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

REPLY BRIEF OF DEUTSCHE RESIDENTIAL MORTGAGE CO.

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ARGUMENT

I. The intervention order should be reversed

This Court should reverse the intervention order.

A. This Court has appellate jurisdiction over the intervention order

Regardless whether the order granting Orlando's belated intervention is reviewable under Rule 9.110(h), the issue whether the trial court had subject-matter jurisdiction to grant the motion is reviewable in this appeal. Subject-matter jurisdiction "can be raised at any time," *Cunningham* v. *Std. Guar. Ins. Co.*, 630 So. 2d 179, 181 (Fla. 1994), "including after entry of a final judgment or for the first time on appeal," *Stel-Den of Am., Inc.* v. *Roof Structures, Inc.*, 438 So. 2d 882, 884 (Fla. 4th DCA 1983); *accord Bank One, N.A.* v. *Batronie*, 884 So. 2d 346, 349 (Fla. 2d DCA 2004).

Contrary to Orlando's assertion, an appellate court's ability to consider any issue, once it has jurisdiction, is not limited to matters of constitutionality. Further, it has the discretion to consider issues that were not raised before the trial court: "Once a court obtains jurisdiction, it has the discretion to consider any issue affecting the case. Here, both the Second District and this Court obtained jurisdiction and thus discretion to consider the economic loss rule issue, even though it was not raised before the trial court." *PK Ventures, Inc.* v. *Raymond James & Assocs., Inc.*, 690 So. 2d 1296, 1297 n.2 (Fla. 1997) (citations omitted).

B. Orlando was not entitled to intervene as a matter of law

Orlando argues that because Wilmington's foreclosure action and Outbidya's counterclaim remained pending, the trial court had continuing jurisdiction in Deutsche's crossclaim action to entertain its motion to intervene. It is incorrect.

Each claim in a multiclaim lawsuit is a separately commenced action, prosecuted for convenience in a single action. *Brady* v. *P3 Group (LLC)*, 98 So. 3d 1206, 1208 (Fla. 3d DCA 2012). As such, Wilmington's mortgage foreclosure action is a separate action from Outbidya's counterclaim, and it is also separate from Deutsche's crossclaim mortgage foreclosure action.

That the trial court retained jurisdiction in Wilmington's action and Outbidya's counterclaim does not mean it continued to have jurisdiction in Deutsche's crossclaim mortgage foreclosure action after the time for filing postjudgment motions had expired. "A trial judge is deprived of jurisdiction, not by the *manner* in which the proceeding is terminated, but by the sheer finality of the act, whether judgment, decree, order or stipulation, which concludes litigation. Once the litigation is terminated and the time for appeal has run, that action is concluded for all time." *Miller* v. *Fortune Ins. Co.*, 484 So. 2d 1221, 1223 (Fla. 1986). "'A judgment is final when it adjudicates the merits of the cause and disposes of the pending action, leaving nothing further to be done but the execution of the judgment.'" *Gore* v. *Hansen*, 59 So. 2d 538, 539 (Fla. 1952) (citation omitted).

The consent final judgment adjudicated the merits of Deutsche's crossclaim and left nothing further to be done in that cause except for the clerk's ministerial act of selling the property. It thereby disposed of the pending litigation. The sheer finality of this act in terminating the crossclaim litigation deprived the trial court of its jurisdiction to grant Orlando's motion to intervene in that concluded litigation:

> "In 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 [P]rocedure."

Grand Central at Kennedy Condo. Ass'n, Inc. v. *Space Coast Credit Union*, 173 So. 3d 1089, 1091 (Fla. 2d DCA 2015) (citation omitted).

C. Deutsche's *Pearlman* standing argument is jurisdictional

Orlando contends Deutsche waived its argument that Orlando lacked *Pearlman* standing. *See* Answer Br. 22. It is incorrect.

