RECEIVED, 1/22/2018 10:05 PM, Clerk, Second District Court of Appeal

No. 2D17-4136

IN THE SECOND DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

DEUTSCHE RESIDENTIAL MORTGAGE CO.,

Appellant,

v.

WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee for Stanwich Mortgage Loan Trust B, DAVID G. KAPES, UNKNOWN SPOUSE, THE RAM-SEA II CONDOMINIUM ASSOCIATION, INC., PARKES INVESTMENTS, LLC, OUTBIDYA INC., and ORLANDO REALTY GROUP, LLC,

Appellees.

On Appeal from the Circuit Court of the Sixth Judicial Circuit
in and for Pinellas County, Florida
L.T. No. 16-CA-1790, Hon. Jack St. Arnold

INITIAL BRIEF OF DEUTSCHE RESIDENTIAL MORTGAGE CO.

Thomas A. Burns (FBN 12535)
BURNS, P.A.
301 West Platt Street, Suite 137
Tampa, FL 33606
(813) 642-6350 T
(813) 642-6350 F
tburns@burnslawpa.com

Counsel for Deutsch Residential Mortgage Co.

TABLE OF CONTENTS

Page

TABLE OF CITATIONS v

STATEMENT OF THE CASE AND FACTS 1

Nature Of The Case 1

Course Of The Proceedings 1

Disposition In The Lower Tribunal 8

A. The Second Amended Motion To Intervene And Vacate The Certificate Of Title, Certificate Of Sale, And Consent Final Judgment Of Foreclosure 8

B. The Objection To Intervention 11

C. The Order Granting Intervention 11

D. The Hearing 11

E. The Oral Ruling 17

F. The Written Order Vacating The Certificate Of Title, Certificate Of Sale, And Consent Final Judgment Of Foreclosure 19

SUMMARY OF ARGUMENT 19

ARGUMENT 21

I. ISSUE 1: DID THE TRIAL COURT HAVE JURISDICTION TO PERMIT ORLANDO'S BELATED INTERVENTION OR OTHERWISE COMMIT AN ERROR OF LAW TO WHICH NO DEFERENCE IS OWED WHEN IT GRANTED SUCH PERMISSION AFTER MISINTERPRETING RULE 1.230? 21

Standard Of Review 21

Merits 22

A. The General Reservation Of Jurisdiction In The Consent Final Judgment Did Not Give The Trial Court Jurisdiction To Permit Orlando To Intervene Belatedly 22

B. Even If It Had Jurisdiction To Entertain A Motion To Intervene, The Trial Court Misinterpreted Rule 1.230 When It Permitted Orlando To Intervene After The Judgment Became Final 24

C. Even If Orlando Could Intervene, The Scope Of Its Authority To Seek Relief Under Rule 1.540(b) Was Narrow 26

II. ISSUE 2: DID THE TRIAL COURT ABUSE ITS DISCRETION UNDER RULE 1.540(B) WHEN IT VACATED THE CONSENT FINAL JUDGMENT OF FORECLOSURE, CERTIFICATE OF SALE, AND CERTIFICATE OF TITLE? 29

Standard Of Review 29

Merits 30

A. Rule 1.540(b) Did Not Allow The Trial Court To Set Aside The Final Judgment, Because It Had Not Been Entered Against Orlando And Did Not Adversely Impact It 30

B. Rule 1.540(b) And § 45.031, *Fla. Stat.*, Gave The Trial Court No Authority To Vacate The Foreclosure Sale 31

C. Even If Orlando Was Entitled To Seek Relief Under Rule 1.540(b), It Was An Elementary Procedural Error To Grant Relief Under Subsection (b)(5) When Orlando Never Raised That Basis In Its Motion 33

D. Even If The Trial Court Could Consider Rule 1.540(b)(5), Orlando Failed To Establish Significant New Evidence Or Substantial Changes In Circumstances Arising After Entry Of The Judgment That Made Prospective Application Inequitable....34

E. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Improperly Retried The Case And Invented Inaccurate Facts (Which Predated The Consent Final Judgment) Out Of Thin Air....36

F. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Misapplied Equity Because It Failed To Consider How The Doctrine Of *Caveat Emptor* Applied To Purchasers At Judicial Sales....38

G. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Failed To Consider The Equitable Doctrine Of Unclean Hands....41

Summary....43

CONCLUSION....44

CERTIFICATE OF SERVICE....45

CERTIFICATE OF COMPLIANCE....46

TABLE OF CITATIONS

Cases **Page(s)**

Artz ex rel. Artz v. *City of Tampa*,
102 So. 3d 747 (Fla. 2d DCA 2012) 22

Biden v. *Lord*,
147 So. 3d 632 (Fla. 1st DCA 2014).....25

Cantor v. *Davis*,
489 So. 2d 18 (Fla. 1986).....7

Carlisle v. *U.S. Bank, N.A. for Harborview 2005-10 Tr. Fund*,
225 So. 3d 893 (Fla. 3d DCA 2017) 26, 27

Cent. Mortg. Co. v. *Callahan*,
155 So. 3d 373 (Fla. 3d DCA 2014) 24

Coast Cities Coaches, Inc. v. *Dade County*,
178 So. 2d 703 (Fla. 1965).....36

Dep't of Revenue ex rel. Stephens v. *Boswell*,
915 So. 2d 717 (Fla. 5th DCA 2005) 33, 34

Dickinson v. *Segal*,
219 So. 2d 435 (Fla. 1969).....25

Envtl. Confederation of Sw. Florida, Inc. v. *IMC Phosphates, Inc.*,
857 So. 2d 207 (Fla. 1st DCA 2003).....36, 37

Estate of Arroyo v. *Indem. Ins.*,
211 So. 3d 240 (Fla. 3d DCA 2017) 9

Farish v. *Lum's, Inc.*,
267 So. 2d 325 (Fla. 1972).....21

Flagler v. *Flagler*,
94 So. 2d 592 (Fla. 1957).....38

Grand Central at Kennedy Condo. Ass'n, Inc. v. *Space Coast Credit Union*,
173 So. 3d 1089 (Fla. 2d DCA 2015) 22, 23, 24

Gulf Landings Ass'n v. *Hershberger*,
845 So. 2d 344 (Fla. 2d DCA 2003) 33

Harrell v. *Harrell*,
515 So. 2d 1302 (Fla. 3d DCA 1987) 24

Heilman v. *Suburban Coastal Corp.*,
506 So. 2d 1088 (Fla. 4th DCA 1987) 31

Idacon, Inc. v. *Hawes*,
432 So. 2d 759 (Fla. 1st DCA 1983).....26

In re Adoption of a Minor Child,
593 So. 2d 185 (Fla. 1991).....25, 26

In re Guardianship of Schiavo,
792 So. 2d 551 (Fla. 2d DCA 2001) 34, 36, 37

Jaffrey v. *Baggy Bunny, Inc.*,
733 So. 2d 1140 (Fla. 4th DCA1999) 33

Krouse v. *Palmer*,
179 So. 762 (Fla. 1938).....36

Lake Charleston Homeowners Ass'n v. *Haswell*,
77 So. 3d 922 (Fla. 4th DCA 2012) 29

Leila Corp. Of St. Pete v. *Ossi*,
138 So. 3d 470 (Fla. 2d DCA 2014) 43

McClanahan v. *Mayne*,
138 So. 36 (Fla. 1931).....32

New Day Miami, LLC v. *Beach Developers, LLC*,
225 So. 3d 372 (Fla. 3d DCA 2017) 7

Osceola Serv. Co. v. *Bevis*,
289 So. 2d 712 (Fla. 1974) 40

Pearlman v. *Pearlman*,
405 So. 2d 764 (Fla. 3d DCA 1981) 27, 28

Pino v. *Bank of New York Mellon*,
121 So. 3d 23 (Fla. 2013) 28, 30

Pure H_2O Biotech., Inc. v. *Mazziotti*,
937 So. 2d 242 (Fla. 4th DCA 2006) 34

Putnam County Envtl. Council, Inc. v. *County Comm'rs of Putnam County*,
750 So. 2d 686 (Fla. 5th DCA 1999) 34

Rosenberg v. *Cape Coral Plumbing, Inc.*,
920 So. 2d 61 (Fla. 2d DCA 2005) 34

Ross v. *Wells Fargo Bank*,
114 So. 3d 256 (Fla. 3d DCA 2013) 24

Rude v. *Golden Crown Land Dev. Corp.*,
521 So. 2d 351 (Fla. 2d DCA 1988) 26, 29

Ryan v. *Countrywide Home Loans*,
743 So. 2d 36 (Fla. 2d DCA 1999) 32

Saia Motor Freight Line, Inc. v. *Reid*,
930 So. 2d 598 (Fla. 2006) 21

Sapp v. *Sullivan*,
866 So. 2d 28 (Fla. 2004) 7

Schwartz v. *Zaconick*,
68 So. 2d 173 (Fla. 1953) 38

Shlishey the Best, Inc. v. *CitiFinancial Equity Servs., Inc.*,
14 So. 3d 1271 (Fla. 2d DCA 2009) 9

State Farm Mut. Auto. Ins. Co. v. *Statsick*,
2017 WL 2989010 (Fla. 2d DCA July 14, 2017) 29

State Tr. Realty, LLC v. *Deutsche Bank Nat'l Tr. Co. Am.*,
207 So. 3d 923 (Fla. 4th DCA 2016) 36

