Initial Brief @13-16). However, the trial court never lost jurisdiction under *Fla.R.Civ.P. 1.530*, had complete jurisdiction over the court registry, with alternative jurisdiction under *Fla.R.Civ.P. 1.540(b)* and acted properly in vacating the Ex-Parte Order Vacating Sale and striking the Satisfaction of Judgment.

i. *The trial court had jurisdiction under the timely Fla.R.Civ.P. 1.530 and 1.540(b) motions.*

Buyer claims the Satisfaction of Judgment was a complete bar to any effort to alter or amend the Ex-Parte Order Vacating Sale; and that under Pino v. Bank of New York, 121 So.3d 23 (Fla. 2013) and Spencer v. DiGiacomo, 56 So.3d 92 (Fla. 4th DCA 2011) the trial court lost jurisdiction when the Satisfaction of Judgment was filed on March 28, 2023 at 9:08 a.m. If this were true, then the trial court also lacked jurisdiction to enter the Ex-Parte Order Vacating Sale several hours later at 3:13 p.m. Nevertheless, Buyer's argument has no merit because timely *Fla.R.Civ.P. 1.530* and *Fla.R.Civ.P. 1.540(b)* motions preserved the trial court's jurisdiction.

The Satisfaction of Judgment and Ex-Parte Order Vacating Sale were both filed on March 28, 2023. Florida Rule of Civil Procedure 1.530(b) allows a party fifteen (15) days to serve a motion for rehearing of a final order or judgment. On March 31, 2023, the Association served and filed its Motion To Vacate Ex-Parte Order seeking to vacate the Ex-Parte Order Vacating Sale and strike the Satisfaction of Judgment. On April 10, 2023, Richardson served and filed his Motion for Rehearing citing *Fla.R.Civ.P. 1.530* and *Fla.R.Civ.P. 1.540(b)*. As allowed by *Fla.R.Civ.P. 1.530(b)*, on August 14, 2023,

Richardson supplemented his Motion for Rehearing by filing his Support Memorandum asking that the trial court to grant the Association's Motion To Vacate Ex-Parte Order.

The Ex-Parte Order Vacating Sale and Satisfaction of Judgment were both post-judgment final orders on which a *Fla.R.Civ.P. 1.530* motion was authorized. When the Certificate of Sale was filed a potential surplus existed for Richardson and others. The Ex-Parte Order Vacating Sale vacated the foreclosure sale, released registry funds back to Buyer, and eliminated any surplus; and thus was a final post-judgment decretal order upon which a *Fla.R.Civ.P. 1.530* motion was authorized. Clearwater Federal Sav. and Loan Ass'n v. Sampson, 336 So.2d 78, 79 (Fla. 1976); see also Popescu v. Laguna Master Ass'n, Inc., 126 So.3d 449, 450 (Fla. 4th DCA 2013) (*Fla.R.Civ.P. 1.530* motion was authorized on a motion to vacate a foreclosure sale); BDO Seidman, LLP v. British Car Auctions, Inc., 789 So. 2d 1019 (Fla. 4th DCA 2001) (noting in Clearwater Federal that a post-judgment order withdrawing court registry funds was a final order authorizing a *Fla.R.Civ.P. 1.530* motion). Similarly, the Satisfaction of Judgment was final because it foreclosed the

Association's right to enforce the Judgment and obtain payment from the court registry.

A timely Rule 1.530 motion stays rendition of a final order. Commonwealth Land Title Ins. Co. v. Freeman, 884 So.2d 164, 168 (Fla. 2nd DCA 2004); see also Fla.R.App.P. 9.020(h)(1)(B). An order is rendered when a signed, written order is filed with the clerk. See Fla.R.App.P. 9.020(h). When a timely Rule 1.530 motion has been filed, the order is not rendered until the motion has been disposed. Marsh & McLennan, Inc. v. Aerolineas Nacionales Del Ecuador, 530 So.2d 971, 973 (Fla. 3d DCA 1988); see also Herskowitz v. Herskowitz, 513 So.2d 1318, 1319 (Fla. 3d DCA 1987).

"If a motion to alter or vacate is timely filed, or if the trial court acts timely on its own initiative pursuant to Rule 1.530, the trial court's jurisdiction continues until the motion or petition is disposed of, or the rehearing or new trial is conducted." Shelby Mut. Ins. Co. of Shelby, Ohio v. Pearson, 236 So.2d 1, 3 (Fla. 1970); Derma Lift Salon, Inc. v. Swanko, 419 So.2d 1180 (Fla. 3d DCA 1982). A motion for rehearing vests the court with continuing jurisdiction. Mistretta v. Mistretta, 31 So.3d 206, 210 fn.2 (Fla. 1st DCA 2010).

The same is true for the alternative *Fla.R.Civ.P. 1.540(b)* motions which also provided the trial court jurisdiction over the issues raised in the motions. *Allstate Fire and Casualty Insurance Company v. Hoffman*, 351 So.3d 7, 9 (Fla. 4th DCA 2022); see also *Moforis v. Moforis*, 977 So.2d 786, 788 (Fla. 4th DCA 2008).

Richardson's *Motion for Rehearing* specifically cited *Fla.R.Civ.P. 1.530* and *Fla.R.Civ.P. 1.540(b)*. Although the Association's *Motion To Vacate Ex-Parte Order* did not cite either rule, it was timely filed under both rules, and sought to vacate the *Ex-Parte Order Vacating Sale* and strike the *Satisfaction of Judgment* because those matters were inadvertently submitted ex-parte; which in substance raised relief under *Fla.R.Civ.P. 1.530(a)* (open judgment and enter new judgment), *Fla.R.Civ.P. 1.530(g)* (alter or amended judgment), *Fla.R.Civ.P. 1.540(b)(1)* (mistake in prematurely filing satisfaction and submitting order ex-parte); *Fla.R.Civ.P. 1.540(b)(4)* (void ex-parte order and satisfaction); and/or *Fla.R.Civ.P. 1.540(b)(5)* (prospective application of satisfaction no longer warranted).