To the contrary, Deutsche has not waived any argument regarding any limitation on Orlando to seek relief under 1.540(b). The argument regarding such a limitation is directly connected to the issue of whether the trial court had jurisdiction to grant Orlando's motion to intervene in Deutsche's crossclaim. "In order for a non-party to bring a 1.540(b) motion, generally the non-party must first intervene and thereby become a party to the suit." *Carlisle* v. *U.S. Bank, N.A.*, 225 So. 3d 893, 894 (Fla. 3d DCA 2017).

Thus, if the trial court did not have jurisdiction to allow Orlando to intervene in Deutsche's crossclaim mortgage foreclosure action, as Deutsche had argued in its initial brief, then Orlando was a mere stranger and nonparty that could have moved to vacate the final judgment only under Rule 1.540(b)(3) by arguing that the judgment was obtained by fraud or collusion which directly affected its rights. *Pearlman* v. *Pearlman*, 405 So. 2d 764, 766-67 (Fla. 3d DCA 1981).

Since Deutsche can argue the trial court lacked jurisdiction to allow Orlando to intervene in this appeal, so too can it argue the consequences of that lack of jurisdiction as it relates to the limitations on the ability of Orlando to raise any of the enumerated grounds under 1.540(b). Thus, Deutsche has not waived any argument regarding any limitation on Orlando to seek relief under 1.540(b).

Further, to the extent Orlando argues the *Pearlman* exception of available relief under Rule 1.540(b)(3) is not the only basis for relief to a nonparty, it is incorrect. Only a party or its legal representative may seek relief from a final judgment pursuant to Rule 1.540(b). *Carlisle*, 225 So. 3d at 894. Thus, contrary to Orlando's assertion that the *Pearlman* exception is merely one of several ways for a nonparty to seek Rule 1.540(b) relief, it is in fact the only way. Notably, Orlando failed to cite any cases to support its argument, and the rule is clear and unambiguous.

II. The trial court abused its discretion under Rule 1.540(b) when it vacated the consent final judgment of foreclosure, certificate of sale, and certificate of title

The Court should reverse the vacation order.

A. Deutsche preserved its arguments in the trial court

Orlando contends Deutsche did not preserve its appellate arguments, but the transcript belies Orlando's argument that Deutsche failed to appear the hearing on the motion to vacate. Although Deutsche's counsel of record was ill and did not appear at the hearing, he informed the court of his illness and that counsel for Outbidya and Parkes would "handle" the hearing for Deutsche. *See* Tr. 32-33.[1]

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

Orlando cites *Marsh* v. *Marsh*, 72 Fla. 142 (Fla. 1916), for the proposition that a court may set aside a foreclosure sale after confirmation. Answer Br. 27-28, 30. But 15 years later, the Florida Supreme Court in *McClanahan* v. *Mayne* held:

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[1] Orlando also misapprehends the holding of *Sunset Harbour Condo. Ass'n* v. *Robbins*, 914 So. 2d 925 (Fla. 2005). That court did not hold that the appellant waived any objection to the validity of the asserted affirmative defense because it did not raise the standing issue in either the trial court or the district court; rather, it was waived because no party raised it. *Id.* at 928. Similarly, *Tillman* v. *State*, on which *Sunset Harbour* relied, held, "[i]n order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved." 471 So. 2d 32, 35 (Fla. 1985). *Tillman* did not say, in order to be preserved for further review by a higher court, the issue must have been presented to the lower court by the same party seeking to argue it on appeal. In other words, what is crucial is that the issue be raised; who raised it is unimportant.

> "The final order of confirmation, having the effect of a final conclusive judgment, cures all irregularities, misconduct and unfairness in making of the sale, departures from the provisions of the decree of sale, and errors in the decree and proceedings under it; and if 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."

138 So. 36, 38 (Fla. 1931) (citation omitted). As such, "issuance of the certificate of title confirms the sale, curing 'all irregularities, misconduct and unfairness in the making of the sale.'" *Straub* v. *Wells Fargo Bank, N.A.*, 182 So. 3d 878, 881 (Fla. 4th DCA 2016) (citation omitted).