State, Dept. of Legal Affairs v. *Rains*,
654 So. 2d 1254 (Fla. 2d DCA 1995) 21

Sterling Factors Corp. v. *U.S. Bank N.A.*,
968 So. 2d 658 (Fla. 2d DCA 2007) 30

U.S. Bank N.A. v. *Rios*,
166 So. 3d 202 (Fla. 2d DCA 2015) 38, 39

U.S. Bank N.A. v. *Taylor*,
30 So. 3d 530 (Fla. 3d DCA 2010) 26

U.S. Bank Nat'l Ass'n v. *Bjeljac*,
43 So. 3d 851 (Fla. 5th DCA 2010) 33

U.S. Bank, N.A. v. *Bevans*,
138 So. 3d 1185 (Fla. 3d DCA 2014) 40

Union Cent. Life Ins. Co. v. *Carlisle*,
593 So. 2d 505 (Fla. 1992) 21

Yost v. *Rieve Enters., Inc.*,
461 So. 2d 178 (Fla. 1st DCA 1984) 43

Statutes **Page(s)**

§ 45.031, *Fla. Stat.* ..... *passim*

§ 48.23, *Fla. Stat.* 2, 3

§ 90.202, *Fla. Stat.* 8

Rules **Page(s)**

Fla. R. App. P. 9.020 2

Fla. R. App. P. 9.030 7

Fla. R. App. P. 9.110 7

Fla. R. App. P. 9.130 7

Fla. R. Civ. P. 1.100 33

Fla. R. Civ. P. 1.170 .....2, 4, 10, 12

Fla. R. Civ. P. 1.180 .....2, 4

Fla. R. Civ. P. 1.210 4

Fla. R. Civ. P. 1.230 .....*passim*

Fla. R. Civ. P. 1.540 .....*passim*

Other Authorities **Page(s)**

BLACK'S LAW DICTIONARY 1154 (7th ed. 1999) 25

Federal Financial Institutions Examination Council, Federal Reserve System, *National Information Center: A repository of financial data and institution characteristics collected by the Federal Reserve System*, https://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx.....8

Pinellas County Foreclosure, *Foreclosure Process*, https://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx.....42

STATEMENT OF THE CASE AND FACTS

Nature Of The Case

This appeal arises from a residential foreclosure. As a junior lienholder, Appellant, Deutsche Residential Mortgage Co., obtained a final judgment of foreclosure against a condominium unit. At the foreclosure sale, Appellee, Orlando Realty Group, LLC, an experienced firm that had purchased hundreds of foreclosure properties, purchased the unit without performing adequate due diligence. After the 10-day deadline to object to the sale expired, Orlando then filed a series of "emergency" motions to intervene and to vacate the certificate of title, certificate of sale, and final judgment of foreclosure pursuant to Rule 1.540(b)(3) and (b)(4), but not (b)(5). Deutsche opposed. In two orders, the trial court allowed Orlando to intervene and vacated the certificate of title, certificate of sale, and final judgment of foreclosure per Rule 1.540(b)(5). In this appeal, Deutsche challenges both orders.

Course Of The Proceedings

Wells Fargo Bank, N.A., the original senior lienholder,[1] filed a foreclosure action against David G. Kapes (the senior lienholder's mortgagor) and his un-

[1] Subsequently, Appellee, Wilmington Savings Fund Society, FSB, moved to substitute as party plaintiff for Wells Fargo. App. 12.5. After the certificate of sale (App. 20) and certificate of title (App. 21) issued, but two days before Orlando filed its first of three motions to intervene and to vacate the certificate of title, certificate of sale, and final judgment (*see* App. 22; 24; 24A; 25; 25A), the trial court granted Wilmington's motion, substituted Wilmington for Wells Fargo, and changed the caption. App. 21.5.

known spouse,[2] The Ram-Sea II Condominium Association, Inc. (the homeowner association that had previously foreclosed on the unit for failure to pay HOA dues), and Outbidya, Inc. (which had purchased the unit at that prior foreclosure sale). App. 1 at 1-5. The complaint asserted Wells Fargo was owed $130,345.94 plus interest, attorney fees, costs, and other expenses. App. 1 at 2. Outbidya answered and asserted an affirmative defense. App. 2 at 1-2.

Thereafter, Deutsche timely moved to intervene within the 30 days provided in § 48.23, *Fla. Stat.* App. 3 at 1-2. Wells Fargo opposed. App. 5 at 1-3. The trial court did not enter a written order on this motion. *See* Tr. 16 ("There was no intervention, agreed, but that's not even an issue.").

Pursuant to Florida Rules of Civil Procedure 1.170(h)[3] and 1.180(a),[4] Outbidya then moved for leave to file a counterclaim against Wells Fargo and to assert third-party claims against other parties, including Deutsche. App. 7 at 1-2. Indeed, at the outset, the proposed counterclaim and crossclaims named Deutsche as a

---

[2] Early on, Mr. Kapes and his unknown spouse were defaulted. App. 7.5. Although they technically are parties in this appeal, Fla. R. App. P. 9.020(g)(2), they have never appeared in the trial court or this Court.

[3] Rule 1.170(h) provides: "When the presence of parties other than those to the original action is required to grant complete relief in the determination of a counterclaim or crossclaim, they must be named in the counterclaim or crossclaim and be served with process and must be parties to the action thereafter if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action." Fla. R. Civ. P. 1.170(h).

[4] Rule 1.180(a) permits a defendant, upon obtaining leave of court, to assert third-party claims against third-party defendants. *See* Fla. R. Civ. P. 1.180(a).

third-party defendant: *i.e.*, Outbidya "files this counterclaim against the Plaintiff, Wells Fargo Bank, NA, [other third parties], and Deutsche Residential Mortgage Co." App. 7 at 3. The first four counts sought damages and injunctive relief against Wells Fargo and the other third parties. App. 7 at 3-8. Count Five, however, sought to reform a quitclaim deed from Outbidya to Parkes Investments, *Inc.*, which (due to a typographical error) should have listed Parkes Investments, *LLC* instead. App. 7 at 8-10; 7A at 1-3; 7C at 1-3.

As part of Count Five, Outbidya alleged that before it became aware of the original deed's typographical error, it had "executed a mortgage on the subject property in favor of Counter-defendant, Deutsche Residential Mortgage Co." App. 7 at 9. For that reason, Outbidya explained, "Reformation of the deed is necessary to protect the interests of Deutsche Residential Mortgage Co. in the subject property since its mortgage was executed by Parkes prior to the corrective quit claim deed being executed and recorded, and Plaintiff [*i.e.*, Wells Fargo at that time] may seek to argue that the mortgage is thus invalid or barred by Florida Statute 48.23." App. 7 at 9.

Recognizing that Outbidya sought to assert both a counterclaim against Wells Fargo and a series of third-party claims "against third parties not presently involved in this action," the trial court granted leave in part and denied leave in part. App. 8 at 1. Specifically, with respect to Counts One through Four (which had

nothing to do with Deutsche), the trial court denied leave to file third-party claims against those third parties (who therefore never became parties to this action). App. 8 at 1. But with respect to Count Five, which was alleged against Deutsche, the trial court granted Outbidya leave to file it: *i.e.*, Outbidya "will be permitted to go forward with such reformation action as set forth in the proposed Count V." App. 8 at 1. As a result, Deutsche became a party.

After Outbidya filed its third-party claim in Count Five (App. 9; 9A; 9B), Deutsche answered and admitted Count Five's allegations (App. 10 at 1). Thereafter, pursuant to Rules 1.170(g)[5] and 1.180(a),[6] Deutsche (as a third party) filed a counterclaim against Outbidya (which was a defendant in Wells Fargo's original action and filed a third-party claim against Deutsche) and a crossclaim against Parkes; it sought repayment for two promissory notes. App. 11 at 1-2; 11A; 11B; 11C; 11D. Outbidya and Parkes both filed answers that admitted all of Deutsche's allegations. App. 12 at 1; 13 at 1. Based on those admissions, Deutsche moved for summary judgment against Outbidya and Parkes (App. 14 at 1) and filed an affidavit of indebtedness (App. 15 at 1-2).

---

[5] Rule 1.170(g) allows any party, including a third party, to assert a crossclaim against any other party. *See* Fla. R. Civ. P. 1.170(h); *see also* Fla. R. Civ. P. 1.210(a) ("Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause.").

[6] In relevant part, Rule 1.180(a) provides a third-party defendant "shall make … counterclaims against the defendant and crossclaims against other third-party defendants as provided in rule 1.170." Fla. R. Civ. P. 1.180(a).

A week later, Deutsche, Outbidya, and Parkes filed a stipulation to a consent final judgment of foreclosure. App. 16 at 1-2. In that stipulation, Deutsche waived its right to seek a deficiency judgment, and Outbidya and Parkes waived their rights to object to the foreclosure sale or to impede or delay the issuance of the certificate of title. App. 16 at 1.

Next, the trial court entered the consent final judgment of foreclosure. App. 17 at 1-6. That judgment described Deutsche as the "Cross-Plaintiff" and Outbidya and Parkes as the "Cross-Defendants." App. 17 at 1-6. Unlike Wells Fargo's complaint, which sought recovery of $130,345.94 in principal, this consent judgment identified the "actual value of the claim" as $376,966.19—almost triple the complaint's amount. App. 17 at 1.

A few weeks later, counsel for Deutsche filed a notice of sale. App. 18 at 1-2. The notice explained it was given "pursuant to a Final Judgment of Foreclosure dated April 18, 2017, and entered in Case No. 16-1790-CI, of the Circuit Court of the Sixth Judicial Circuit in and for PINELLAS County, Florida, wherein *DEUTSCHE RESIDENTIAL MORTGAGE CO. is the Cross-Plaintiff*, and *OUTBIDYA, INC. and PARKES INVESTMENTS, LLC. are the Cross-Defendants*." App. 18 at 1 (emphases added). The notice—which contained precisely the same description of Deutsche, Outbidya, and Parkes—was published. App. 19 at 1.