Courts look at the substance of a motion rather than nomenclature or labels. *Estate of Willis v. Gaffney*, 677 So.2d 949,

951 (Fla. 2d DCA 1996). Here the Association's motion and hearing arguments satisfy both *Fla.R.Civ.P. 1.530* and *Fla.R.Civ.P. 1.540(b)*, and thus the Association's motion should be treated under those rules. *Hill v. Hill*, 65 So.3d 143, 144 (Fla. 5th DCA 2011) (petition for partition was *Fla.R.Civ.P. 1.540(b)* motion); *Cape Royal Realty, Inc. v. Kroll*, 804 So.2d 605 (Fla. 5th DCA 2002) (motion to set aside order was Rule 1.530 motion because timely served); *Magnum Towing, Inc. v. Sunbeam Television Corp.*, 781 So. 2d 379, 380 (Fla. 3d DCA 1998) (motion seeking relief considered a *Fla.R.Civ.P. 1.530* motion); *Nardi v. Continental Nat. Bank*, 559 So.2d 307, 310 fn.3 (Fla. 3d DCA 1990) (timely "motion to set aside final summary judgment" was a *Fla.R.Civ.P. 1.530* motion); *Tucker v. Dianne Elec., Inc.*, 389 So.2d 683, 686 fn.1 (Fla. 5th DCA 1980) (motion to set aside default was a *Fla.R.Civ.P. 1.540(b)* motion); *Stella v. Craine*, 281 So.2d 584, 585-586 (Fla. 4th DCA 1973), cert. denied, 289 So.2d 731 (Fla. 1974) (motion to amend judgment that did not cite rule was a *Fla.R.Civ.P. 1.540(b)* motion); *see also Arp Acquisitions Corp. v. PHH Mortg. Corp.*, 337 So.3d 873, 875 (Fla. 3d DCA 2022) (timely motion seeking to alter or amend judgment treated as a rule 1.530 motion).

At the hearing the trial court announced she would rule on both the Association and Richardson's motions because they raised the same issues. Buyer's attorney referred to the Association's motion as an attempt "to use 1.540(b) to undo their discharge of *lis pendens* and their satisfaction of judgment"; and the trial court vacated the Ex-Parte Order Vacating Sale because it was entered ex-parte and then struck the corresponding Satisfaction of Judgment. Thus, the trial court and all parties acted as if they were addressing Fla.R.Civ.P. 1.530 (and alternative Fla.R.Civ.P. 1.540(b)) motions.

- ii. *The trial court had jurisdiction over the sale proceeds in the court registry and distribution of those funds.*

Even if no rehearing was sought, the trial court still had jurisdiction as reserved in the final judgment or as provided by statute or rule of procedure. Ross v. Wells Fargo Bank, 114 So.3d 256, 257 (Fla. 3d DCA 2013); see also Moforis v. Moforis, 977 So.2d 786, 788 (Fla. 4th DCA 2008). Paragraph 5 of the Judgment provides specific procedures for distributing and retaining sale proceeds pending future court order. Pursuant to the Judgment in paragraph 6 and Fla.Stat. §45.0315, when the Clerk filed the March 27, 2023 Certificate of Sale the rights of the Association, Richardson and

others were transferred from the Property to the court registry funds. See AG Grp. Invs., LLC v. All Realty Alliance Corp., 106 So.3d 950, 952 (Fla. 3d DCA 2013) (property interests are removed when certificate of sale filed and transferred to the sale proceeds). The foreclosure sale did not extinguish the parties' interests, but merely transferred them to the funds. See JP Morgan Chase Bank v. U.S. Bank Nat., 929 So.2d 651, 654 (Fla. 4th DCA 2006). *"After removal from the land, it [the lien] then attached to what had taken the place of the land in the eyes of the law, to wit, whatever remained as surplus after paying off the first mortgage and costs."* Waybright v. Turner, 129 Fla. 310, 176 So. 424, 428 (Fla. 1937). Money from a foreclosure sale stands in place of the land in respect to all liens and vested rights. Rosen v. Dorn-Kothe, Inc., 126 Fla. 717, 171 So. 646, 648 (Fla. 1936); see also Garcia v. Stewart, 906 So.2d 1117, 1120-21 (Fla. 4th DCA 2005); Household Fin. Serv. Inc. v. Bank of America, 883 So.2d 346, 348 (Fla. 4th DCA 2004); and Dudlar v. Mortg. Elec. Registration Sys., Inc., 338 So.3d 375 (Mem) (Fla. 3d DCA 2022). Once the sale proceeds were in the court registry, the trial court had complete jurisdiction to determine what would

become of those funds. Rosen v. Dorn-Kothe, Inc., 126 Fla. 717, 171 So. 646, 648 (Fla. 1936) (court has complete jurisdiction over funds brought into the court); Meyer v. Bricklayers, Masons & Plasterers Union, 144 Fla. 401, 198 So. 78, 79 (Fla. 1940) (trial court has full jurisdiction over claims and distribution of court funds).

Before the hearing both Richardson and the assignee of Iron Condor filed claims to the surplus under Fla.Stat. §45.032, which also provides the trial court statutory jurisdiction. Nat'l Equity Recovery Servs., Inc. v. Imperial Fund Trust 2019-I, 361 So.3d 876, 880 (Fla. 4th DCA 2023) (trial court had statutory jurisdiction over the surplus). Additionally, under Fla.Stat. §45.031, foreclosure sale proceeds are to be retained for distribution according to the judgment and as provided by law. Thus, the trial court had jurisdiction over the court registry and entitlement to those funds, including vacating the Ex-Parte Order Vacating Sale which initially released funds to Buyer, and striking the Satisfaction of Judgment that affected the Association's right to a portion of those funds.

- iii. *The Satisfaction of Judgment could not affect the court registry funds or Richardson's right to the surplus.*

A foreclosure judgment includes not only the payment of

money, but other rights and remedies intertwined with the property. MERS v. Mahler, 928 So.2d 470, 472 (Fla. 4th DCA 2006). The Satisfaction of Judgment could only affect the Association's rights in the Judgment and not Richardson's surplus rights. Challenger Inv. Group, Lc v. Jones, 20 So.3d 941, 944 (Fla. 3^d DCA 2009) (satisfaction only affected creditor and debtor not required to set aside the satisfaction to seek reimbursement); see also Spencer v. DiGiacomo, 56 So.3d 92 (Fla. 4th DCA 2011) (satisfaction of judgment relinquishes the *judgment creditor's* rights).

