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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 a/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.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

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

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STATEMENT OF CASE AND FACTS

I. The Association Forecloses its Lien on the Borrower's Property And Files a Quiet Title Action Against the Bank

The Condominium Association of La Mer Estates, Inc. (the "Association") took title to the property commonly known as 1904 South Ocean Dr. PH-1, Hallendale Beach, Florida, 33009 ("Subject Property"), after foreclosing its lien for unpaid condominium assessments. App. at 1. The Association's title was subject to the first mortgage ("Mortgage"), assigned to The Bank of New York Mellon ("Bank"). App. at 1. The Association filed an action against the Bank seeking to quiet title in the Subject Property. App. at 1–2. The Complaint alleged that the Bank had not instituted foreclosure proceedings despite the fact that mortgage payments were not being made. App. at 1–2. The Association also alleged that the Bank's mortgage created a cloud on title, that the Association had offered to convey the property to the Bank, but the Bank did not accept the Association's offer. App. at 1–2. The Association concluded that "it appears that the Bank has no real interest or bona fide claim to the property." App. at 1–2.

On November 16, 2010, the Association served the Alias Summons and Complaint upon the Bank. App. at 2. The Bank did not respond to the Complaint, and a Final Judgment Quieting Title was entered on February 3, 2011 ("Default

Final Judgment"). App. at 2.[1]

II. The Bank Moves to Vacate the Final Judgment

On August 31, 2012, the Bank moved to vacate the default final Judgment as void ("Motion to Vacate"). App. at 2. In the Motion to Vacate, the Trustee alleged that the Complaint failed to state a cause of action to quiet title, and thus, the Default Final Judgment entered upon the legally insufficient Complaint, is void and may be collaterally attacked at any time. App. at 2.

On December 3, 2012, after hearing argument of counsel, the court found that the Complaint failed to state a cause of action to quiet title, and thus, the Default Final Judgment was void. App. at 2. The trial court then entered an order vacating the Default Final Judgment. App. at 2.

Respondent appealed to the Fourth District Court of Appeal seeking review of the trial court order vacating the Default Final Judgment. App. at 2. On February 19, 2014, an en banc panel of the district court entered an order reversing the trial court order. App. The district court recognized that the trial court ruled correctly based on the then-existing precedent, but receded from its prior precedent to hold that a default judgment, entered on a complaint that failed to state a cause of action, is voidable rather than void. App. at 1.

[1] The Opinion mistakenly lists the date as February 10, 2011. This discrepancy is irrelevant to the issues in this matter.

Rehearing was denied on April 25, 2014, and the petitioner's notice to invoke the discretionary jurisdiction of this court was timely filed on May 27, 2014.

SUMMARY OF ARGUMENT

This Court has jurisdiction to review this case because the district court certified that its decision is in direct conflict with the decisions of two other district courts of appeal. This Court should decide to review this case because the issue in question is not limited to the facts of the instant case, but has statewide impact and affects all areas of substantive law, warranting a resolution by this Court. The district court's pronouncement that a judgment entered on a complaint that is devoid of legal basis is voidable rather than void, will cause inconsistent inter-district decisions on whether those default judgments are subject to collateral attack at any time pursuant to Rule of Civil Procedure 1.540(b)(4). It will also encourage fraudulent litigation, on the hopes that the defendants sued will default. The confusion among the courts will cause an increase in petitions to this Court until the issue is resolved. Thus, this Court should accept jurisdiction.

JURISDICTIONAL STATEMENT

This is a petition for discretionary review of the decision of the Fourth District Court of Appeal in *Condominium Association of La Mer Estates, Inc. v.*

Bank of New York Mellon Corp., 39 Fla. L. Weekly D398 (Fla. 4th DCA 2014). This Court has discretionary jurisdiction pursuant to Article V, §3(b)(4) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi), providing for review of decisions certified by a district court to be in express and direct conflict with a decision of another district court of appeal.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL HAS CERTIFIED THAT ITS DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF MULTIPLE DISTRICT COURTS OF APPEAL, AND THE UNDERLYING ISSUE IS ONE OF STATEWIDE IMPORTANCE

This Court should accept jurisdiction and review this case because the district court's decision, holding that a default judgment on a complaint which wholly fails to state any cognizable cause is voidable rather than void, creates a conflict between the district courts. This conflict will cause inconsistent decision on motions to vacate default judgments brought under Florida Rule of Civil Procedure 1.540(b)(4). This Rule limits collateral attacks of judgments that are voidable to one year, but provides that judgments which are void may be challenged at any time. *See* Rule of Civil Procedure 1.540. Thus, this case presents an issue of statewide application and importance, which affects all areas of legal practice.