About a month later—and precisely three weeks after the jurisdictional 30-day timeframe for any party to appeal from the consent final judgment of foreclosure expired—a certificate of sale issued. App. 20 at 1. It indicated the "highest and best bid received for the property in the amount of $458,100.00 was submitted by ORLANDO REALTY GROUP, LLC, to whom the property was sold." App. 20 at 1. Orlando's bid was only one of many. Tr. 51 (Orlando "was not the only bidder at that foreclosure sale. There were multiple bidders at that foreclosure sale."). Almost two weeks after the certificate of sale issued, the certificate of title issued as well. App. 21 at 1. Orlando never objected to the issuance of the certificate of sale or the certificate of title at any time.

Instead, nine days after the certificate of title issued, and two days before the trial court substituted Wilmington for Wells Fargo, Orlando filed a an "emergency" motion to intervene, vacate the certificate of title, vacate the certificate of sale, and vacate the consent final judgment of foreclosure. App. 22 at 1-12. After Outbidya and Parkes moved to strike that motion (App. 23 at 1-2), Orlando twice amended it (App. 24; 24A; 25; 25A).

Without a hearing, and over the objection of Deutsche (App. 25.5), the trial court allowed Orlando to intervene. App. 26 at 2. Relatedly, it convened an evidentiary hearing on whether to vacate the certificates of title and sale and the consent

final judgment of foreclosure. App. 26 at 2. Outbidya and Parkes moved for reconsideration (App. 27 at 1-3), which was denied (App. 28 at 1-5).

At the hearing, the trial court heard extensive argument about the motion to vacate. Tr. 1-59. Ultimately, the trial court orally granted the motion and vacated the certificate of title, certificate of sale, and final judgment of foreclosure. Tr. 55-58. That oral ruling was reduced to a written order. App. 29 at 1-2. Deutsche timely appealed. App. 31 at 1-5. This Court has jurisdiction.[7]

[7] In addition to having nonfinal order jurisdiction under Rule 9.130(a)(5) (permitting nonfinal appeal from "[o]rders entered on an authorized and timely motion for relief from judgment"), this Court also has final order jurisdiction under Rules 9.030(b)(1)(A) and 9.030(b)(1)(B). That is because the order vacating the certificate of title, certificate of sale, and consent final judgment of foreclosure (App. 29) was a final order as to Orlando and a nonfinal order as to the remaining parties. *See New Day Miami, LLC* v. *Beach Developers, LLC*, 225 So. 3d 372, 374 (Fla. 3d DCA 2017) (order was final for appellant but nonfinal for others). As such, this Court has jurisdiction under Rule 9.110(h) to review the order granting intervention (App. 26) as well as the order vacating the certificate of title, certificate of sale, and consent final judgment of foreclosure (App. 29). And even if this Court lacks final order jurisdiction, it may still exercise ancillary appellate jurisdiction over the propriety of the order granting intervention (App. 26). *See Sapp* v. *Sullivan*, 866 So. 2d 28, 34 (Fla. 2004) ("once an appellate court has jurisdiction it may, if it finds it necessary to do so, consider any item that may affect the case"); *Cantor* v. *Davis*, 489 So. 2d 18, 20 (Fla. 1986) ("Once this Court has jurisdiction, however, it may, at its discretion, consider any issue affecting the case.").

Disposition In The Lower Tribunal

A. The Second Amended Motion To Intervene And Vacate The Certificate Of Title, Certificate Of Sale, And Consent Final Judgment Of Foreclosure

After a few filing misfires (*see* App. 22; 24; 24A), Orlando filed an "emergency" motion to intervene and to vacate the certificate of title, certificate of sale, and consent final judgment of foreclosure. App. 25. The motion sensationally defined Deutsche, Outbidya, and Parkes as "Conspirators."[8] App. 25 at 2. At any rate, as a putative postjudgment intervenor rather than as a plaintiff or defendant, the motion raised four arguments pertinent here.

---

[8] According to the searchable records of Florida's Division of Corporations (http://dos.myflorida.com/sunbiz/search/), the contents of which this Court may take judicial notice, *see, e.g.*, § 90.202(12), *Fla. Stat.* (courts "may take judicial notice of … [f]acts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned"), Deutsche (Doc. P16000032540) and Outbidya (Doc. P12000044234) are active Florida for-profit corporations; their president and registered agent is Roy Skelton, Esq., and its principal and mailing address is at a strip mall in Clearwater, Florida. In contrast, Parkes Investments, LLC (Doc. L05000002075) is an active Florida limited liability company; its registered agent is Jan Topolosky, its president is Lou Katz, and its principal and mailing address is at a residence in Largo, Florida. According to the Federal Reserve's searchable National Information Center, Deutsche Bank AG has no affiliate or subsidiary named Deutsche Residential Mortgage. *See* Federal Financial Institutions Examination Council, Federal Reserve System, *National Information Center: A repository of financial data and institution characteristics collected by the Federal Reserve System*, *at* https://www.ffiec.gov/nicpubweb/nicweb/SearchForm.aspx (last visited January 19, 2018). In short, neither the searchable Sunbiz records nor the searchable Federal Reserve records provide any indication that an international bulge-bracket bank like Deutsche Bank AG had set up shop in a shopping plaza in Clearwater or established a company named Deutsche Residential Mortgage Co.

First, the motion sought to intervene pursuant to Florida Rule of Civil Procedure 1.230.[9] App. 25 at 3-6. Specifically, without addressing how it could possibly have any interest "in pending litigation" when the 30-day jurisdictional timeframe within which to appeal the consent final judgment of foreclosure had long since expired, Orlando claimed it was entitled to intervene under "a careful review of the entire universe of existing case law regarding intervention." App. 25 at 3-6. Purporting to canvass that "entire universe," Orlando cited two cases. The first was *Estate of Arroyo* v. *Indem. Ins.*, 211 So. 3d 240, 246 (Fla. 3d DCA 2017), which explained "a contingent interest in the proceedings, as opposed to a direct and immediate interest, will not justify a party's intervention," and the second was *Shlishey the Best, Inc.* v. *CitiFinancial Equity Servs., Inc.*, 14 So. 3d 1271, 1275 (Fla. 2d DCA 2009), which Orlando contended gave it a "protectable legal interest" as a "third-party purchaser" that attached when the certificate of sale issued. App. 25 at 3-4.

Second, Orlando contended the consent final judgment of foreclosure (to which it was not a party) was void (not merely voidable) for lack of jurisdiction. App. 25 at 6-8. Specifically, Orlando contended Deutsche was not a cross-plaintiff,

[9] That rule provides: "Anyone claiming an interest *in pending litigation* may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Fla. R. Civ. P. 1.230 (emphasis added).

but rather was a non-party. App. 25 at 6-8. In making this argument, Orlando did not address Rule 1.170(h).[10] And in asserting the consent final judgment of foreclosure was void, Orlando relied exclusively on Rule 1.540(b)(3) and (b)(4), which allow a court to relieve a party from a "final judgment, decree, order, or proceeding" if there was fraud or "the judgment or decree is void." *See* App. 25 at 6-8.

Third, Orlando contended the consent final judgment of foreclosure was voidable (not void) because Deutsche, Outbidya, and Parkes had supposedly failed to serve other parties with certain papers in violation of Florida Rule of Judicial Administration 2.516 and had otherwise acted with "unclean hands." App. 25 at 8-13.

Fourth, Orlando contended it should be relieved from the consent final judgment of foreclosure (to which it was not a party) because its mistaken belief that it was bidding on a senior lienholder's mortgage rather than a junior lienholder's mortgage was excusable neglect within the meaning of Florida Rule of Civil Procedure 1.540(b)(1). App. 25 at 13-14. Specifically, Orlando complained it was confused by the case style. App. 25 at 13. In making this argument, Orlando did not explain how there could have been any confusion in light of the numerous

[10] That rule provides: "When the presence of parties other than those to the original action is required to grant complete relief in the determination of a counterclaim or crossclaim, *they must be named in the counterclaim or crossclaim* and be served with process and *must be parties to the action thereafter* if jurisdiction of them can be obtained and their joinder will not deprive the court of jurisdiction of the action." Fla. R. Civ. P. 1.170(h) (emphases added).

court papers in which Deutsche was described as a cross-plaintiff. *See* App. 13-14. Nor did it complain that it had confused Deutsche for an affiliate or subsidiary of international megabank, Deutsche Bank AG. *See* App. 13-14.

B. The Objection To Intervention

Deutsche objected to Orlando's intervention. App. 25.5 at 1-3. That objection contended Orlando could not intervene because there was no "pending litigation" within the meaning of Rule 1.230. App. 25.5 at 1. In that regard, Deutsche explained that it was too late to intervene after entry of a final judgment, that trial courts lack jurisdiction to alter a judgment after the time to appeal has expired, and an intervenor cannot challenge prior rulings or procedure because it must take the case as it finds it. App. 25.5 at 2-3.

C. The Order Granting Intervention

Without a hearing, and without expressly considering or overruling Deutsche's objection (App. 25.5), the trial court allowed Orlando to intervene. App. 26 at 2. Relatedly, it convened an evidentiary hearing whether to vacate the certificate of title, certificate of sale, and the consent final judgment of foreclosure. App. 26 at 2. The trial court denied reconsideration. App. 27 at 1-3; 28 at 1-5.

