

**IN THE SUPREME COURT OF FLORIDA**

David L. Griffin

Petitioner,

v.

Case No.: SC18-1132  
L.T. No.: 1D17-5122;  
2009-CA-000458

LaSalle Bank, N.A. as Trustee for  
WAMU Mortgage Pass-Through Certificates  
Series 2007-HYO5 Trust; Terrell K. Johnson;  
and Linda Johnson, et al.

Respondents.

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**ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA**

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**PETITIONER'S BRIEF ON JURISDICTION**

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RECEIVED, 07/19/2018 04:28:26 PM, Clerk, Supreme Court

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## STATEMENT OF THE CASE AND OF THE FACTS

The Petitioner, David L. Griffin, seeks review to resolve conflict regarding the circuit court's jurisdiction to oversee the judicial foreclosure sale process set forth in its final judgment of foreclosure.

The Petitioner, David L. Griffin ("Griffin"), was the highest bidder at a public auction of real property held pursuant to a Final Judgment of Mortgage Foreclosure (Pet.App. pp. 21-26) against Terrell K. Johnson ("Johnson"). The Respondent, Lasalle Bank, N.A. as Trustee for WAMU Mortgage Pass-Through Certificates Series 2007-HY05 Trust ("Trust"), is the Plaintiff in the underlying action.

The circuit court entered its Final Judgment of Mortgage Foreclosure against Johnson and in favor of the Trust on February 25, 2010 ("Final Judgment")(Pet. App. pp 21-26). In its Final Judgment, the circuit court ordered that the property be sold by judicial foreclosure sale at a public auction on April 7, 2010. Griffin attended the sale and, after a competitive bid with another bidder, won the sale with a final bid of \$75,000.00 (Pet. App. pp 27-29). The Trust, as plaintiff, did not appear or bid at the public auction.

The Trust did not object to the sale and on April 20, 2010, the clerk of court issued a Certificate of Title to Griffin(Pet. App. pp 30-31)

On April 23, 2010, the Trust filed a Motion to Vacate the Certificate of Sale

and Certificate of Title and Sale (“Motion to Vacate”) (Pet. App. pp 31-54) on the grounds that the Trust’s failure to attend the sale was due to the excusable neglect of its law firm, The Law Offices of Marshall Watson, and a grossly inadequate price.

The circuit court conducted a hearing on the Trust’s Motion to Vacate and on December 2, 2011, entered its Order Vacating Sale (Pet. App. pp 55-58) finding that the Trust’s failure to attend the sale was due to excusable neglect and that Griffin’s \$75,000 bid was grossly inadequate; however, the circuit court did not order a return of Griffin’s \$75,000 purchase price nor did it address Griffin’s claim for improvements made to the property. Griffin filed a timely Motion for Rehearing on December 12, 2011(Pet. App. pp 59-61).

After a hearing on Griffin’s Motion for Rehearing the circuit court entered an Amended Order Vacating Sale (Pet. App. pp 62-63) and 1) returned to Griffin his \$75,000 purchase price; and, 2) reserved jurisdiction to determine if Griffin was entitled to damages for improvements he made to the property during the 18 months Griffin had title to the property.

On July 11, 2012, Griffin filed a Motion for Damages Due to Betterment (Pet. App. pp 64-71). Thereafter, Johnson engaged in motion practice, a conveyance, and bankruptcies over the course of the next several years to try and frustrate the court’s sale of the property which led to the setting, then canceling of multiple judicial

foreclosure sales from 2012 to 2016. See Docket Summary (Pet. App. pp 11-20).

On September 23, 2016, Griffin filed a Motion for Referral to Mediation (Pet. App. pp 72-74). The court granted Griffin's Motion for Mediation on October 26, 2016 (pet. App. pp 75-76). The Trust, Griffin and Johnson all attended mediation, but the mediation ended in an impasse.

The circuit court set the final date for judicial foreclosure sale and the property was sold at an electronic public auction on May 1, 2017. The certificate of title was issued on May 12, 2017, to the Trust (Pet. App. pp 79-80).

On August 15, 2017, Griffin filed a Notice of Hearing on his Motion for Damages Due to Betterment (Pet. App. pp 81-82). The circuit court entered an Order Referring Case to Mediation (Pet. App. pp 83-84). The Trust filed a Motion to Strike Order Referring Case to Mediation (Pet. App. pp 85-86) which the circuit court denied.

On December 6, 2017, the Trust filed a Petition for Writ of Prohibition and Alternative Petition for Certiorari Relief in the First District Court of Appeal (Pet. App. pp 87-105). The First District issued an Order to Show Cause why the Writ Should Not be Granted (Pet. App. p 106) and Griffin filed a Response (Pet. App. pp 107-116).