The March 27, 2023 Certificate of Sale transferred the parties rights from the Property to the court registry funds. AG Grp. Invs, supra, 106 So.3d at 952; see also Waybright, supra, 176 So. at 428; Rosen, supra, 171 So. at 648; JP Morgan Chase, supra, 929 So.2d at 654; Garcia, supra, 906 So.2d at 1120-21; Household Fin., supra, 883 So.2d at 348. Once the proceeds were in the court registry, the Association could only collect what it was owed and nothing more. So even if the Satisfaction of Judgment had not or could not be stricken, the trial court would still have jurisdiction over the court registry and distribution of those funds according to the Judgment

and applicable statutes. The Satisfaction of Judgment gave Buyer no right to redirect the surplus funds back to himself. At best, Buyer would be equitably subrogated to the Association's right to collect what it was owed from the court registry, and nothing more. See AG Grp. Invs., LLC v. All Realty Alliance Corp., 106 So.3d 950, 951 (Fla. 3d DCA 2013) (buyer of senior lien's interest is equitability subrogated in place of the senior lien); Abdoney v. York, 903 So.2d 981, 983 (Fla. 2d DCA 2005) (foreclosure purchaser of property becomes equitable assignee of senior lien holder).

The cases cited by Buyer are irrelevant because of the timely *Fla.R.Civ.P. 1.530* motions (and alternative *Fla.R.Civ.P. 1.540(b)* motions). Buyer erroneously claims the Satisfaction of Judgment acted as a voluntary dismissal that terminated the trial court's jurisdiction, citing Pino v. Bank of New York, 121 So.3d 23 (Fla. 2013). In Pino, the court noted that a voluntary dismissal normally ends litigation and court jurisdiction. However, Pino stated that a voluntary dismissal can be set aside under *Fla.R.Civ.P. 1.540(b)*. Pino, supra, 121 So.3d at 33-35 (Florida case law is replete with examples of *plaintiffs* invoking rule 1.540(b) to set aside voluntary

dismissals); see also Miller v. Fortune Insurance Co., 484 So.2d 1221 (Fla.1986). Even if the Satisfaction of Judgment could act as a voluntary dismissal it would be invalid because funds were in the court registry. See Fla.R.Civ.P. 1.420(a)(1). Here, the Clerk was holding \$252,100 when the Satisfaction of Judgment was filed, and thus the action could not be voluntarily dismissed. See Ginsburg v. Carney, 514 So.2d 1153, 1154 (Fla. 2d DCA 1987) (because funds were in court registry, notice of voluntary dismissal was invalid); and O'Sullivan v. City of Deerfield Beach, 232 So.2d 33 (Fla. 4th DCA 1970) (once funds deposited in court registry, city could no longer voluntarily dismiss condemnation action).

Likewise, Buyer's citation to Spencer v. DiGiacomo, 56 So.3d 92 (Fla. 4th DCA 2011) is also irrelevant. Spencer only states that a satisfaction of judgment relinquishes a creditor's rights in the judgment, and not that third parties can be prejudiced or that the action is deemed dismissed. Moreover, Spencer cited Morris North American, Inc. v. King, 430 So.2d 592 (Fla. 4th DCA 1983) which specifically held that a satisfaction of judgment can be set aside under Fla.R.Civ.P. 1.540(b). Morris, supra, 430 So.2d at 593.

Spencer also cited Challenger, *supra*, which held that a satisfaction of judgment only affects the creditor's right to enforce the judgment and has no effect on the rights of other parties.

iv. Trial court properly vacated the Ex-Parte Order Vacating Sale and struck the Satisfaction of Judgment.

The trial court acted on timely *Fla.R.Civ.P. 1.530* motions (and/or alternative *Fla.R.Civ.P. 1.540(b)* motions). Rule 1.530 provides a short time to reconsider a final order for a broad range of reasons. Balmoral Condo. Ass'n v. Grimaldi, 107 So.3d 1149, 1151 (Fla. 3d DCA 2013). A party may move for rehearing for any reason, including that the final order conflicts with governing law or is simply wrong on the merits. Balmoral, *supra*, *citing Carollo v. Carollo*, 920 So.2d 16, 19 (Fla. 3d DCA 2004). The plain text of Rule 1.530 alerts the reader that for any reason a party may move for rehearing. Bucsit v. Bucsit, 229 So.3d 430, 432 (Fla. 1st DCA 2017). The effect of the rehearing rule “*is to put the world on notice that at any time . . . the court may . . . enter a new or amended decree [and] [a]ny person that acts in reliance upon such a decree within that time does so at his own peril.*” Fugazy Travel Bureau, Inc. v. State by Dickinson, 188 So.2d 842, 844 (Fla. 4th DCA 1966); Bucsit, *supra*,

229 So.3d at 433; Marsh & McLennan, supra, 530 So.2d at 971; Romano v. Mechaia Investments, LLC, 201 So.3d 4, 6 (Fla. 3d DCA 2009). The Ex-Parte Order Vacating Sale was vacated because it was submitted ex-parte. This decision was well within the trial court's broad discretion under *Fla.R.Civ.P. 1.530*.

Courts of general jurisdiction have absolute authority over their own orders, decrees, and judgments before they become final, including the power to set aside a satisfaction of one of its own judgments. Progressive Plumbing, Inc. v. Dixie Const. Products, 912 So.2d 646, 647-648 (Fla. 5th DCA 2005); Ford Motor Credit Co. v. Simmons, 421 So.2d 698, 700 (Fla. 2d DCA 1982). In this case, the trial court also had broad discretion under *Fla.R.Civ.P. 1.530* to strike the Satisfaction of Judgment after ordering Buyer's \$51,475.84 returned, because the Judgment would no longer be satisfied. Appellant Buyer does not dispute that his \$51,475.84 was returned or assert that the trial court erred by ordering his money returned.

Setting aside the Ex-Parte Order Vacating Sale would have also been proper under *Fla.R.Civ.P. 1.540(b)* because the order was void. Due process requires fair notice and a real opportunity to be heard.

