

In the Supreme Court of Florida

CASE NO. SC14-1049
LT. CASE NO. 4D13-17
LT. CASE NO. 10-31646 (08)

THE BANK OF NEW YORK MELLON
CORPORATION a/k/a THE BANK OF
NEW YORK MELLON f/k/a THE BANK
OF NEW YORK AS TRUSTEE FOR THE
BENEFIT OF ALTERNATIVE LOAN
TRUST 2007-0A2 MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2007-0A2

Petitioner,

v.

CONDOMINIUM ASSOCIATION OF LA
MER ESTATES, INC.,

Respondent.

RESPONDENT'S AMENDED JURISDICTIONAL RESPONSE BRIEF

On Review from the District Court of Appeal, Fourth District State of Florida

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STATEMENT OF REFERENCE

“Association” refers to respondent, Condominium Association of La Mer Estates, Inc.

“Bank” refers to petitioner, The Bank of New York Mellon Corporation a/k/a The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Benefit of Alternative Loan Trust 2007-0A2 Mortgage Pass-Through Certificates, Series 2007-0A2.

“Seno” refers to Karla and Daniel Seno, the previous owners of the Property.

“Property” refers to Condominium Unit PH1, LA MER CONDOMINIUM ESTATES SOUTH, according to the Declaration of Condominium thereof, recorded in Official Records Book 4297, Page 51 of the Public Records of Broward County, Florida, with an address of 1904 South Ocean Drive, PH1, Hallandale Beach, Florida 33009.

“A” refers to Appendix to Petitioner’s Jurisdictional Brief.

“Declaration of Condominium” refers to the Declaration of Condominium for La Mer Condominium recorded at Official Records Book 4297, Page 51 of the Public Records of Broward County, Florida.

“Trial Court Action” refers to *Condominium Association of La Mer Estates, Inc. vs. The Bank of New York Mellon etc., Broward Circuit Case No.: 10-31646 CACE (08)*.

“Condominium Foreclosure Action” refers to *Condominium Association of La Mer Estates, Inc. vs. Karla Seno, et al, Broward Circuit Case No.: 09-20476 CACE* (12).

“Quiet Title Judgment” refers to that certain Final Judgment Quieting Title entered February 3, 2011, in favor of La Mer in the Trial Court Action.

STATEMENT OF CASE AND FACTS

Despite various omissions, discrepancies and misnomers, Association generally accepts the Statement of Case and Facts provided by Bank in its jurisdictional brief. Instead of providing an entire Statement of Case and Facts, Association will solely address the omissions, discrepancies and misnomers.

Association’s complaint in the Trial Court Action alleged that: (a) Bank had not instituted foreclosure proceedings, despite the fact that mortgage payments were not being made; (b) the mortgage created a cloud on title to the Property; (c) Association had offered to convey title to Bank, but Bank never responded to Association’s offer; and (d) as a result of Bank’s failure to respond, Association concluded that it appeared that Bank had no real interest in or bona fide claim to the Property. (A.1-2).

Association served Bank and obtained a default. (A.2). Although Association also obtained a default judgment, it moved to vacate the default judgment because of concerns that service had not been properly effected. (A.2). Association re-served Bank. (A.2). Again, Bank failed to respond, and the clerk entered a new default. (A.2).

Association filed a new motion for entry of final judgment quieting title. Bank was given notice and the opportunity to be heard, but again failed to appear for the hearing.

(A.2). The Trial Court entered the new Quiet Title Judgment. (A.2).

Bank took no action for more than 1 ½ years after the entry of the Quiet Title Judgment. (A.2). Bank did not file its motion to vacate the Quiet Title Judgment until August 31, 2012. (A.2).

Association argued in both the Trial Court Action, and on appeal in the Fourth District, that Bank could not attack the Quiet Title Judgment, because it was merely voidable, not void. Because Bank did not file its motion to vacate for more than 1 ½ years after entry of the Quiet Title Judgment, the Fourth District held that Bank could only seek to vacate the Quiet Title Judgment if it was void, and because it was not void, the Trial Court erred in vacating the Quiet Title Judgment. (A.2). As a result, the Fourth District reinstated the Quiet Title Judgment. (A.5).

SUMMARY OF ARGUMENT

Without waiving any argument in support of the Fourth District's opinion, and not as a confession of error, the Association agrees that the En Banc opinion announces an express conflict with opinions of other District Courts, but said conflict arises from the failure of various District Courts to adhere to the opinions of this Court.

ARGUMENT

Without waiving any argument in support of the Fourth District's opinion, and

not as a confession of error, Association agrees that the En Banc Opinion announces an express conflict with opinions of other District Courts. See *Condominium Association of La Mer Estates, Inc. vs. Bank of New York Mellon Corp.*, 137 So.3d 396 (Fla. 4th DCA 2014). Nonetheless, Association believes that the conflict arises from the failure, by various District Courts, to adhere to this Court's opinions in *Coleman vs. Williams*, 3 So.2d 152 (Fla. 1941) and *Curbelo vs. Ullman*, 571 So.2d 443 (Fla. 1990), as to the distinction between void and voidable judgments.

The divergence from this Court's opinion in *Coleman* apparently starts with the Third District in *Becerra vs. Equity Imports, Inc.*, 551 So.2d 486 (Fla. 3d DCA 1989), where, in a footnote, the Court stated that *Coleman* pre-dated the Florida Rules of Civil Procedure and, therefore, was inapplicable to the determination of whether the failure to state a cause of action rendered a judgment void as opposed to voidable. Thereafter, *Becerra* formed the basis for many of the decisions holding that the failure to state a cause of action rendered a judgment void as opposed to voidable. See, for example, *Big Bang Miami Entertainment, LLC vs. Moumina*, 137 So.3d 1117 (Fla. 3d DCA 2014), and *Southeast Land Developers, Inc. vs. All Florida Site and Utilities, Inc.*, 28 So.3d 166 (Fla. 1st DCA 2010).

While acknowledging the conflict between the various Districts, the Fourth District, in citing to *Coleman* and *Curbelo*, determined that prior decisions holding the failure to state a cause of action rendered a judgment void as opposed to voidable,

failed to follow the dictates of this Court. That failure justified the Fourth District in receding from prior case law and finding that the failure to state a cause of action rendered a judgment voidable as opposed to void, and not subject to attack by Bank.

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CONCLUSION

The En Banc opinion announced an express conflict with opinions of other District Courts, but the Fourth District was justified in receding from its prior case law as its opinion was based on the dictates of this Court, finding that the failure to state a cause of action rendered a judgment voidable as opposed to void.

CERTIFICATE OF SERVICE

I CERTIFY that an image hereof was electronically transmitted to: Dennis D. Bailey, Esq. (eservice@clegalgroup.com), Choice Legal Group, P.A., 1800 NW 49th

Street, Suite 120, Fort Lauderdale, FL 33309; and to Tricia J. Duthiers, Esq. (tjd@lgplaw.com) and service@lgplaw.com; Liebler, Gonzalez & Portuondo, P.A., 44 West Flagler Street, 25th Floor, Miami, FL 33130; and that a copy of Respondent's Jurisdictional Response Brief was emailed to the Clerk on July 16, 2014, in accordance with Florida Rule of Judicial Administration 2.516.

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CERTIFICATE OF TYPE SIZE AND STYLE

Respondent hereby certifies that the type size and style of the Jurisdictional Response Brief is Times New Roman 14 pt.

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