Because Orlando failed to object to the sale under § 45.031, *Fla. Stat.*, upon issuance of the certificate of title, the sale stood confirmed, thereby curing (if any existed) any irregularities, misconduct, and unfairness in making of the foreclosure sale, and any departures from the provisions of the consent final judgment as to the manner of the sale. Thereafter, the trial court lacked authority to set aside the sale. *Ryan* v. *Countrywide Home Loans, Inc.*, 743 So. 2d 36, 38 (Fla. 2d DCA 1999). In other words, to the extent any confusion existed from any lack of clarity of the oral pronouncement by the court or the language of the written order thereafter, the foreclosure sale could only be and was only set aside solely through the vacation of the underlying final judgment, and not through any other means.

As to Orlando's contention that the trial court did not abuse its discretion in vacating the consent final judgment, the pursuit of relief under Rule 1.540(b) is ex-

pressly limited to one who is a party or a party's legal representative. *Carlisle*, 225 So. 3d at 894. Here, the trial court had lost jurisdiction to grant intervention to Orlando in Deutsche's crossclaim foreclosure action. *Grand Central at Kennedy Condo. Ass'n, Inc.*, 173 So. 3d at 1090-92.

If the trial court had jurisdiction to allow Orlando to intervene in Deutsche's crossclaim, it was still an abuse of discretion to do so. "[T]he general rule—universally—is that intervention may not be allowed after final judgment." *Dickinson* v. *Segal*, 219 So. 2d 435, 436 (Fla. 1969) (it was reversible error for trial court to allow a third party to intervene after entry of the final judgment); *accord Rude* v. *Golden Crown Land Development Corp.*, 521 So. 2d 351, 353 (Fla. 2d DCA 1988).

Either way, Orlando could not intervene. As such, Orlando's only option was to assert the *Pearlman* standing exception, which allows a nonparty to the action to move for vacation of the judgment under 1.540(b)(3) when that judgment was obtained by fraud or collusion and which directly affected the rights of that person. *Pearlman*, 405 So. 2d at 766.

Thus, on this point alone, the trial court abused its discretion in setting aside the consent final judgment, certificate of title, and certificate of sale when it did so under Rule 1.540(b)(5). Of course, Rule 1.540(b)(5) was a ground that Orlando as a nonparty was procedurally prevented from raising, and in fact never raised at the

evidentiary hearing. Nor did it present any evidence in support of or raise a Rule 1.540(b)(3) argument.

C. As a nonparty, Orlando was not adversely affected by the consent final judgment of foreclosure

Under *Pino* v. *Bank of New York*, 121 So. 3d 23 (Fla. 2013), in order for a party to obtain relief under any of the provisions of 1.540(b), that party must show that it had been adversely impacted by the final judgment, order, decree or proceeding. In the answer brief, Orlando identified only one adverse impact from the consent final judgment. Specifically, it argued that because Deutsche failed to pay all of the documentary stamps owed on the indebtedness represented by the demand promissory notes before entry of the consent final judgment, the mortgage was unenforceable under § 201.08(1), *Fla. Stat.*, and the consent final judgment was therefore void. The consequence of this, Orlando claims, is that it was induced to bid on the property due to a misrepresentation of the minimum amount required to satisfy Deutsche's mortgage lien.[2]

> 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.

[2] The mortgage filed in the action showed all taxes were paid on the initial indebtedness, but not on the advances. Deutsche paid the additional taxes after the evidentiary hearing but before rendition of the order vacating the consent final judgment. *See* App. 30.