D. The Hearing

At the hearing, Orlando argued Deutsche was "a stranger to these proceedings." Tr. 12. In making this argument, Orlando did not acknowledge Deutsche had

been named in Outbidya's counterclaim (App. 9), its answer to that third-party claim (App. 10), its assertion of crossclaims against Outbidya and Parkes (App. 11), its motion for summary judgment (App. 14), its stipulation to entry of final judgment (App. 16), the final consent judgment of foreclosure in its favor that described it as the prevailing cross-plaintiff (App. 17), and the notice of sale (App. 18) and publication (App. 19) that described it as a cross-plaintiff. *Compare* Tr. 12-13, *with* Tr. 16-18.

According to Orlando, the "most important" reason why Deutsche was a "stranger" was because the trial court had never ruled on its motion to intervene: "Deutsch was never granted intervention, and because they weren't granted invention, this final judgment that was entered thereupon is void and should be vacated." Tr. 13. In making this argument, Orlando again did not address Rule 1.170(h). *See supra* note 10. Additionally, Orlando raised "a couple secondary arguments." Tr. 13. They concerned mistake, *see* Fla. R. Civ. P. 1.540(b)(1), and whether the judgment was void, *see* Fla. R. Civ. P. 1.540(b)(3).[11]

[11] Orlando's two other arguments concerned the supposedly improper service of court papers (Tr. 13-14) and a new argument it had not raised in its motion: *i.e.*, whether the mortgage and security agreement had the proper amount of documentary stamp taxes paid on them (Tr. 14). The trial court summarily rejected the service argument. Tr. 14. It took further argument about the stamps and taxes. Tr. 35-36, 38. Deutsche acknowledged it had not paid all documentary stamp taxes (Tr. 36), but did so before the trial court entered its order on Orlando's motion (*compare* App. 30, *with* App. 29).

The trial court took testimony from Orlando's corporate representative, John Houde. Tr. 19-32. On direct, Mr. Houde testified he had reviewed "the docket" and "the court files," but "d[id]n't see anywhere in there where Deutsch Residential Mortgage has been granted a leave to intervene or be a part in these proceedings." Tr. 20. He did not mention that literally the first words of the first numbered paragraph below the consent final judgment's caption explained the matter "was heard before the Court upon the stipulation of *Cross-Plaintiff* and *Cross-Defendants*" (App. 17 at 1), which in turn had defined the cross-plaintiff as Deutsche and the cross-defendants as Outbidya and Parkes (App. 16 at 1). *See* Tr. 20.

On cross-examination, Mr. Houde clarified what he meant by his review of "the docket" and "the court files." Tr. 20-21. He reviewed the "case history"—which apparently included nothing more than looking at the complaint, the lis pendens, and the "caption"—but he did not review the body of the final judgment. Tr. 20-21; *accord* Tr. 23 ("We looked at the—the complaint and the lis pendens, and then the—and then ultimately the final judgment."). Because "the caption" of the final judgment "was named the same" as the original complaint and had the "same case number," Mr. Houde concluded "nothing had changed." Tr. 21. Based on that minimal due diligence, Mr. Houde concluded there was "not another mortgage—first mortgage sitting in front of it." Tr. 21. Because Mr. Houde never took the time to become aware that it was Deutsche that was foreclosing, he never had the oppor-

tunity to confuse Deutsche for an affiliate or subsidiary of Deutsche Bank AG. *See* Tr. 20-32.

Mr. Houde also conceded that Orlando was not some babe in the woods making its first foray into the foreclosure market; rather, it was an experienced buyer of foreclosure properties that had already purchased a "[c]ouple hundred." Tr. 27. Given that extensive experience, Mr. Houde admitted familiarity with the "confirmation screens" used on the clerk's real estate foreclosure sale website. Tr. 30. In particular, he admitted the confirmation screen stated, "'Buyer beware. All property sold as is.'" Tr. 30. Additionally, Mr. Houde also acknowledged the confirmation screen required him to state he had read all the documents on file with the clerk of court. *See* Tr. 53-54. Notwithstanding those warnings, Mr. Houde conceded he had "clicked confirmed," which constituted a false representation that he had read the entire court file. Tr. 31-32.

Thereafter, the trial court asked a few questions about the "kind of lender" Deutsche was. Tr. 32-35. Deutsche indicated it had not made a loan, but rather had given its stock in exchange for a promissory note from Outbidya. Tr. 34-35. Outbidya secured its obligation on that promissory note with a mortgage on the condominium unit that it and Parkes owned together. Tr. 34-35.

The parties presented closing arguments. Tr. 37-55. Orlando argued the "heart of the matter is jurisdiction, jurisdiction, jurisdiction," and urged the trial court to vacate the judgment as void. Tr. 38-39.

In response, counsel for Outbidya and Parkes, who due to another attorney's illness ended up handling the hearing for Deutsche as well (Tr. 32-33), argued Orlando had limited rights as an intervenor and that the trial court had jurisdiction to enter the consent final judgment of foreclosure because Deutsche had properly become a party to the lawsuit. Tr. 40-41. In support, Deutsche discussed Rule 1.540(b), several cases, and the ancient doctrine of *caveat emptor*. Tr. 41-48. With respect to *caveat emptor*, Deutsche explained:

> Mr. Houde basically admitted he did not read the final judgment, certainly not in its entirety. He said he read the docket. That's like reading a table of contents and saying you read the book.
>
> It's not the same thing.

Tr. 44. Deutsche further explained that the Rule 1.540(b) motion was improper, because after the time within which to object to the judicial sale per § 45.031, *Fla. Stat.*, had expired, it was no longer a judicial proceeding; instead, a foreclosure sale was an ancillary, ministerial act. Tr. 45. Deutsche noted that Orlando had deprived it of due process by raising the documentary stamp tax issue for the first time at the hearing. Tr. 46.

In rebuttal, Orlando argued it had fallen prey to what it described as a "very cunning plan," "pretty savvy scheme," or "ingenious … trap" set by Outbidya, Parkes, and Deutsche, which was "confusing for laypeople" like Orlando (*i.e.*, the experienced entity that had purchased hundreds of foreclosure properties). Tr. 48, 50, 51. Orlando further argued it was unfair to hold it to the bargain it had struck because, notwithstanding its minimal due diligence, it now "stand[s] to lose a substantial amount of money," whereas Deutsche "stand[s] to make a substantial amount of money." Tr. 49. Finally, Orlando remarkably claimed the trial court had jurisdiction at virtually anytime to "do whatever is equitable in your eyes and your discretion." Tr. 50-51. (The trial court, however, expressed doubt its discretion extended so far. *See* Tr. 53.)

In sur-rebuttal, Deutsche reiterated the broad scope of the *caveat emptor* doctrine:

> MR. SKELTON: So as I say, he basically represented to the system, if you will, that he has read these documents.
>
> That system is there for a reason. It's there to protect people who are otherwise unsophisticated or unknowing in the ways of foreclosure sales.
>
> It's there—as I say, as a safety net. And what he did, he clicked 1, 2, 3, 4, let me go ahead and bid on this thing.
>
> And as I said, he's defrauded the system. He should have clicked cancel. No, I haven't read these documents, and he should not have been bidding. Therefore he cannot come to this Court now and

> complain, oh, I misunderstood who was foreclosing, and I thought it was Wells Fargo and it's Deutsch Residential Mortgage.
>
> And had he read the documents he would have known that. Had he read the cross claim he would have know that. Had he read the consent to final judgment he would have known that. Had he actually read the final judgment he would have known that. Had he read the notice of sale he would have known that.
>
> But he didn't do those things, therefore he comes to this Court with unclean hands.
>
> You should deny any relief to him. Thank you.

Tr. 54-55.

E. The Oral Ruling

The trial court rejected Orlando's jurisdictional argument under Rule 1.540(b)(4) that the judgment was void because Deutsche was not a party (Tr. 55), and it did not address Orlando's argument that the judgment should be set aside due to fraud under Rule 1.540(b)(3) (*see* Tr. 55-58). Nevertheless, the trial court, "in an exercise of [its] discretion," ruled in favor of Orlando exclusively on the basis of Rule 1.540(b)(5):

> I think I'm faced before me with the conniving versus the complicit [*sic*]. It's pretty clear to me that the buyer, while attempting to do his due diligence and review things, didn't do it in a competent manner. Certainly you're a knowledgeable buyer when it comes to foreclosures, based upon the number of foreclosures that you have told me that you participated in.
>
> On the other hand, Mr. Skelton, clearly you set a trap for unwary buyers, be it this one or anybody else that was bidding at this sale. There was no economic reality or no economic basis for this purported mortgage scheme that you put together.

You've represented to me and I accept as a fact that Deutsch Residential Lending LLC [*sic*] has made one loan, and that's all it's going to make, so clearly it was put together not as a legitimate residential lending, but as a name that was deceptively similar to others that are in the market.

It ignores any economic reality, and in fact I believe was illusory and had no other purpose, other than to lure in unsuspecting bidders. The ultimate profit that would flow to you from this is nearly unconscionable.

While I have little sympathy for this particular buyer, who is in the business of picking over the bones of foreclosure properties—and he's well aware of the risks—I feel that I am bound under the Rule of 1.540 B to do the equitable thing, and *in the rule it allows me to make such reversals if it is no longer equitable that the judgment or decree should have prospective application, and I'm going to read that to mean that the application that we have before us today is not equitable.*

To the extent that Mr. Weidner has pointed out a number of technical errors, each and every one of those are easily correctable.

And indeed if and when that is done, I think the Deutsch-Outbidya-Roy Skelton conglomerate—which is all you—can then decide how you want to proceed in this basis, if indeed you want to go forward.