Bank of America, N.A. v. Fogel, 192 So.3d 573 (Fla. 4th DCA 2016) (one day notice rendered order void); Viets v. Arei, 922 So.2d 1090, 1095 (Fla. 4th DCA 2006); see also J.B. v. Fla. Dep't of Children & Family Servs., 768 So.2d 1060, 1063 (Fla.2000). Judgments entered without notice are void and can be vacated at any time. Bayview Loan Servicing, LLC v. Dzidzovic, 249 So. 3d 1265 (Fla. 2d DCA 2018) (ex-parte order vacating judgment was void); Reyes v. Aqua Life Corp., 209 So. 3d 47, 51 (Fla. 3d DCA 2016) (dismissal without notice was void); Shlishey the Best v. Citifinancial Equity, 14 So.3d 1271 (Fla. 2d DCA 2009) (ex-parte order vacating foreclosure sale was void); McCrea v. Deutsche Bank Nat. Trust Co., 993 So.2d 1057 (Fla. 2d DCA 2008) (ex-parte order vacating dismissal required notice and hearing); and White v. Loschiavo, 597 So.2d 373 (Fla. 4th DCA 1992) (ex-parte order vacating bids was void).

Although Buyer claims all defendants were defaulted and thus no notice was required (Initial Brief @3), this contention is false with an erroneous citation, not supported by the record, and cannot be considered.¹ The Angulos were never defaulted and filed defenses

¹ See Hastings v. Hastings, 45 So.2d 115 (Fla. 1950) (statements in the brief not supported by record cannot be considered); and

claiming to be the rightful owners of the Property. Likewise, Pinto appeared in the action and was entitled to notice. See White v. Loschiavo, 597 So.2d 373 (Fla. 4th DCA 1992) (defaulting bidder entitled to notice); see also Shlishey the Best v. Citifinancial Equity, 14 So.3d 1271 (Fla. 2d DCA 2009) (bidder entitled to notice).

Furthermore, even though Richardson's Home Address was known, little effort was made to personally serve him, with service made by publication.² Constructive service only confers in rem or quasi in rem jurisdiction. See Avila v. HMC Assets, LLC, 273 So.3d 1134 (Fla. 5th DCA 2019); Demir v. Schollmeier, 273 So.3d 59 (Fla. 3d DCA 2018). The default only admitted the well-pled allegations that the Association's lien was superior to Richardson's rights, and that the Association had a right to foreclose. Household Fin. Serv. Inc. v. Bank of America, 883 So.2d 346, 348 (Fla. 4th DCA 2004). The default did not affect Richardson's right to the surplus.

Jackson v. State, 572 So.2d 31, 32, fn.1 (Fla. 5th DCA 1991) (contentions not supported by record cannot be considered).

² The Affidavit of Diligent Search and Inquiry reflects two attempts to served Richardson at the Property, two attempts at Richardson's Home Address, and one attempt at another location. This Court has held that seven attempts at service is not a diligent search justifying service by publication. Benavente v. Ocean Vill. Prop.

Golindano v. Wells Fargo Bank, 913 So.2d 614, 615 fn.1 (Fla. 3d DCA 2005) (default does not waive surplus rights); Household Fin. Serv., supra, 883 So.2d at 348 (default does not affect surplus rights); see Schroth v. Cape Coral Bank, 377 So.2d 50, 51 (Fla. 2d DCA 1979) (surplus claimant does not waive surplus by failing to answer complaint). Even a defaulted party is entitled to notice of matters affecting other rights. See Crimson 27, LLC v. Taylor Made Lending, LLC, 341 So.3d 419 (Fla. 3d DCA 2022) (defaulted defendant entitled to notice and hearing on unliquidated damages).

Additionally, a hearing was required to vacate the sale. To set aside a foreclosure sale a litigant must, "*allege one or more adequate equitable factors and make a proper showing to the trial court that they exist. . .*" Can Financial, LLC v. Niklewicz, 307 So.3d 33, 35 (Fla. 4th DCA 2020) *citing* Arsali v. Chase Home Fin. LLC, 121 So. 3d 511, 518 (Fla. 2013). Since "a proper showing" is required, it was improper to vacate the foreclosure sale without a hearing. See SVI Capital, LLC v. Bank of Am., N.A., 164 So.3d 36 (Fla. 4th DCA 2015) (motion to set aside foreclosure sale required hearing); Avi-Isaac v. Wells Fargo Bank, 59 So.3d 174 (Fla. 2d DCA 2011) (motion to set

Owners Ass'n, Inc., 260 So.3d 313 (Fla. 4th DCA 2018).

aside foreclosure sale required hearing); Shlishey the Best v. Citifinancial Equity, 14 So.3d 1271 (Fla. 2d DCA 2009) (ex-parte order vacating foreclosure sale required a hearing). Since notice and a hearing are required to vacate the sale, the trial court properly set aside the March 28, 2023 Ex-Parte Order Vacating Sale.

The trial court could have also struck the Satisfaction of Judgment under *Fla.R.Civ.P. 1.540(b)* because the Ex-Parte Order Vacating Sale was void and the court had to resolve the \$51,475.84 tendered by the Buyer. If the money stayed with the Association, Buyer would need to seek equitable reimbursement from the court registry. If the funds were returned, then the Judgment would no longer be satisfied and would have to be stricken. The trial court decided to return Buyer's \$51,475.84 and strike the Satisfaction of Judgment. See Ford Motor Credit Co. v. Simmons, 421 So.2d 698 (Fla. 2d DCA 1982) (where judgment no longer satisfied, a satisfaction of judgment can be set aside under Rule 1.540(b)). See also, Morris, supra, 430 So.2d at 593 (“satisfaction may be set aside pursuant to Rule 1.540(b)”); Challenger, supra, 20 So.3d at 943 (satisfaction of judgments can be set aside under *Fla.R.Civ.P.*

1.540(b)); and Progressive Plumbing, supra, 912 So.2d at 647.