Krouse v. *Palmer*, 179 So. 762, 763 (Fla. 1938).[3] Further, "[i]ntervention 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.*

Thus, Orlando, as an intervenor, albeit an improper one, and one that did not intervene until after the consent final judgment, was then and is now compelled to concede the sufficiency of the pleadings and the propriety of the action. It could not and cannot contest Deutsche's entitlement to a judgment foreclosing its mortgage lien. Also, the incomplete payment of the documentary stamps, and its impact on the amount and entitlement of Deutsche's claim, is a new issue that was not raised by any of the parties to the consent final judgment. Orlando could not raise this issue at the evidentiary hearing, and it provides no basis here from which it can show it was adversely impacted by the consent final judgment.

Notwithstanding the foregoing, Orlando's citation to *Palacios* v. *Fla. Funding Tr.*, 32 So. 3d 167 (Fla. 2d DCA 2010), for support is ineffective. There, this Court held that a third party bidder was entitled to a vacation of a foreclosure judgment and resulting sale, where it was later determined that the judgment

[3] *Accord State Tr. Realty, LLC* v. *Deutsche Bank Nat'l Tr. Co. Ams.*, 207 So. 3d 923, 925-26 (Fla. 4th DCA 2016); *Coast Cities Coaches, Inc.* v. *Dade County*, 178 So. 2d 703, 706 (Fla. 1965).

amount was overstated due to the mortgagee's failure to properly secure a claim to future advances, and the trial court, post-sale, amended the final judgment to reflect a lower judgment amount. *Id.* at 168-170. This Court found that the third party bidder was prejudiced by the faulty original foreclosure judgment because it misled him as to the property's "foreclosure market value." *Id.* at 169.

Palacios is easily distinguishable. That trial court, in amending the final judgment after the sale had already occurred, reduced the amount the plaintiff was entitled to recover. *Id.* at 168. This prejudiced the third-party bidder in that the amount the plaintiff could have properly bid had been substantially reduced. *Id.* at 169. Since the plaintiff and the third-party bidder were the only ones bidding, this Court reasoned, the third-party bidder could have potentially acquired the property for a much lower price since the amount plaintiff could have bid had been reduced substantially. *Id.*

Here, the judgment had not been amended, and Deutsche and Orlando were not the only bidders. Rather, there were many bidders. *See* Tr. 51. Orlando was not trying to outbid Deutsche; instead, it was trying to outbid all the other bidders based on their perceived valuations of the property. Deutsche credit bid its judgment ($377,036.19), while Orlando bid $458,100. Thus, the last $81,000+ of Orlando's bidding was against other bidders, not Deutsche.

Further, contrary to Orlando's claim that the failure to pay all of the documentary stamps rendered the consent final judgment void, and notwithstanding that as an intervenor it was and is incapable of making such as argument, the consent final judgment was in fact, voidable, not void. As a result, it could not be challenged as void under rule 1.540(b)(4).

A voidable judgment has legal force until vacated. *Sterling Factors Corp.* v. *U.S. Bank N.A.*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007). A court has subject-matter jurisdiction when it has authority to hear and decide a case. *The Fla. Star* v. *B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988). "'[C]ircuit courts are superior courts of general jurisdiction, and nothing is intended to be outside their jurisdiction except that which *clearly* and *specially* appears so to be.'" *Mandico* v. *Taos Constr., Inc.*, 605 So. 2d 850, 854 (Fla. 1992) (citation omitted). "[W]here a court is legally organized and has jurisdiction of the subject matter and the adverse parties are given the opportunity to be heard, then errors, irregularities or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, will not render the judgment void." *Curbelo* v. *Ullman*, 571 So. 2d 443, 445 (Fla. 1990); *accord Bank of New York Mellon* v. *Condo. Ass'n of La Mer Estates, Inc.*, 175 So. 3d 282, 285 (Fla. 2015).