I'm well aware Wells Fargo still has a first mortgage out there, and everything we're going to talk about here could well be gone.

To the extent that 2nd District Court of Appeals disagrees with me and wishes to condone such unscrupulous behavior, they can do that.

I don't have the heart to do it and I won't, accordingly.

I'll vacate the final judgment.

I'll vacate the title.

> I'll vacate the certificate of sale.
>
> And I will direct the Clerk to return to the Orlando Group the money they have paid.

Tr. 56-58 (emphasis added).

In so ruling, the trial court did not mention that Orlando had not raised any argument under Rule 1.540(b)(5) in its motion. *See* Tr. 56-58. Nor did the trial court mention that Orlando was not aware of Deutsche's existence at any relevant time, and hence it did not explain how Orlando could have been tricked into placing a bid by a fact (*i.e.*, supposed confusion, notwithstanding public records, whether Deutsche was an affiliate or subsidiary Deutsche Bank AG) of which its corporate representative was never aware in the first place. *See id.*

F. The Written Order Vacating The Certificate Of Title, Certificate Of Sale, And Consent Final Judgment Of Foreclosure

Consistent with that oral ruling, a written order vacated the certificate of title, certificate of sale, and consent final judgment of foreclosure. App. 29 at 1-2. This appeal followed. App. 31 at 1-5.

SUMMARY OF ARGUMENT

1. The trial court acted beyond its jurisdiction when it allowed Orlando to intervene. It had no authority to do so under its general reservation of jurisdiction in the consent final judgment. Moreover, Rule 1.230 and its interpretive case law make clear that intervention is permitted only as to pending litigation. Here,

the litigation was no longer pending because the 30-day jurisdictional timeframe from which to appeal from the consent final judgment of foreclosure had long since expired.

2. Setting aside the impropriety of Orlando's belated intervention, it was still an abuse of discretion to vacate the certificate of title, certificate of sale, and consent final judgment of foreclosure. Rule 1.540(b) did not authorize the trial court to set aside the judgment because it had not been entered against Orlando and did not adversely affect it in any way. Relatedly, Rule 1.540(b) and § 45.031, *Fla. Stat.*, did not separately authorize the trial court to set aside the certificate of title and certificate of sale (*i.e.*, the foreclosure sale) because Orlando did not object within 10 days. Even if Orlando was entitled to relief under Rule 1.540(b), it was an elementary procedural error for the trial court to grant relief under subsection (b)(5), which Orlando did not assert in its motion. And even if the trial court could consider subsection (b)(5), that claim should have failed on the merits because Orlando did not establish significant new evidence or changed circumstances since entry of the final judgment that made its prospective application inequitable. Instead of identifying such facts, the trial court improperly retried the case. Finally, in granting equitable relief, the trial court failed to consider the doctrines of *caveat emptor* and unclean hands.

ARGUMENT

I. ISSUE 1: DID THE TRIAL COURT HAVE JURISDICTION TO PERMIT ORLANDO'S BELATED INTERVENTION OR OTHERWISE COMMIT AN ERROR OF LAW TO WHICH NO DEFERENCE IS OWED WHEN IT GRANTED SUCH PERMISSION AFTER MISINTERPRETING RULE 1.230?

The trial court lacked jurisdiction to permit Orlando's belated intervention because the judgment was final and did not reserve jurisdiction to determine the issues Orlando wanted to litigate. And even if the trial court had jurisdiction to consider whether to permit Orlando to intervene, it committed an error of law to which no deference is owed when it misinterpreted Rule 1.230.

Standard Of Review

An order granting a motion to intervene is reviewed for abuse of discretion. *State, Dept. of Legal Affairs* v. *Rains*, 654 So. 2d 1254, 1255 (Fla. 2d DCA 1995); *accord Union Cent. Life Ins. Co.* v. *Carlisle*, 593 So. 2d 505, 507 (Fla. 1992) ("intervention pursuant to rule 1.230 is a matter of discretion"). Nevertheless, although the application of procedural rules is reviewed for abuse of discretion, *e.g.*, *Farish* v. *Lum's, Inc.*, 267 So. 2d 325, 327-28 (Fla. 1972) ("application of procedural rules" is reviewed for abuse of discretion), the interpretation of the scope of authority they confer on trial courts is a question of law reviewed de novo, *e.g.*, *Saia Motor Freight Line, Inc.* v. *Reid*, 930 So. 2d 598, 599 (Fla. 2006) (interpretation of procedural rules "is a question of law subject to de novo review"). Additionally,

whether a trial court has jurisdiction is a question of law reviewed de novo. *Artz ex rel. Artz* v. *City of Tampa*, 102 So. 3d 747, 749 (Fla. 2d DCA 2012).

Merits

A. The General Reservation Of Jurisdiction In The Consent Final Judgment Did Not Give The Trial Court Jurisdiction To Permit Orlando To Intervene Belatedly

The trial court had no jurisdiction under its general reservation of jurisdiction in the consent final judgment of foreclosure to permit Orlando's belated intervention.

For instance, that is precisely what this Court held in *Grand Central at Kennedy Condo. Ass'n, Inc.* v. *Space Coast Credit Union*, 173 So. 3d 1089, 1090 (Fla. 2d DCA 2015). There, a credit union foreclosed on a mortgage, then purchased the property at the foreclosure sale. *Id.* After the judgment and sale were final, the condominium association assessed past due condominium fees and related charges. *Id.* Displeased, the credit union moved to enforce the final judgment or to amend the certificate of title; its objective was to obtain a determination of the amount of unpaid condominium assessments due. *Id.* In response, the condominium association contended the trial court lacked jurisdiction under the final judgment's general reservation of jurisdiction. *Id.* The trial court disagreed and ruled in favor of the credit union. *Id.*

On appeal, this Court reversed. *Id.* at 1090-91. The trial court lacked jurisdiction "because entitlement to assessments was neither litigated nor adjudicated and the trial court did not specifically reserve jurisdiction to determine the amount of assessments due." *Id.* Instead, "'[i]n a foreclosure case, after entry of a final judgment and expiration of time to file a motion for rehearing or for a new trial, the trial court loses jurisdiction of the case … unless jurisdiction was reserved to address that matter or the issue is allowed to be considered [postjudgment] by statute or under a provision of the Florida Rules of Civil procedure.'" *Id.* at 1091 (citation omitted). That conclusion followed from the general rule that a trial court "'loses jurisdiction upon the rendition of a final judgment and expiration of the time allotted for altering, modifying or vacating the judgment.'" *Id.* (citation omitted). Ultimately, "[o]nce the final judgment of foreclosure was entered and the foreclosure sale took place, there was nothing left for the trial court to enforce." *Id.*

Applied here, *Grand Central* establishes that the consent final judgment's general reservation of jurisdiction was insufficient to permit Orlando to intervene. *See* App. 17 at 6. It provided, "The Court retains jurisdiction of this action to enter further Orders that are proper, including without limitation, Orders authorizing writs of possession and an award of attorney's fees, and to enter a deficiency judgment if the Cross-Defendant has not been discharged in bankruptcy." App. 17 at 6. That general reservation of jurisdiction did not indicate the trial court had spe-

cifically reserved jurisdiction to handle any of the issues Orlando wished to litigate for the first time (*e.g.*, the documentary tax stamp issue). Hence, it did not afford the trial court jurisdiction.[12]

B. Even If It Had Jurisdiction To Entertain A Motion To Intervene, The Trial Court Misinterpreted Rule 1.230 When It Permitted Orlando To Intervene After The Judgment Became Final

Even if the trial court had jurisdiction to entertain Orlando's motion to intervene, it misinterpreted the scope of authority conferred by Rule 1.230.

Intervention under Rule 1.230 is expressly limited to "pending litigation." Fla. R. Civ. P. 1.230. As to Deutsche's foreclosure crossclaim, the litigation had ended upon the entry of the consent final judgment, and the time to file post-judgment motions or take an appeal had long since expired. Thus, by the time Orlando moved to intervene, there was no pending litigation, and the trial court com-

[12] Other cases are in accord with *Grand Central*. *See, e.g.*, *Cent. Mortg. Co.* v. *Callahan*, 155 So. 3d 373, 375 (Fla. 3d DCA 2014) (a trial court's "inherent jurisdiction to enforce its judgment" does not include "the authority to determine statutory assessments where the time to alter, modify, or vacate the judgment has elapsed and the judgment provides for only a general reservation of jurisdiction"); *Harrell* v. *Harrell*, 515 So. 2d 1302, 1304 (Fla. 3d DCA 1987) ("Once a trial court enters a final judgment and the time for filing post-trial motions has expired, the trial court may not, absent factors [such as Rule 1.540(b)], entertain any further motions in the case unless it specifically retained jurisdiction to do so in its final judgment."). Indeed, a general reservation of jurisdiction does not allow for a supplemental complaint or to add an omitted party post-judgment. *See Ross* v. *Wells Fargo Bank*, 114 So. 3d 256, 257 (Fla. 3d DCA 2013) ("The final judgment did not retain jurisdiction to allow for a supplemental complaint to add an omitted party post-judgment. In permitting such a supplemental post-judgment proceeding, the trial court acted in the absence of jurisdiction.").

mitted an error of law to which no deference is owed when it misinterpreted Rule 1.230 to the contrary.