Appellant Buyer also argues that there was no evidence to support striking the Satisfaction of Judgment and that the trial court made no factual findings. To preserve this argument Buyer needed to file a *Fla.R.Civ.P. 1.530* motion and bring it to the trial court. Tucker v. LNV Corp., 363 So.3d 1095, 1098 (Fla. 4th DCA 2023) (failure to seek rehearing for lack of findings waives the argument on appeal). Nevertheless, although an evidentiary hearing is normally required on a *Fla.R.Civ.P. 1.540(b)* motion, fact finding is limited solely to those facts necessary to dispose of the motion. SPS Corp. v. Kinder Builders, Inc., 997 So.2d 1232, 1234 (Fla. 3d DCA 2008); Zwakhals v. Senft, 206 So.2d 62, 63 (Fla. 4th DCA 1968). In this case, all relevant facts are undisputed and in the Record. Buyer admits the foreclosure sale was vacated ex-parte; that on March 28, 2023 he tendered \$51,475.84 to the Association, which was the basis for the Satisfaction of Judgment; and after the hearing received back his \$51,475.84 – resulting in the Judgment no longer being satisfied. A party is bound by the factual concessions made by that party's attorney before a judge in a legal proceeding. U.S. Bank, N.A.

v. Vogel, 137 So.3d 491, 494 (Fla. 4th DCA 2014). Where the record shows that the relevant facts are undisputed, an evidentiary hearing is unnecessary. *Cabral v. City of Miami Beach*, 76 So. 3d 324, 327 (Fla. 3d DCA 2011) (undisputed facts mooted question of excusable neglect under Rule 1.540(b)); *see also U.S. Bank Nat'l Ass'n v. Anthony-Irish*, 204 So.3d 57, 59 (Fla. 5th DCA 2016) (“*Bank never requested an evidentiary hearing below, nor did it set forth disputed facts to warrant such a hearing*”). Since the relevant facts are undisputed and Buyer does not identify any disputed facts warranting an evidentiary hearing, Buyer’s argument has no merit.

B. The trial court struck the Satisfaction of Judgment because the Judgment was no longer satisfied, and not because of any rescission argument that Buyer never presented.

Buyer next argues that Florida law does not permit equitable rescission for a unilateral mistake resulting from a lack of due care, and because Buyer suffered irreparable harm relying upon his agreement with the Association, that the Association’s unilateral mistake did not invalidate the Satisfaction of Judgment (Initial Brief @16-19). This argument has no merit.

First, the argument was never presented to the trial court and

cannot be considered. Sunset Harbour Condo. Ass'n v. Robbins, 914 So.2d 925, 928 (Fla. 2005) (to be preserved the specific legal argument argued on appeal must have been presented to the lower court). Buyer only argued to the trial court that his agreement made Can Financial inapplicable. Since Buyer never specifically argued that the Association was trying to rescind the agreement to invalidate the Satisfaction of Judgment, this argument cannot be considered. Sunset Harbour Condo, supra, 914 So.2d at 928.

Second, as stated previously, the Satisfaction of Judgment was not invalidated by the Association but struck by the trial court because the Ex-Parte Order Vacating Sale was improper, and the Satisfaction of Judgment was intertwined with that void order.

Third, Buyer never filed a motion to enforce his agreement. Buyer's bare claims of "unilateral mistake", "lack of due care", "reliance" and "irreparable harm" (Initial Brief @16-18) are all facts requiring an evidentiary hearing. River City Wholesale Florist, Ltd. v. Equiflor Corp., 864 So.2d 21 (Fla. 3d DCA 2003) (stipulation of settlement must be proved by competent evidence); Melfi Const., Inc. v. Coastal Theaters, Inc., 279 So.2d 341 (Fla. 4th DCA 1973) (final

judgment based upon alleged stipulation of settlement had to reverse for lack of evidence). Moreover, a court cannot enforce a stipulation of settlement beyond its own terms. Sarhan v. H&H Investors, Inc., 88 So.3d 219 (Fla. 3d DCA 2011). In the Record, Buyer describes his agreement “as Buyer paying the judgment to undo the sale.”³ Buyer never claimed his agreement includes a satisfaction of judgment or proceeding ex-parte. Thus Buyer cannot complain that the Satisfaction of Judgment was struck or that a hearing was required. Buyer doesn't even have standing to object to striking the Satisfaction of Judgment because he is not the debtor. Jankowski v. Dey, 64 So.3d 183, 189 (Fla. 2d DCA 2011) (attorney had no standing to object to former client satisfying judgment). Additionally, any claim that the Association had to act ex-parte, would be unenforceable under Fla. R. Gen. Prac. & Jud. Admin. 2.505(d) which require such stipulations to be in writing.

Buyer's agreement also violates the redemption and surplus

³ The Initial Brief describes the Agreement as, “*Surmaty agreed to forego his right to challenge the sale by way of objection in exchange for payment in full of the amounts owed under the Final Judgment*”. (Initial Brief @4). This latest version should not be considered because it is different than what is in the Record. See Jackson v. State, 572 So.2d 31, 32, fn.1 (Fla. 5th DCA 1991) (contentions not in

statutes, caselaw, and prejudices third parties. Neither the Association nor Buyer could settle Richardson's surplus rights or redirect the surplus back to the Buyer. See K-Mart Corp. v. State, Dept. of Transp., 636 So.2d 131, 133 (concurring opinion) (Fla. 2d DCA 1994) (stipulated final judgment could not affect eminent domain rights of leasehold); Brown v. Vermont Mut. Ins. Co., 614 So.2d 574 (Fla. 1st DCA 1993) (insurance company could not settle with insured to deprive statutory attorney fees). Buyer also had no right to redeem the Property since those rights belong to the mortgagor and subordinate interests. Fla.Stat. §45.0315; Popescu v. Laguna Master Ass'n, Inc., 184 So.3d 1196, 1199-1200 (Fla. 4th DCA 2016) (redemption belongs to mortgagor and those claiming under him). Moreover, that right expired with the March 27, 2023 Certificate of Sale; and a trial court has no authority to extend the redemption period. Fla.Stat. §45.0315; YEMC Contr. & Dev. v. Inter Ser USA Inc., 884 So.2d 446, 448 (Fla. 3d DCA 2004). Furthermore, a court order is required to vacate a sale. At the hearing, Buyer admitted he had no basis to object to the sale under Can Financial, and that Buyer's agreement would prejudice the rights of

record cannot be considered).