The circuit court had subject-matter jurisdiction over the foreclosure action. Art. V, § 5(b), Fla. Const.; §§ 26.012(2)(a), (c), (g), 34.01(1)(c), *Fla. Stat.*; *Alexdex*

Corp. v. *Nachon Enters., Inc.*, 641 So. 2d 858, 862 (Fla. 1994). The trial court had the authority to hear and decide Deutsche's crossclaim foreclosure action, and although erroneous as to a matter of law regarding the enforceability of those promissory notes derived from future advances, subject-matter jurisdiction was not lacking, and the consent final judgment was voidable, and not void. As such, it cannot be challenged as void. *Sterling Factors Corp.*, 968 So. 2d at 666.

Thus, contrary to Orlando's claim that the minimum amount required to satisfy Deutsche's mortgage lien was less than the amount stated in the final judgment, the final judgment, and the amounts therein declared owed to Deutsche were in full force and effect when Orlando successfully bid on the condominium unit. There was no misrepresentation. The final judgment had not been reversed. At the sale, Deutsche was legally entitled to bid its full judgment amount of $377,036.19. Again, Orlando was never adversely impacted by the consent final judgment.

In none of Orlando's cases[4] did any court declare a final judgment void *ab initio*. Rather, they were merely voidable because the trial courts had personal and subject-matter jurisdiction. *The Fla. Star*, 530 So. 2d at 288-89. § 201.08(1), *Fla. Stat.*, does not prevent a court from hearing a case involving promissory notes for which the taxes were not paid; rather, it prevents it from deciding the case in favor

[4] *See Nikooie* v. *JPMorgan Chase Bank, N.A.*, 183 So. 3d 424 (Fla. 3d DCA 2014); *Somma* v. *Metra Elecs. Corp.*, 727 So. 2d 302 (Fla. 5th DCA 1999); *Silber* v. *Cn'R Indus. of Jacksonville, Inc.*, 526 So. 2d 974 (Fla 1st DCA 1998); *Owens* v. *Blitch*, 443 So. 2d 140 (Fla. 2d DCA 1983).

the party bringing action upon those promissory notes. The complaints in these cases merely failed to state a cause of action under § 201.08(1), *Fla. Stat.* When the complaint upon which a judgment is based on fails to state a cause of action, that judgment is voidable rather than void. *Bank of New York Mellon*, 175 So. 3d at 285.

III. The vacation order cannot be affirmed on alternative grounds

Orlando asks to affirm the vacation order on alternative grounds that the consent final judgment was void, not merely voidable, for failure to pay documentary stamp taxes (*see* Answer Br. 32-35) and for failure to intervene within 30 days as required by § 48.23(1)(d), *Fla. Stat.* (*see* Answer Br. 36-37). It is incorrect.[5]

In particular, Orlando argues the consent final judgment was void (and thus challengeable under Rule 1.540(b)(4)) for two reasons. First, Orlando argues it was void because of Deutsche's failure to pay the requisite documentary taxes on those

[5] Whatever alternative grounds there may be, they must derive from within some provision of Rule 1.540(b). Rule 1.540(b)(1) is inapplicable because Orlando was not a party to the consent final judgment, thus no mistake, inadvertence, surprise or excusable neglect on its part resulted in the creation of the consent final judgment. Rule 1.540(b)(2) is also inapplicable because Orlando neither argued the existence of nor presented any newly discovered evidence. Orlando also did not argue or present any evidence of fraud or collusion under Rule 1.540(b)(3). And Rule 1.540(b)(5) is inapplicable because the consent final judgment of foreclosure, as a money judgment, by definition could not have had any prospective application. *E.g.*, *In re Guardianship of Schiavo*, 792 So. 2d 551, 559 (Fla. 2d DCA 2001); *Griffin* v. *Sec'y, Fla. Dep't of Corr.*, 787 F.3d 1086, 1092-93 (11th Cir. 2015); *DeWeerth* v. *Baldinger*, 38 F.3d 1266, 1275 (2d Cir. 1994); *Twelve John Does* v. *District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988).

promissory notes derived from future advances. Second, Orlando argues that under § 48.23(1)(d), when Wilmington recorded its lis pendens, Deutsche's mortgage was unrecorded. Thus, Orlando claims, Deutsche was required to intervene in the trial court action within 30 days of the recording of the lis pendens.