The "general rule—universally—is that intervention may not be allowed after final judgment." *Dickinson* v. *Segal*, 219 So. 2d 435, 436 (Fla. 1969); *see also id.* at 437 n.6 (collecting cases). This is consistent both with leading treatises, *see id.* at 436-37, and the leading legal dictionary, BLACK'S LAW DICTIONARY 1154 (7th ed. 1999) (defining "pending" as "[r]emaining undecided" or "awaiting decision"). The only exception to the general rule is when it is in the interest of justice *and* intervention would not injure the original parties in any way. *Dickinson*, 219 So. 2d at 437; *accord Biden* v. *Lord*, 147 So. 3d 632, 636 (Fla. 1st DCA 2014) ("failed to demonstrate that post-judgment intervention would *in no way* injure the original litigants" (emphasis in original)).

Nevertheless, that exception is very narrow; generally, it is "limited to permitting intervention by affected persons so that an appeal can be taken." *In re Adoption of a Minor Child*, 593 So. 2d 185, 190 (Fla. 1991). That case is illustrative; there, a deceased mother's sister failed to notify the child's grandparents that she had filed an adoption petition. *Id.* The Florida Supreme Court therefore approved an order allowing the grandparents to intervene post-judgment and seek to set aside the adoption judgment because there was "no question" they had always

been "legally interested parties" who were constitutionally entitled to receive notice of the proceedings. *Id.* at 189.

But that is a highly unusual situation. It is far more common for an order allowing post-judgment intervention to be reversed on appeal. *See, e.g.*, *Rude* v. *Golden Crown Land Dev. Corp.*, 521 So. 2d 351, 352 (Fla. 2d DCA 1988) ("trial court erred in allowing a third party to intervene after entry of the final judgment"); *U.S. Bank N.A.* v. *Taylor*, 30 So. 3d 530, 532 (Fla. 3d DCA 2010) ("A post judgment motion to intervene is rarely, if ever, granted and only if the intervention will not injuriously affect the original litigants. In this case, the trial court abused its discretion since the granting of the post judgment motion to intervene did injuriously affect the original parties."); *Idacon, Inc.* v. *Hawes*, 432 So. 2d 759, 762 (Fla. 1st DCA 1983) ("the interests of justice do not require that a creditor with an unperfected security interest be allowed to intervene several months after final judgment and judicial sale"). Indeed, courts are "'strongly inclined to the view that adherence to the rule rather than the exception will produce the best result in the great majority of cases.'" *Idacon, Inc.*, 432 So. 2d at 761 (citation omitted).

C. Even If Orlando Could Intervene, The Scope Of Its Authority To Seek Relief Under Rule 1.540(b) Was Narrow

"Only 'a party or a party's legal representative' may seek relief from a final judgment pursuant to Rule 1.540(b)." *Carlisle* v. *U.S. Bank, N.A. for Harborview 2005-10 Tr. Fund,* 225 So. 3d 893, 894 (Fla. 3d DCA 2017). To bring a Rule

1.540(b) motion, a non-party generally must intervene and become a party. *Id.* If so, that intervenor is said to have *Pearlman* standing (which is limited to relief via Rule 1.540(b)(3)'s fraud provisions). *See Pearlman* v. *Pearlman*, 405 So. 2d 764, 766 (Fla. 3d DCA 1981) ("an unnamed party whose rights were directly and injuriously affected by a judgment fraudulently obtained may seek relief from that judgment either by motion or by independent collateral attack"). But to obtain *Pearlman* standing, a non-party must have had rights that (1) "predated the litigation," (2) were "directly affected by the judgment," and (3) would have qualified the non-party to intervene under Rule 1.230 while the litigation remained pending. *Carlisle*, 225 So. 3d at 895. One who purchases a foreclosure property after the *lis pendens* is filed, however, necessarily "had no rights in the property at the time the litigation commenced" and "purchased the property subject to and bound by any judgment rendered in the foreclosure action." *Id.*

Here, because the trial court lacked jurisdiction to grant intervention (because the litigation was no longer "pending" under Rule 1.230 and there was no specific reservation of jurisdiction in the final judgment), Orlando was a non-party. As such, even it had *Pearlman* standing, its only option would have been to seek relief under Rule 1.540(b)(3). And that would be permissible only if the final judgment had directly affected Orlando's rights. Of course, the final judgment did not affect Orlando's rights at all. That is because, when the final judgment was en-

tered, Orlando had no legally recognizable right, title, or interest in or to the condominium unit, the mortgage being foreclosed, or the proceeds that would be generated from the foreclosure sale of the condominium unit, and therefore could not bring a motion under any of the subsections of 1.540(b). Thus, it was an error of law to which no deference is owed for the court to set aside the consent final judgment.[13]

And, because the consent final judgment could not be touched, it was also reversible error to set aside the certificate of sale and the certificate of title. That is because the judgment, decree, order, or proceeding "being challenged under rule 1.540(b) must subject the litigant to some adverse impact from which he or she needs relief." *Pino* v. *Bank of New York Mellon*, 121 So. 3d 23, 39 (Fla. 2013). The judgment certainly did not subject Orlando to any adverse impact. And to the extent the certificate of sale or certificate of title subjected Orlando to some adverse impact, those are not a "judgment, decree, order or proceeding" within the meaning of Rule 1.540(b). *See infra* Argument II.

[13] Even if Orlando's rights were somehow directly affected by the final judgment, it presented no evidence at the hearing of any fraud or collusion in entry of the final judgment, and the trial court made no such findings. Instead, the trial court relied exclusively upon 1.540(b)(5) to support his ruling. But *Pearlman* standing allows relief under only subsection (3) of Rule 1.540(b), not its other provisions. As such, to the extent the trial court based its ruling on Rule 1.540(b)(5), it was an error of law to which no deference is owed.

II. ISSUE 2: DID THE TRIAL COURT ABUSE ITS DISCRETION UNDER RULE 1.540(B) WHEN IT VACATED THE CONSENT FINAL JUDGMENT OF FORECLOSURE, CERTIFICATE OF SALE, AND CERTIFICATE OF TITLE?

The trial court abused its discretion when it vacated the consent final judgment of foreclosure, certificate of sale, and certificate of title.

Standard Of Review

The grant or denial of a Rule 1.540(b)(4) motion is reviewed de novo, but the grant or denial of a Rule 1.540(b)(1), (2), (3), or (5) motion is reviewed for abuse of discretion. *State Farm Mut. Auto. Ins. Co.* v. *Statsick*, 2017 WL 2989010, at *3-4 (Fla. 2d DCA July 14, 2017). In reviewing for abuse of discretion, however, "to the extent that a circuit court applies its findings of fact to the law in rendering an order, we review that application de novo." *Lake Charleston Homeowners Ass'n, Inc.* v. *Haswell*, 77 So. 3d 922, 924 (Fla. 4th DCA 2012).

Additionally, the "abuse of discretion standard applicable under rule 1.540(b), although deferential, requires that the decision to exercise discretion and afford relief under any of these subsections be supported by competent substantial evidence." *Id.* at *4. "Absent such evidence, a court's vacation of final judgment constitutes an abuse of discretion." *Rude*, 521 So. 2d at 353.

Merits

A. Rule 1.540(b) Did Not Allow The Trial Court To Set Aside The Final Judgment, Because It Had Not Been Entered Against Orlando And Did Not Adversely Impact It

"Rule 1.540 permits a party against whom judgment is entered to seek relief based on a limited list of issues." *Sterling Factors Corp.* v. *U.S. Bank N.A.*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007). But that judgment must "adverse[ly] impact" the movant; otherwise, there is no need for relief. *Pino*, 121 So. 3d at 39. Although Rule 1.540(b) does not define the term "relieve," a dictionary defines it as is "to set free from an obligation, condition, or restriction ... to ease a burden, wrong, or oppression by judicial or legislative interposition ... to bring about the removal or alleviation of." *Id.* at 35.

Here, the consent final judgment did not obligate, condition, restrict, burden, wrong, or oppress Orlando in any way. In sum, there was nothing in the consent final judgment from which to "relieve" Orlando. When the consent final judgment was entered, Orlando had no legally recognizable right, title or interest in or to the condominium unit, the mortgage being foreclosed, or the proceeds that would be generated from the foreclosure sale of the condominium unit. As such, it was not adversely impacted by the consent final judgment, and the trial court committed reversible error in setting it aside (along with the certificate of sale and certificate of title) under any of the subdivisions of 1.540(b).

B. Rule 1.540(b) And § 45.031, *Fla. Stat.*, Gave The Trial Court No Authority To Vacate The Foreclosure Sale

Under Rule 1.540(b)(1), (b)(2), or (b)(3), a trial court may relieve a party from a final judgment, decree, or proceeding. *See* Fla. R. Civ. P. 1.540(b)(1)-(3). Under Rule 1.540(b)(4) and (b)(5), a trial court may only relieve a party from a final judgment or decree. *See* Fla. R. Civ. P. 1.540(b)(4)-(5).

A foreclosure sale is clearly not a judgment or decree. It also is not a judicial proceeding. Rather, it is merely a ministerial act:

> A judicial sale is a sale made as the result of a judicial proceeding under a judgment, order or decree of the court. The sale itself is part of the judicial process but *it is not a judicial proceeding*. Being merely ancillary to those proceedings, it is a ministerial act, an offering of the debtor-mortgagor's property for sale pursuant to a final judgment of foreclosure.

Heilman v. *Suburban Coastal Corp.*, 506 So. 2d 1088, 1089 (Fla. 4th DCA 1987) (emphasis added). Because a judicial act is not a "a final judgment, decree, order, or proceeding" within the meaning of Rule 1.540(b), it cannot be used to set aside a foreclosure sale.

Instead, the sole procedural mechanism for vacating a foreclosure sale itself it to seek to set it aside under § 45.031, *Fla. Stat.* But that statute requires an interested party to object within 10 days. § 45.031(5), *Fla. Stat.* Upon expiration of that 10-day period, a sale stands confirmed upon issuance of the certificate of title.