Richardson and others. Because a hearing and a court order were required to vacate the sale, and because the agreement violates the redemption and surplus statutes, caselaw, and prejudices third parties, even if Buyer had filed a motion to enforce his agreement, the trial court would not have to enforce it. See American Cas. Co. v. Coastal Caisson Drill Co., 542 So.2d 957, 958 (Fla. 1989) (provision waiving bond requirement on public construction project violated statute and thus was void); Wechsler v. Novak, 157 Fla. 703, 26 So.2d 884 (Fla. 1946) (“*The general right to contract is subject to the limitation that the agreement must not violate the Federal or State Constitutions or state statutes or ordinances of a city or town or some rule of the common law.*”); Bullard v. Sharp, 407 So.2d 1023, 1024 (Fla. 4th DCA 1981), citing Smith v. Smith, 90 Fla. 824, 107 So. 257 (Fla. 1925) (stipulation that is unreasonable, against good morals and sound public policy will not be enforced); Cone v. State Ex Rel. Crane, 187 So. 593, 136 Fla. 828 (Fla. 1939) (stipulation could not prejudice the rights of third parties).

II. Proceedings in the first mortgage foreclosure case were irrelevant to the trial court’s jurisdiction in this case.

Buyer next argues that the trial court exceeded its jurisdiction

when it reinstated the foreclosure sale because a certificate of sale in the first mortgage foreclosure case extinguished lien rights and nullified the trial court's jurisdiction over the Property (Initial Brief @19-22). This argument has no merit. When the Clerk filed the Certificate of Sale on March 27, 2023, the parties' rights in the Property were transferred to the court registry. AG Grp. Invs, supra, 106 So.3d at 952; see also Waybright, supra, 176 So. at 428; Rosen, supra, 171 So. at 648; JP Morgan Chase, supra, 929 So.2d at 654; Garcia, supra, 906 So.2d at 1120-21; Household Fin., supra, 883 So.2d at 348. On March 28, 2023, the court entered the Ex-Parte Order Vacating Sale which purported to vacate the sale and refund the Buyer. But the Fla.R.Civ.P. 1.530 motions prevented that ex-parte order from ever being rendered. On August 25, 2023, the trial court entered the Order Vacating Ex-Parte Order which: (1) vacated the March 28, 2023 Ex-Parte Order Vacating Sale; (2) ratified the March 24, 2023 foreclosure sale; and (3) ratified the March 27, 2023 Certificate of Sale (nunc pro tunc to March 27, 2023). Because the March 28, 2023 Ex-Parte Order Vacating Sale was never rendered, it effectively never existed. Buyer erroneously claims that the trial

court “reinstated” the foreclosure sale, as if the *Fla.R.Civ.P. 1.530* motions never existed. Indeed, Buyer fails to even mention Richardson’s Motion for Rehearing in his Initial Brief. When the trial court “ratified” the March 24, 2023 foreclosure sale and the March 27, 2023 Certificate of Sale, it simply made those events “approved” and/or “formally sanctioned”, and not “reinstated”. Thus, the Order Vacating Ex-Parte Order did not affect title, but rather just approved the earlier foreclosure sale and Certificate of Sale.

Appellant Buyer argues that the May 31, 2023 certificate of sale and June 15, 2023 certificate of title in the first mortgage foreclosure case deprived the trial court of jurisdiction; referencing documents in Appellant’s Appendix that were not before the trial court; i.e. Final Judgment of Foreclosure in Strykr Group LLC v Iron Condor Holdings Inc, et al,, Case No. CACE19007866, Circuit Court of the 17th Judicial Circuit (A.116-118); 5/31/23 Certificate of Sale (A.119); and 6/13/23 Certificate of Title (A.120) (Initial Brief @20). These documents are irrelevant since the March 24, 2023 sale and March 27, 2023 Certificate of Sale in this case, occurred *before* these

two events and the trial court was simply ratifying the earlier sale and exercising jurisdiction over the court registry funds.

The cases cited by Buyer do not support the argument that the other foreclosure case divested the court of jurisdiction. Abdoney v. York, 903 So.2d 981 (Fla. 2d DCA 2005) held that a certificate of sale does not extinguish an omitted junior lien and then detailed the rights of an omitted junior lien. Abdoney, supra, 903 So.2d at 983-984. AG Grp. Invs., LLC v. All Realty Alliance Corp., 106 So.3d 950 (Fla. 3d DCA 2013) held that a foreclosure judgment does not eliminate a junior lien's interest, but rather those interests are only removed when the certificate of sale is filed. AG Grp. Invs, supra, 106 So.3d at 951-952. The AG Grp. Invs court also noted that lien interests are not actually extinguished, but rather are transferred from the property to the foreclosure sale proceeds. AG Grp. Invs, supra, 106 So.3d at 952. In re: Neely, 256 B.R. 322, 325 (Bankr.S.D.Fla. 2000) also held that lien interests are only removed from a property when the certificate of sale is filed. Finally, in Ross v. Wells Fargo Bank, 114 So.3d 256 (Fla. 3d DCA 2013), the court held that since a foreclosure judgment did not contain a reservation

of jurisdiction to file a supplemental foreclosure, the court lacked jurisdiction to allow one and thus a new foreclosure needed to be filed against an omitted party. Ross, supra, 114 So.3d at 257.

None of the cases cited by Buyer hold that the trial court lacked jurisdiction, but rather confirm that the trial court never lost jurisdiction under *Fla.R.Civ.P. 1.530*, that the Ex-Parte Order Vacating Sale was never rendered, and that the Certificate of Sale transferred the parties' rights to the court registry funds (over which the trial court had complete jurisdiction) before the May 31, 2023 certificate of sale in the first mortgage foreclosure case.

III. The trial court did not abuse its discretion by vacating the Ex-Parte Order Vacating Sale and ratifying the Foreclosure Sale.

Finally, Buyer argues the trial court abused its discretion when it reinstated the voided sale because it ratified the Association's breach of contract and knowingly provided a windfall to Richardson and Iron Condor whose delinquency gave rise to the foreclosure sale at the expense of Buyer who is an innocent non-breaching party, which is a miscarriage of justice (Initial Brief @22-28). This argument misstates the Record and otherwise has no merit.