These arguments are incorrect. Orlando, as an intervenor, took the case as it found it and cannot belatedly contest Deutsche's entitlement to the judgment foreclosing its mortgage lien as being as void under § 201.08(1) or under § 48.23(1)(d). Instead, as an intervenor, Orlando could assert only its right to the res.[6] In addition, the consent final judgment was voidable, not void, so it cannot be challenged under Rule 1.540(b)(4). *Sterling Factors Corp.*, 968 So. 2d at 666. The trial court had personal jurisdiction over the parties, and the authority to hear and decide Deutsche's crossclaim foreclosure action.[7]

Further, Orlando's argument that the consent final judgment was void due to noncompliance with § 48.23(1)(d) was not raised at the evidentiary hearing and

[6] A trial court, upon proper motion, may abate an action for a time sufficient to enable a plaintiff to purchase documentary stamps and affix them to the note. *Solis* v. *Lacayo*, 86 So. 3d 1147, 1148 n.1 (Fla 3d DCA 2012); *Somma* v. *Metra Elecs. Corp.*, 727 So. 2d 302, 305 (Fla 5th DCA 1999). Given this authority, trial courts must have subject-matter jurisdiction, which makes the consent final judgment merely voidable, not void. *See In re Estate of Peck*, 336 So. 2d 1230, 1231 (Fla. 2d DCA 1976) (abatement suspends action until defect is remedied).

[7] Additionally, enforcement of an interest that is unrecorded at the time of the filing of a lis pendens is only barred if that litigation proceeds to final judgment and judicial sale. *Adhin* v. *First Horizon Home Loans*, 44 So. 3d 1245, 1253 (Fla. 5th DCA 2010); *accord Nikooie*, 183 So. 3d at 433. Here, Wilmington's foreclosure action has not proceeded to final judgment.

should not be resolved here. S*unset Harbour Condo Ass'n*, 914 So. 2d at 928. Nevertheless, Orlando's basic assumption is incorrect. Deutsche did move to intervene within 30 days of Wilmington's recording of its lis pendens. Wilmington recorded its lis pendens on March 23, 2016, and Deutsche timely moved to intervene on April 21, 2016. App. 3. *See Barnsdale Holdings, LLC* v. *PHH Mortgage Corp.*, 170 So. 3d 863, 864 (Fla. 3d DCA 2015) ("a person in Barnsdale Holdings' position is a 'stranger to the record' and must file a motion to intervene within 30 days of the lis pendens recording or be barred" (citation omitted)); *accord Adhin*, 44 So. 3d at 1253.[8, 9]

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.

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[8] Additionally, enforcement of an interest that is unrecorded at the time of the filing of a *lis pendens* is barred only if that litigation proceeds to final judgment and judicial sale. *Adhin*, 44 So. 3d at 1253; *accord Nikooie*, 183 So. 3d at 433. Here, Wilmington's foreclosure action has not proceeded to final judgment.

[9] Lastly, on March 14, 2017, before entry of Deutsche's consent final judgment, Wilmington amended its complaint to add Parkes Investments, LLC as a defendant. *See* Supp. App. A at 1-35. This had the effect of amending its lis pendens. *Nikooie*, 183 So. 3d at 433 (30-day bar in lis pendens statute "exists for the benefit of the plaintiff and to warn non-parties" and "does not preclude the plaintiff from amending its complaint, and thereby effectively amending its lis pendens"). Deutsche recorded its mortgage on April 19, 2016 (App. 11C at 1), before Wilmington amended its complaint and lis pendens. Thus, § 48.23(1)(d) would not bar enforcement of Deutsche's crossclaim foreclosure action in any event.

Respectfully submitted,

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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.

April 9, 2018

/s/ Thomas Burns
Thomas A. Burns