§ 45.031(6), *Fla. Stat.* That means the sale stood confirmed when Orlando received its certificate of title.

And that has significant consequences here. When a litigant, like Orlando, fails to file a timely objection, the trial court lacks authority to set aside the sale. For instance, the Florida Supreme Court has explained, "if there was any irregularity," the movant "should have made timely protest"; otherwise, the certificate of title, "having the effect of a final conclusive judgment, cures all irregularities, misconduct and unfairness in the making of the sale, departures from the provisions of the decree of sale, and errors in the decree and proceedings under it." *McClanahan* v. *Mayne*, 138 So. 36, 38 (Fla. 1931). "[I]f the court had jurisdiction and the officer the authority to sell, it makes the sale valid as against collateral attack even though irregular and voidable before and though grounds sufficient to have prevented confirmation existed." *Id.*

More recently, this Court has reiterated that only timely objections may be considered, even though the results might be harsh. *Ryan* v. *Countrywide Home Loans, Inc.*, 743 So. 2d 36, 38 (Fla. 2d DCA 1999). There, this Court explained that a litigant's "failure 'to take the required steps necessary to protect its own interest, cannot, standing alone, be grounds to vacate judicially authorized acts to the detriment of other innocent parties. The law requires certain diligence of those subject to it, and this diligence cannot be lightly excused.'" *Id.* And even though it

might be "harsh" to allow other litigants "to acquire property that has a fair market value of $75,000 for $100," it "must stand" due to the complainant's "lack of proper diligence in timely filing its own objection to the sale." *Id.*

C. Even If Orlando Was Entitled To Seek Relief Under Rule 1.540(b), It Was An Elementary Procedural Error To Grant Relief Under Subsection (b)(5) When Orlando Never Raised That Basis In Its Motion

It was an elementary procedural error for the trial court to grant relief on a ground—Rule 1.540(b)(5)—that Orlando never raised in its motion.

Motions "shall be made in writing unless made during a hearing or trial, *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." Fla. R. Civ. P. 1.100(b) (emphasis added). "The purpose of rule 1.100 is to put the opposing party on notice of the grounds which will be asserted against it." *Jaffrey* v. *Baggy Bunny, Inc.*, 733 So. 2d 1140, 1141 (Fla. 4th DCA 1999). Accordingly, a motion that "set[s] forth no basis on which the court could intelligently" rule does not meet this requirement. *U.S. Bank Nat'l Ass'n* v. *Bjeljac*, 43 So. 3d 851, 852 (Fla. 5th DCA 2010); *accord Gulf Landings Ass'n* v. *Hershberger*, 845 So. 2d 344, 346 (Fla. 2d DCA 2003) (a notice of hearing does not satisfy Rule 1.100(b) because it does not "state with particularity the grounds" or "set forth the relief or order sought").

In the Rule 1.540(b) context, trial courts cannot grant relief on a basis that was not asserted in the motion. *Dep't of Revenue ex rel. Stephens* v. *Boswell*, 915

So. 2d 717, 721 (Fla. 5th DCA 2005) ("the trial court was not entitled to vacate the final judgment on grounds not raised in the motion"); *see also Rosenberg* v. *Cape Coral Plumbing, Inc.*, 920 So. 2d 61, 64 (Fla. 2d DCA 2005) ("In ruling on a motion for summary judgment, the trial court is limited to the grounds raised in the motion."); *Putnam County Envtl. Council, Inc.* v. *Bd. of County Comm'rs of Putnam County*, 750 So. 2d 686, 688 (Fla. 5th DCA 1999) ("It is a fundamental requirement of law and due process that a party be given adequate notice and an opportunity to be heard.").

Because Orlando never raised Rule 1.540(b)(5) in its motion, it was an elementary procedural error for the trial court to grant relief on that basis.

D. Even If The Trial Court Could Consider Rule 1.540(b)(5), Orlando Failed To Establish Significant New Evidence Or Substantial Changes In Circumstances Arising After Entry Of The Judgment That Made Prospective Application Inequitable

Rule 1.540(b)(5) "provides 'extraordinary relief' reserved for 'exceptional circumstances.'" *In re Guardianship of Schiavo*, 792 So. 2d 551, 559 (Fla. 2d DCA 2001). As such, it has been "rather narrowly construed." *Id.*; *accord Pure H_2O Biotech., Inc.* v. *Mazziotti*, 937 So. 2d 242, 245 (Fla. 4th DCA 2006). It "does not allow a party to retry a case merely because the judgment provides equitable relief and the party has found additional evidence." *In re Guardianship of Schiavo*, 792 So. 2d at 559. Instead, it "requires the movant to establish that *significant new evidence* or *substantial changes in circumstances* arising *after the entry of the judg-*

ment make it 'no longer equitable' for the trial court to enforce its earlier order." *Id.* at 559-60; *accord Hensel* v. *Hensel*, 276 So. 2d 227, 228 (Fla. 2d DCA 1973).

There were only three parties to the consent final judgment of foreclosure: the mortgagee (Deutsche) and the mortgagors (Outbidya and Parkes). Orlando was not a party, was a stranger to the record, and had no legally recognizable right, title, or interest in or to the condominium unit, the mortgage being foreclosed, or the proceeds to be generated from the foreclosure sale.

As noted by this Court in *Hensel*, the very language of Rule 1.540(b)(5) is to say that it once was equitable that the consent final judgment in this action have prospective effect, and that in turn, presupposes that the judgment was valid to begin with, and thus entitled to the finality inherent in terminated litigation.

The only change in circumstance occurring after the final judgment was Orlando being the high bidder at the court-ordered foreclosure sale, and thereafter being duly awarded a certificate of title to the property. To the extent that Orlando claimed it was unaware when it placed its bid (after doing its due diligence) that it was bidding on a junior mortgage holder foreclosing its lien and not a senior mortgage holder, such a claim, even if true, would not constitute even a slight change in circumstances so as to alter the equities of the situation as between the three actual parties to the consent final judgment.

Nothing occurring post-judgment would qualify as a substantial change in circumstances so as to make it no longer equitable that Deutsche should have a final judgment of foreclosure against Outbidya and Parkes, neither of which were contesting the consent final judgment.

E. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Improperly Retried The Case And Invented Inaccurate Facts (Which Predated The Consent Final Judgment) Out Of Thin Air

Rule 1.540(b)(5) "does not allow a party to retry a case merely because the judgment provides equitable relief and the party has found additional evidence." *In re Guardianship of Schiavo*, 792 So. 2d at 559. Moreover, with respect to an intervenor, the law is settled that their rights are limited:

> The law is settled that an intervener is bound by the record made at the time he intervenes and must take the suit as he finds it. He cannot contest the plaintiff's claim against the defendant, but is limited to an assertion of his right to the res. He cannot challenge sufficiency of the pleadings or the propriety of the procedure, nor can he move to dismiss or delay the cause without permission of the chancellor.

Krouse v. *Palmer*, 179 So. 762, 763 (Fla. 1938); *accord State Tr. Realty, LLC* v. *Deutsche Bank Nat'l Tr. Co. Am.*, 207 So. 3d 923, 925-26 (Fla. 4th DCA 2016); *Coast Cities Coaches, Inc.* v. *Dade County*, 178 So. 2d 703, 706 (Fla. 1965).

"Intervention is a dependent remedy in the sense that an intervenor may not inject a new issue into the case." *Envtl. Confederation of Sw. Florida, Inc.* v. *IMC*

Phosphates, Inc., 857 So. 2d 207, 211 (Fla. 1st DCA 2003). As such, any argument an intervenor raises must "fit within an issue raised by one of the parties." *Id.*

At the evidentiary hearing, the trial court improperly sought to make counsel for Outbidya and Parkes also act as counsel for Deutsche (Tr. 32), then improperly questioned counsel regarding the size and quantities of loans made by Deutsche. This questioning was improper because Orlando, as an (improper) intervenor had to take the suit as it found it and could not contest Deutsche's foreclosure claim against Outbidya and Parkes, nor could it raise any new issues.

The trial court then used counsel's answers as a basis for exercising its discretion under 1.540(b)(5). This was improper because *In re Guardianship of Schiavo* held 1.540(b)(5) does not allow a party to retry a case merely because the judgment provides equitable relief and the party has found additional evidence.

The trial court, in effect, became an advocate for Orlando through its questioning of counsel on this issue and then took counsel's answers and improperly retried the case. In so doing, it also misconstrued the facts. The trial court incorrectly found Deutsche made a loan to Outbidya and Parkes, and that Deutsche was not going to make any additional loans in the future. From those mistaken facts, the trial court concluded the loan lacked any economic reality and was illusory.

In fact, counsel had earlier explained (Tr. 33) that he as the shareholder/owner of Outbidya had lent monies to Outbidya to purchase properties. In re-

turn, Outbidya gave him demand promissory notes, which he later conveyed to Deutsche in exchange for shares of stock in that company. These unsecured, demand promissory notes were later securitized by a mortgage on the property owned by Outbidya and Parkes. No representation was made that no loans would be made in the future. Rather, Deutsche would not be engaging in any additional financial transactions until it had recovered the significant monies already owed it.

F. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Misapplied Equity Because It Failed To Consider How The Doctrine Of *Caveat Emptor* Applied To Purchasers At Judicial Sales

Generally, "equity must follow the law." *Schwartz* v. *Zaconick*, 68 So. 2d 173, 176 (Fla. 1953). In other words, "courts of equity have [no] right or power under the law of Florida to issue such order it considers to be in the best interest of 'social justice' at the particular moment without regard to established law." *Flagler* v. *Flagler*, 94 So. 2d 592, 594 (Fla. 1957).