In certifying express and direct conflict with *Southeast Land Developers, Inc. v. All Florida Site and Utilities, Inc.*, 28 So. 3d 166, 168 (Fla. 1st DCA 2010), and *Moynet v. Courtois*, 8 So. 3d 377, 378-79 (Fla. 3d DCA 2009), the district court receded from nearly thirty years of precedent, including its own decisions. For nearly thirty years, the district courts of appeal have applied the principle that a default judgment entered on a complaint that fails to state a cause of action is void and may be challenged at any time. *Se. Land Developers, Inc. v. All Florida Site & Utilities, Inc*., 28 So. 3d 166, 168 (Fla. 1st DCA 2010) ("A default judgment is void and should be set aside when the complaint fails to state a cause of action." (citing *Moynet v. Courtois*, 8 So. 3d 377, 378–79 (Fla. 3d DCA 2009) (citing *Becerra v. Equity Imports, Inc.*, 551 So. 2d 486 (Fla. 3d DCA 1989), and *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 493 (Fla. 3d DCA 1994)); *GAC Corp. v. Beach*, 308 So. 2d 550 (Fla. 2d DCA 1975). For example, the *Southeast Land Developers* court held that the "[f]ailure to allege that conditions precedent are met renders a complaint fatally defective in that it fails to state a cause of action." 28 So. 3d at 168. Other courts have also held that "[a] default judgment must be set aside where the complaint fails to state a cause of action because '[f]ailure to state a cause of action, ***unlike formal or technical deficiencies, is a fatal pleading deficiency not curable by a default judgment***.'" *Mauna Loa*

Investments, LLC v. Santiago, 38 Fla. L. Weekly D658, 2013 WL 1136448 at *2 (Fla. 3d DCA 2013) (quoting *Becerra*, 551 So.2d at 488) (emphasis added); *see also Sunshine Sec. & Detective Agency v. Wells Fargo Armored Servs. Corp.*, 496 So. 2d 246, 246 (Fla. 3d DCA 1986) (‘“[T]he law is well-settled that a default judgment may not be entered against a defendant on a complaint which wholly fails to state a cause of action against the said defendant.’”) (citing *North American Accident Insurance Co. v. Moreland*, 60 Fla. 153, 53 So. 635 (1910); *Fernandez-Aguirre v. Gall*, 484 So. 2d 1286 (Fla. 3d DCA 1986); *Bay Products Corp. v. Winters*, 341 So.2d 240 (Fla. 3d DCA 1976); *GAC Corp. v. Beach*, 308 So. 2d 550 (Fla. 2d DCA 1975)).

In entering the decision below, the fourth district receded from its cases that followed this principle and determined that a default judgment entered upon a complaint that failed to state a cause of action would merely be voidable. While the district court determined that the foundation for its prior precedent was shaky, the Third District Court of Appeal recently reaffirmed its position, and specifically rejected the reasoning of the fourth district in *Big Bang Miami Entm't, LLC. v. Moumina*, 39 Fla. L. Weekly D647, at *3 n.2 (Fla. 3d DCA 2014). Thus, the issue of whether a default judgment entered upon a complaint that fails to state a cause of action continues to cause conflict between the district courts of appeal. This

conflict will cause confusion which will lead to an increase in litigation and thus, should be definitively resolved by this Court.

This Court has stressed the importance of the "uniform application of our procedural rules." *Totura & Co., Inc. v. Williams*, 754 So. 2d 671, 681 (Fla. 2000). However, the present conflict between the district courts of appeal will cause the Florida Rules of Civil Procedure to be applied inconsistently across the state. As it currently stands, Rule 1.540(b)(4) could be used to vacate a default judgment on the ground that the complaint failed to state a cause of action in the first and third districts,[2] but not in the fourth or fifth districts.[3] The Bank respectfully submits that this is a conflict that needs resolution. The district court recognized the importance that this question be resolved, stating, "[b]ecause of the importance of this issue to the finality of judgments and the stability of property titles, we also believe that this is an issue of statewide importance." App. at 5 n.1. However, the district court determined that it was not necessary to "frame a question of great

[2] *Southeast Land Developers, Inc. v. All Florida Site and Utilities, Inc.*, 28 So. 3d 166, 168 (Fla. 1st DCA 2010); *Moynet v. Courtois*, 8 So. 3d 377, 378-79 (Fla. 3d DCA 2009).

[3] *Condo. Ass'n of La Mer Estates, Inc. v. Bank of New York Mellon Corp.*, 39 Fla. L. Weekly D398 (Fla. 4th DCA 2014); *Krueger v. Ponton*, 6 So. 3d 1258 (Fla. 5th DCA 2009).

public importance, because by announcing express conflict with the opinions of other district courts of appeal, the supreme court's jurisdiction may be invoked." *Id.*

CONCLUSION

Because the district court certified express conflict with two other courts, this Court has jurisdiction to review this matter. For the reasons stated above, the Court should exercise that jurisdiction to consider the merits of the petitioners' argument.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished via Email Transmission on June 6, 2014, to all parties on the Service List below.

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CERTIFICATE OF TYPE SIZE & STYLE

Appellee hereby certifies that the type size and style of the Answer Brief is Times New Roman 14pt.

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