The First District granted the Writ of Prohibition (Pet. App. pp 6-10)

concluding that “Griffin’s motion for damages raised a new claim that was not part of the previous foreclosure litigation<sup>1</sup>” (Op. 3) in that it was filed “after [the circuit court] rendered the final judgment of foreclosure in 2010” (Op. 4 (emphasis added)) and “the circuit court reserved jurisdiction to consider a claim that was not related to its ability to enforce the final judgment of foreclosure. (Op. 4). Griffin filed a timely Motion for Rehearing (Pet. App. pp 117-123) with the district court denied (Pet. App. p 5).

### SUMMARY OF ARGUMENT

The district court’s holding conflicts with the decisions of this Court in *Macfarlane v. Macfarlane*, 50 Fla. 570, 579 (Fla. 1905) and *Bridier v. Burns*, 148 Fla. 587, 592 (Fla. 1941) which stand for the proposition that a trial court in a foreclosure action does not lose jurisdiction after entering final judgment because the judicial foreclosure sale is conducted by the circuit court through its agents, to wit: the clerk of court and the plaintiff’s counsel. Thus, the circuit court has the right and duty to exercise supervision of its process to insure that all parties are protected from all fraud, unfairness and imposition. *Macfarlane* at 579. In this Court’s decision in

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<sup>1</sup> Mr. Griffin did not enter this litigation until the circuit court, through its agents, conducted the foreclosure sale and he was the successful bidder. Mr. Griffin’s claim arises as a third party bidder in the judicial foreclosure sale set aside dispute. Indeed, there would have been no need to set aside the sale and title in this matter if Mr. Griffin had not made the highest bid at the judicial foreclosure sale.

*Arsali v. Chase Home Finance LLC*, 121 So. 3d 511 (2013), the Court reemphasized that “the trial court’s use of their equity powers in resolving disputes pertaining to judicial foreclosure sale set aside actions is essential.” *Id.* at 518.

### ARGUMENT

I. THIS COURT HAS JURISDICTION UNDER ARTICLE V, SECTION 3(B)3 OF THE FLORIDA CONSTITUTION BECAUSE THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THIS COURT.

A. The decision below conflicts with decisions regarding whether circuit courts have jurisdiction over matters that arise during a judicial sale of real property in foreclosure

The decision below holds that “the circuit court reserved jurisdiction to consider a claim that was not related to its ability to enforce the final judgment of foreclosure. Instead, Griffin’s motion for damages raised a new claim that was not part of the previous foreclosure litigation. Accordingly, the circuit court exceeded its jurisdiction by proceeding on the motion” (Op. at 4) (emphasis added). In support of its holding the district court cites *Travelers Cas. & Surety Co. of Am. v. Culbreach Isles Prop. Owners Assoc., Inc.*, 103 So. 3d 896 (Fla. 2d DCA 2012) (quoting *Liberty Ins. Corp. v. Milne*, 98 So. 3d 613 (Fla. 4th DCA 2012)). The district court did not reference or address this Court’s holdings in *Macfarlane v. Macfarlane*, 50 Fla. 570, 579 (Fla. 1905) and *Bridier v. Burns*, 148 Fla. 587, 592 (Fla. 1941) which control

in the context of judicial foreclosure sale set aside cases.

*Travelers Cas. & Surety Co. of Am. v. Culbreach Isles Prop. Owners Assoc., Inc.*, 103 So. 3d 896 (Fla. 2d DCA 2012) and *Liberty Ins. Corp. v. Milne*, 98 So. 3d 613 (Fla. 4th DCA 2012 (which respectively involved a supplemental complaint for indemnification and bad faith failure to settle claims) merely stand for the general, non-judicial foreclosure sale, proposition that "the trial Court loses jurisdiction of a cause after a judgment or final decree has been entered and the time for filing petition for rehearing or motion for new trial has expired or same has been denied." *Id.* (quoting *Travelers*, 103 So. 3d at 899 and *Liberty*, 98 So. 3d at 615). This general proposition simply does not strictly apply in the context of a judicial foreclosure sale. Rather, a trial court in a judicial foreclosure sale action does not lose jurisdiction after entering final judgment.