In that regard, "A purchaser of property at a judicial sale is generally subject to the rule of caveat emptor." *U.S. Bank N.A.* v. *Rios*, 166 So. 3d 202, 210 (Fla. 2d DCA 2015) (citation and punctuation omitted). "[A] purchaser takes title subject to defects, liens, incumbrances, and all matters of which he has notice, or of which he could obtain knowledge in the exercise of ordinary prudence and caution." *Id.* (citation and punctuation omitted). Although § 45.031(5), *Fla. Stat.* allows a litigant to objection within 10 days, the "'substance'" of that objection "'must be directed

toward conduct that occurred at, or which related to, the foreclosure sale itself.'" *Id.* (citation and punctuation omitted). In other words, the purpose of such an objection "'is to afford a mechanism to assure all parties and bidders to the sale that there is no irregularity at the auction or any collusive bidding, etc.'" *Id.* (citation and punctuation omitted).

Rios is very similar to this case. Both involved very experienced buyers of foreclosure properties; both submitted large bids; both stated they would not have purchased had they known all the facts; and both motions to set aside the sales were granted in the trial court. In *Rios*, this Court applied the doctrine of *caveat emptor* and held the purchaser should have known about the sinkhole. Here, the trial court itself acknowledged that Orlando's due diligence was inadequate. *See* Tr. 56 (Orlando "didn't do [due diligence] in a competent manner").

Among other things, had Orlando compared Wilmington's complaint to Deutsche's final judgment, it would have noticed that the complaint sought a principal of roughly $130,000, whereas the final judgment awarded a principal of $320,000. (Unlike amounts for interest, fees, and costs, outstanding principal amounts do not change after litigation has commenced.) Additionally, the final judgment awarded the money to Deutsche, not the plaintiff listed in the caption, Wilmington. An experienced foreclosure purchaser like Orlando should have noticed these discrepancies.

Equally important are the documents Orlando admitted it did not read. It did not read the cross-claim and did not read the stipulation to consent final judgment of foreclosure. *See* Tr. 26. The stipulation clearly stated it was an agreement between the cross-plaintiff, Deutsche (not the plaintiff, Wilmington) and the cross-defendants, Outbidya and Parkes. Additionally, it was the cross-plaintiff, Deutsche, that was entitled to the final judgment of foreclosure, not the plaintiff, Wilmington. The mere mention of Deutsche as a party should have put Orlando on notice to do further investigation to determine what kind of entity Deutsche was, how it became a party, and what its interests were.

In that regard, public records (*e.g.*, the Sunbiz and Federal Reserve records, along with the recording of Deutsche's second mortgage) charged Orlando with constructive notice of its existence and Deutsche's interest in the property. *See, e.g.*, *U.S. Bank, N.A.* v. *Bevans*, 138 So. 3d 1185, 1188 (Fla. 3d DCA 2014) (imputing constructive knowledge through public records). And the same constructive notice derives from the legal publication regarding the foreclosure sale in accordance with § 45.031(2), *Fla. Stat. See, e.g.*, *Osceola Serv. Co.* v. *Bevis*, 289 So. 2d 712, 714 (Fla. 1974) (constructive notice "is effected by the requirement of publication of notice"). The notice of publication clearly referenced the consent final judgment and that the parties to it were Deutsche, Outbidya, and Parkes. Other

than the style of the case, the notice of publication did not mention the plaintiff, Wilmington.

Finally, there was no competent, substantial evidence to support the trial court's finding that Orlando was confused by Deutsche's name. Indeed, the evidence clearly established Orlando was not aware of Deutsche's existence in the first place because its due diligence was so slipshod and incompetent. *See* Tr. 56 ("It's pretty clear to me that the buyer, while attempting to do his due diligence and review things, didn't do it in a competent manner.").

G. In Granting Relief Under Rule 1.540(b)(5), The Trial Court Failed To Consider The Equitable Doctrine Of Unclean Hands

Finally, the trial court failed to consider Orlando's unclean hands in bidding on a foreclosure sale after falsely representing that it had reviewed all public records contained in the trial court's docket.

Pinellas County conducts its foreclosure sales electronically, pursuant to Florida Statute 45.031(10). When attempting to bid on a foreclosure property electronically, a prospective bidder encounters a series of pop-up windows containing a "Confirmation Message" prior to actually being able to place a bid. For each Confirmation Message, the prospective bidder is required to either affirmatively acknowledge his or her understanding of the content of the informational Confirmation Message, if it is of that type, or that he or she has performed the required task set forth in the Confirmation Message. The prospective bidder confirms

acknowledgement of the information or the performance of the required task, by clicking the Confirm button located within the Confirmation Message. If the prospective bidder does not click the Confirm button, the remaining Confirmation Messages will not appear, and the prospective bidder will not advance to the point where he or she will be able to place a bid

The first Confirmation Screen contains the following informational warning:

> BUYER BEWARE! All properties sold "AS IS." Bidders are responsible for conducting their own research as to the property being sold, location or condition, the conditions of any structures or fixtures thereon, its marketability, potential uses, zoning issues, or whether any other potential liens or other defects in title may exist. Neither the Clerk nor Realauction make any representations or warranties to Bidders regarding the marketability of title to properties offered. The property or interest being auctioned may be worth less than the assessed value.

See Pinellas County Foreclosure, *Foreclosure Process*, *at* https://www.pinellas.realforeclose.com/index.cfm?ZACTION=HOME&ZMETHOD=FORECLOSE (last visited on January 21, 2018).

The second Confirmation Screen contains the following affirmation:

> I hereby state that I have reviewed the official documents on file with the Clerk of the Courts, and acknowledge that it is my responsibility to research the real and/or personal property being sold at auction for this case.

See id.

Orlando's corporate representative, Mr. Houde, testified he was familiar with these Confirmation Screens. Tr. 29-32. The trial court also stated it was famil-

iar with the language of the confirmation screens. Tr. 30-31. Mr. Houde admitted he clicked the confirmation buttons for this foreclosure sale. Tr. 31-32. Despite his clicking those buttons, however, Mr. Houde conceded he had in fact had not reviewed all of the official documents on file with the Clerk of the Court. Tr. 26. Mr. Houde misrepresented his level of due diligence, thereby by-passing the fail-safe system of the Second Confirmation Screen utilized by the Clerk. Instead of clicking the confirm button, Mr. Houde should have clicked the cancel button, thus preventing him from bidding on a property for which he had failed to conduct the minimum due diligence required by the Clerk of Court.

"[O]ne who seeks the aid of equity must do so with clean hands." *Yost* v. *Rieve Enters., Inc.*, 461 So. 2d 178, 184 (Fla. 1st DCA 1984); *accord Leila Corp. Of St. Pete* v. *Ossi*, 138 So. 3d 470, 473 (Fla. 2d DCA 2014). Orlando did not come to court with clean hands. It intentionally manipulated the system to bid on a property it was not qualified to bid upon. Again, as noted above, a purchaser of property at a judicial sale is generally subject to the rule of *caveat emptor*. The trial court should have denied it any equitable relief, and it was an abuse of discretion to set aside the final judgment, the foreclosure sale, and the certificate of title.

Summary

In the final analysis, Orlando is asking the courts to rescue it from a business decision it now regrets that was made based on its own sloppy due diligence. But

all the information it needed to assess the value of its investment was available in public records. Orlando simply chose not to read those records. In such circumstances, the law does protect Orlando. And there was no factual basis for the trial court's factual finding that Orlando was confused by Deutsche's name because it was never aware of Deutsche in the first place. The judgment and foreclosure sale should be reinstated.

CONCLUSION

The Court should reverse the order granting intervention, reverse the order vacating the certificate of title, certificate of sale, and consent final judgment of foreclosure, and remand for reinstatement of the judgment and certificates.

Respectfully submitted,

/s/ Thomas Burns
Thomas A. Burns (FBN 12535)
BURNS, P.A.
301 West Platt Street, Suite 137
Tampa, FL 33606
(813) 642-6350 T
(813) 642-6350 F
tburns@burnslawpa.com

Counsel for Deutsche Residential Mortgage Co.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2018, I electronically served the following via eDCA and email:

Wilmington Savings & Fund Society, FSB

Christian J. Gendreau, Esq.
cgendreau@storeylawgroup.com
Joseph A. Dillon, Esq.
jdillon@storeylawgroup.com
Storey Law Group
3670 Maguire Boulevard, Suite 200
Orlando, FL 32803

The RAM-SEA II Condominium Association, Inc.

Scott Tankel, Esq.
scott@tankellawgroup.com
Tankel Law Group
1022 Main Street, Suite D
Dunedin, FL 34698

Orlando Realty Group, LLC

Brian T. Anderson, Esq.
banderson@schatthesser.com
Jon Ingram McGraw, Esq.
jmcgraw@schatthesser.com
Schatt & Hesser, P.A.
238 N.E. 1st Avenue, Suite 100
Ocala, FL 34470

Orlando Realty Group, LLC

Matthew D. Weidner, Esq.
service@mattweidnerlaw.com
Matthew D. Weidner, P.A.
250 Mirror Lake Drive
St. Petersburg, FL 33701

Parkes Investments, LLC and Outbidya Inc.

Roy C. Skelton, Esq.
rcsesq84@verizon.net
326 North Belcher Road
Clearwater, FL 33765

/s/ Thomas Burns
Thomas A. Burns

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

January 22, 2018

/s/ Thomas Burns
Thomas A. Burns