First, the trial court never “reinstated” a voided sale. Because of the timely *Fla.R.Civ.P. 1.530* motions, the Ex-parte Order Vacating Sale was never rendered and then later ceased to exist. Marsh & McLennan, *supra*, 530 So.2d at 973; Herskowitz, *supra*, 513 So.2d at 1319. Moreover, the Ex-parte Order Vacating Sale was vacated because it was entered ex-parte. Buyer never moved to enforce his agreement, and the trial court never ruled on any contract issues. Thus, the trial court never ratified any breach of contract.

Second, Buyer has not argued that the trial court abused its discretion on rehearing by vacating the Ex-parte Order Vacating Sale, and then striking the Satisfaction of Judgment after returning Buyer’s \$51,475.84. The grounds for rehearing under rule 1.530 are broad and a trial court may change its prior order for virtually any reason. Bucsit, *supra*, 229 So.3d at 433. “Discretion is abused only ‘when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the trial court.’” Trease v. State, 768 So. 2d 1050, 1053 n.2 (Fla. 2000) (quoting Huff v. State, 569 So. 2d 1247, 1249 (Fla. 1990)); *see also* Canakaris v.

Canakaris, 382 So.2d 1197, 1203 (Fla. 1980). Vacating the Ex-parte Order Vacating Sale and then striking the Satisfaction of Judgment were not an abuse of the trial court's discretion.

Third, the trial court did not grossly abuse its discretion by ratifying the foreclosure sale. See U.S. Bank, N.A. v. Vogel, 137 So.3d 491, 493 (Fla. 4th DCA 2014) (standard of review is gross abuse of discretion). Under Fla.Stat. §45.031(5), any objections to the sale had to be filed within ten (10) days after the Clerk filed the March 27, 2023 Certificate of Sale. The Association's March 28, 2023 Ex-Parte Motion To Vacate Sale should be considered an objection under Fla.Stat. §45.031(5) because it was filed after the Certificate of Sale, but within ten (10) days thereafter. See Jenkins v. Silver Pines Ass'n, Inc., 328 So.3d 1144, 1145 (Mem) (Fla. 5th DCA 2021) (a "motion to reverse sale" filed after certificate of sale, but within ten (10) days, was considered an objection under Fla.Stat. §45.031(5)). At the hearing, Buyer's attorney asked the court to "approve the order that was entered ex parte", essentially objecting to the sale by asking the trial court to deny rehearing.

However, to set aside the foreclosure sale Buyer had to allege

one or more adequate equitable factors and then make a proper showing that such factors existed. Can Financial, supra, 307 So.3d at 35 citing Arsali, supra, 121 So. 3d at 518. Equitable factors that could be legally sufficient to set aside a foreclosure sale include “gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of the sale.” Can Financial, supra, 307 So.3d at 35 citing Moran-Alleen Co. v. Brown, 98 Fla. 203, 123 So. 561, 561 (Fla. 1929) (emphasis added). Courts have consistently held that “the substance of an objection to a foreclosure sale under section 45.031(5) must be directed toward conduct that occurred at, or which related to, the foreclosure sale itself.” Can Financial, supra, 307 So.3d at 35 citing Skelton v. Lyons, 157 So. 3d 471, 473 (Fla. 2d DCA 2015) (emphases added); IndyMac Fed. Bank FSB v. Hagan, 104 So. 3d 1232, 1236 (Fla. 3d DCA 2012). The purpose of allowing an objection is assure the parties and bidders that there was, “no irregularity at the auction or any collusive bidding, etc.” Can Financial, supra, 307 So.3d at 35 citing IndyMac Fed, supra, 104 So. 3d at 1236; Emanuel v. Bankers Tr. Co., 655 So. 2d 247, 250 (Fla. 3d DCA 1995).

The March 28, 2023 Ex-Parte Motion To Vacate Sale asked the court to vacate the sale because “on March 28, 2023, Plaintiff received payment in satisfaction of said Judgment.” The motion did not mention the March 27, 2023 Certificate of Sale, or that Buyer paid the Association and was trying to redirect the surplus funds back to himself. Although a timely redemption might be grounds to set aside a foreclosure sale, an evidentiary hearing would be required to establish the timely redemption. Residential Mortg. Servicing Corp. v. Winterlakes Prop. Owners Ass'n, Inc., 169 So.3d 253, 256 (Fla. 4th DCA 2015) citing CCC Props., Inc. v. Kane, 582 So.2d 159 (Fla. 4th DCA 1991) (sale set aside where property was privately sold, and proceeds used to satisfy the judgment before the sale). Still, the trial court has no authority to extend the redemption period. YEMC Contr, supra, 884 So.2d at 448. Here, it is undisputed that there was no redemption, let alone a timely redemption.

Buyer's April 3, 2023 Objection To Motion To Vacate Ex-Parte Order also argued that after paying his bid (of \$252,100) Buyer discovered a superior lien in the first mortgage foreclosure case, which would cause Buyer to lose his life savings because another

sale was already scheduled, and that Buyer then agreed to pay the Association's attorney \$51,475.84 to avoid delays in the Association getting paid – essentially giving the Association what it might claim from the court registry. At the hearing, Buyer's attorney argued that Buyer had a contract to undo the sale, that the Association benefitted by not having to risk objections or appeals, that the defendants might be upset because there was no surplus, but someone else paid the money owed to the Association, and thus this was an equitable result despite being done ex-parte and without redeeming the Property.

When taken together, Buyer's arguments fail to allege either a timely redemption, or any improper conduct at or relating to the foreclosure sale itself; but rather are based solely upon Buyer's belief that he overpaid for the Property after failing to conduct any due diligence, and that Buyer now believes he should be allowed to undo the sale by untimely tendering the Judgment amount to the Association in violation of the redemption and surplus statutes, caselaw, and with prejudice to the rights of Richardson and others.