This Court has recognized that a final judgment of foreclosure is a different species of final judgment than that addressed in *Travelers* or *Liberty*. The final judgment of foreclosure necessarily involves the circuit court after the final judgment is rendered because the circuit court is effectively the "vendor" of the foreclosed property. As this Court stated in *Macfarlane v. Macfarlane*, 50 Fla. 570, 579 (Fla. 1905) "In the case at bar the sale was made in a chancery cause, where, in a certain sense, the sale is made through its agent or agents by the court itself..." *Id.* at 579. As

such, "There is no question but it is the right and duty of the chancery courts to exercise a supervision of their process and to protect all parties from all fraud, unfairness, and imposition in their execution." *Supra* at 579 (emphasis added).

Thirty-six years after deciding *Macfarlane*, the Court cited it for being in line with the established tenets of foreclosure law, including that, "[if the purchaser in good faith relying upon the validity of the title obtained by him under the mortgage sale makes improvements of the property and the mortgagor is allowed to redeem because the foreclosure is invalid, the purchaser should be allowed the sums so expended by him so far as the value of the property has thereby been increased." *Bridier v. Burns*, 148 Fla. 587, 592 (Fla. 1941) (quoting *Jones on Mortgages*, Vol. 3, 8th Ed., pages 678-80, par. 2154).

To this day, *Bridier* is cited for hornbook law that "[a] purchaser whose title has been vacated because of a fatal irregularity in the foreclosure proceedings is entitled to be restored to his or her position before the purchase," and accordingly "has a right to reimbursement for taxes paid on the premises, as well as for any money paid out for the purchase, and is also entitled to such sums as the purchaser may have paid out in good faith, relying on the validity of the title transferred under the sales, for improvements on the property, at least to the extent that the value of the property was increased by such improvements." 37 Fla. Jur. 2d *Mortgages and Deeds of Trust*

s. 337 (May 2018 update) (footnotes omitted; citing *Bridier*).

In 2013 this Court reemphasized the circuit court's right and duty to exercise jurisdiction over its judicial foreclosure sale process. In *Arsali v. Chase Home Finance LLC*, 121 So. 3d 511 (2013), this Court addressed matters related to judicial foreclosure sale set aside cases. In reaching its conclusion in *Arsali*, the Court addressed the broad powers of the circuit courts, acting in equity, to resolve disputes pertaining to judicial foreclosure sale set aside actions. This Court stated "we reemphasize that the trial courts' use of their equity powers in resolving disputes pertaining to judicial foreclosure sale set aside action is essential." *Id.* at 518(emphasis added). And, "We have long recognized that, when there is a proper showing, the trial courts in this state possess sufficient powers to ensure that 'equity will act to prevent the wrong result' in judicial foreclosure sale disputes." *Id.* at 519.

But, in direct conflict with *Macfarlane*, *Bridier*, and *Arsali*, the district court relied on non-judicial foreclosure sale cases to hold that "the circuit court did not have jurisdiction to entertain Griffin's third-party motion for damages after it rendered the final judgment of foreclosure in 2010." (Op. at 3 (citing *Travelers Cas. & Surety Co. of Am. v. Culbreach Isles Prop. Owners Assoc., Inc.*, 103 So. 3d 896 (Fla. 2d DCA 2012) (quoting *Liberty Ins. Corp. v. Milne*, 98 So. 3d 613 (Fla. 4th DCA 2012))).

## II. THE COURT SHOULD EXERCISE ITS DISCRETION TO RESOLVE THE CONFLICT

The issue at stake is so important that the Court should exercise its discretion to accept jurisdiction. The decision below handcuffs circuit courts in the performance of their right and duty to conduct fair foreclosure sales and resolve disputes among the plaintiffs, defendants and third-party bidders that arise out of the judicial foreclosure sale process.

The district court's opinion ignores this Court's holdings in *Macfarlane* , *Bridier* and *Arsali* by relying solely on the non-foreclosure cases of *Travelers* and *Liberty*. In so doing, the district court has created a direct conflict with this Court's holdings in *Bridier* (a third party purchaser's whose title has been vacated is entitled to be restored to his position before the sale, including reimbursement for purchase price, taxes and improvements made to the property in good faith reliance on the title) and *Macfarlane* ( sale made in a chancery cause is made by the court itself and there is no question the court has a right and duty to exercise supervision of the sale process and to protect all parties from all fraud, unfairness, and imposition).

### CONCLUSION

For all of the reasons set forth above, the Court should grant review to protect the circuit courts' rights and duties to oversee its judicial foreclosure sales, provide

certainty to the bidding public that the judicial foreclosure sale process is fair, equitable and just and to do justice.

Respectfully submitted,

/s/Michael S. Burke  
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via the Florida Courts e-filing Portal, by electronic mail or regular U.S. Mail on this 19th day of July 2018, to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Time New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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