Buyer's claim of being an innocent victim who will suffer a forfeiture has no merit. Buyer presents no evidence to support such

assertions which are instead refuted by the Record. Buyer is a licensed real estate salesperson and property appraiser. Although Buyer claims to be losing his life savings, the Association recently filed a Request for Judicial Notice attaching filings from a Miami-Dade County foreclosure action. Those filings show that on March 20, 2023 (just four days prior to the sale in this case), Buyer purchased a townhouse for \$92,300 at a foreclosure sale in the case of Vineyards Master Association, Inc. v. Johanne Saveur, Case No. 2022-011323-CA-01, Circuit Court of the Eleventh Judicial Circuit.

A copy of that certificate of sale is included in the Appendix To Richardson's Answer Brief. AR.12-13. Despite contrary representations to this Court, Buyer appears to be actively investing in south Florida foreclosures. Furthermore, although Buyer claims he overbid for the Property, the second highest bid was \$252,000 (see AR.10), and the certificate of sale in the first mortgage case shows the Property sold for \$510,100 at that foreclosure sale (see A.119). Buyer has provided no evidence of the Property's true market value, or that Buyer could not have paid the \$252,100, while still redeeming the Property for the \$510,000 owed in the first

mortgage foreclosure case (see A.115-118). Buyer's references to the first mortgage foreclosure case clearly show that Buyer had an opportunity to pay the sale amount in this case and then redeem the Property in that other foreclosure case. When Buyer believed he was getting a property worth hundreds of thousands of dollars more than he paid, he was happy with the result, but when his dream of enormous profits faded, he devised a scheme to get out of the sale and recover monies that would have gone towards the surplus. In short, there is nothing equitable about the Buyer's actions, or that even allege a valid basis for setting aside the foreclosure sale.⁴

A bidder at a foreclosure auction is presumed to have done his due diligence before bidding and accepts the property as-is. The same facts of this case were rejected by this Court in Can Financial, LLC v. Niklewicz, 307 So.3d 33 (Fla. 4th DCA 2020). In Can Financial a purchaser sought to vacate a foreclosure sale because a superior first mortgage would leave no equity in the property. The

⁴ None of Buyer's arguments raise any of the equitable factors required to set aside a foreclosure sale. Since Buyer failed to state a prima facie basis for setting aside the sale, the trial court did not err in not conducting an evidentiary hearing. Volynsky v. Park Tree Invs. 21, LLC, 322 So.3d 714, 715-716 (Fla. 3^d DCA 2021) (where objections to sale were facially deficient, trial did not err in denying

purchaser claimed he would lose his life savings because the superior first mortgage was also in foreclosure. The trial court vacated the sale. This Court reversed because the purchaser failed to identify any improper conduct at or which related to the sale, or any inequity imposed upon the purchaser, and thus the purchaser failed to justify vacating the sale. This Court stated that failure to discover the first mortgage before bidding was attributable solely to the purchaser, and thus could not demonstrate adequate grounds since due diligence would have revealed the superior mortgage lien.

Can Financial, supra, 307 So.3d at 36-37. This Court also stated that foreclosure sale bidders are on constructive notice of recorded liens, and that the law is clear that a purchaser at a junior lien foreclosure sale takes the property subject to the superior lien and the failure to discover the superior lien is one of inexcusable lack of due care. Can Financial, supra, 307 So.3d at 36. After considering Arsali and other cases cited by the Buyer in his Initial Brief as well, this Court found no basis for setting aside that foreclosure sale.

Lastly, the relief Buyer seeks is not only inequitable, but unconscionable. Buyer's Conclusion (Initial Brief @28) asks this

objections at a non-evidentiary hearing).

Court to quash the order setting aside the satisfaction of judgment, deny the Association's Motion To Vacate Ex-Parte Order and compel the Clerk to comply with the Ex-Parte Order Vacating Sale by refunding all amounts deposited by Buyer. Thus, Buyer wants to keep his \$51,475.84 initially tendered to the Association and get back all monies paid at the foreclosure sale. This would result in a forfeiture to the Association and Richardson. A new foreclosure sale can no longer take place since the May 31, 2023 certificate of sale in the first mortgage foreclosure action has removed all lien and equity interests from the Property, and if the sale proceeds are returned to Buyer, the Association and Richardson will be left with nothing.

CONCLUSION

The trial court had jurisdiction to enter the August 25, 2023 Order Vacating Ex-Parte Order on review, and did not abuse its discretion in vacating the Ex-Parte Order Vacating Sale, striking the Satisfaction of Judgment, and ratifying the foreclosure sale. Accordingly, Appellee Richardson requests this Court deny this appeal and affirm the trial court in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail upon David L. Brough, Esq., Brough, Chadrow & Levine, P.A., (dbrough@bclattorneys.com), 2149 North Commerce Parkway, Weston, Florida 33326; David Pollack, Esq., Pollack Law Firm, (david@davidpollacklaw.com; eric@davidpollacklaw.com), 75 Valencia Avenue, Suite 100, Coral Gables, Florida 33134; Paul Alexander Bravo Esq., P.A. Bravo, P.A. (pabravo@pabravo.com; service@pabravo.com), P.O. Box 558031 Miami, Florida 33255-8031; Kevin Joseph Loftus, Esq., The Loftus Firm, LLC, (kjloftus@loftusfirm.com; kjloftus@yahoo.com) 301 West Bay Street, Suite 14301, Jacksonville, FL 32202; and Maselah Surmaty (maz.surmaty@gmail.com), this 3rd day of May, 2024.

Respectfully Submitted,

MARK E. BUECHELE, ESQ.
P.O. Box 552135
Davie, Florida 33355-2135
Telephone: (305) 926-7455
Facsimile: (954) 236-6455
E-mail: MarkBuechele@msn.com

By: /s/ Mark E. Buechele
MARK E. BUECHELE
Florida Bar No. 906700

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Appellee Richardson's Answer Brief complies with the font, word count limit and page requirements of Florida Rules of Appellate Procedure 9.210(a)(2) & 9.045, is in Bookman Old Style 14-point font and has 9,903 words counted using the method provided for in those rules.

MARK E. BUECHELE, ESQ.
Attorney For Appellant
P.O. Box 552135
Davie, Florida 33355-2135
Telephone: (305) 926-7455
Facsimile: (954) 236-6455

By: /s/ Mark E. Buechele
MARK E. BUECHELE
Florida Bar No. 906700