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 REPLY BRIEF ON THE MERITS

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

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ADDITIONAL FACTS

The following facts are relevant to the arguments raised by the Association in its Answer Brief.

The Association's complaint against the Bank alleged that:

> **5. On or about December 6, 2006, non-parties Karla Seno and Daniel Seno executed a promissory note in the amount of $532,000 and a mortgage securing the note in favor of "SSM Financial, L.P. d/b/a Brokersource." A copy of the mortgage, recorded December 19, 2006 at Official Records Book 43299, Page 51, Broward County Public Records, is attached as Exhibit "A."**
>
> 6. The mortgage encumbers real property located at 1904 South Ocean Drive, Apt. PH1, Hallandale ("Property"), which was owned by Karla Seno and Daniel Seno on December 6, 2006.
>
> 7. Said Property is subject to a Declaration of Condominium recorded at Official Records Book 4297, page 51, Broward County Public Records, which imposes assessments in favor of Association for common expenses.
>
> **8. The mortgage was assigned to and is presently held by defendant. A copy of the assignment, dated October 12, 2009 and recorded February 8, 2010 at Official Records Book 46863, Page 516, Broward County Public Records, is attached as Exhibit "B."**
>
> 9. On or about December, 2008, non-parties Karla Seno and Daniel Seno ceased making their monthly mortgage payments to Bank (or to its assignor), and ceased making their monthly maintenance payments to Association.
>
> **10. Plaintiff recorded a claim of lien for the unpaid assessments on March 19, 2009; filed suit to**

foreclosure its lien on April 8, 2009; and obtained a final judgment of foreclosure on July 6, 2009, in Broward Circuit case 09-020476 (12), styled *Condominium Association of La Mer Estates, Inc. vs. Karla Seno, et al.*

11. On October 2, 2009 (four days before the foreclosure sale), non-party Karla Seno filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court, Southern District of Florida, case 09-31296-RAM.

12. Plaintiff obtained stay relief on November 13, 2009. A copy of the order granting stay relief is attached as Exhibit "C."

13. The foreclosure sale was rescheduled for and occurred on February 18, 2010. Plaintiff was sole bidder and is now titleholder.

14. Notwithstanding the fact that no mortgage payments have been made since December, 2008, Bank has not initiated foreclosure proceedings.

Count I - Action to Quiet Title

Plaintiff realleges the preamble, paragraphs 1-14, and further states:

15. Plaintiff owns the real property described as Condominium Unit PH1, LA MER CONDOMINIUM ESTATES SOUTH, according to the Declaration of Condominium thereof, recorded In Official Record Book 4297, Page 51 of the Public Records of Broward County, Florida.

16. Plaintiff deraigns its title as follows:

a) Ada Friedkin, a single woman, conveyed the property to Daniel Seno, a single man, by Warranty Deed dated February 20, 2001, recorded March 5, 2001 at Official Records Book 31336, Page 1709, Broward County Public Records.

b) Daniel Seno, a married man, conveyed the property to "Karla Sene and Daniel Sene,

wife and husband," by Quit Claim Deed dated September 26, 2005, recorded January 11 , 2006 at Official Records Book 41254, Page 1060, Broward County Public Records.

c) Howard C. Forman, as Clerk of Court, conveyed the property to Condominium Association of La Mer Estates, Inc. via that certain Certificate of Title dated March 2, 2010, recorded March 10, 2010 at Official Records Book 46930, Page 711, Broward County Public Records, issued in connection with the foreclosure proceedings described in paragraph 10.

17. A cloud is cast on Association's title by virtue of the mortgage described in paragraph 5.

18. On June 7, 2010, via the correspondence attached hereto as Exhibit "D," undersigned counsel brought to Bank's attorney's attention the fact that Association is now titleholder, the fact that Bank had taken no steps to foreclose its mortgage, and Association's willingness to convey title to Bank.

19. Bank has taken no action whatsoever to enforce its mortgage despite nonpayment since December, 2008, and despite Association's offer to convey title to Bank.

20. Accordingly, it appears that Bank has no real interest in or bona fide claim to the property.

WHEREFORE, Plaintiff, CONDOMINIUM ASSOCIATION OF LA MER ESTATES, INC., demands judgment against defendant, 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 PASSTHROUGH CERTIFICATES, SERIES 2007-0A2, removing the cloud from its title and quieting the title in it. Plaintiff further requests the costs

of this action, and any further relief the court deems appropriate.

A.A.:1–4 (emphasis added and omitted).

The Bank's motion to vacate the default judgment argued that:

> 7. A complaint to quiet title must allege not only the plaintiff's title to the property in controversy – as well as how the plaintiff obtained title and the chain of title – but must also show why the defendant's claim of an interest in the property is invalid and not well founded. It is axiomatic that at the very least, in order to plead a cause of action in Quiet Title against this Plaintiff, Defendant La Mer must have to have demonstrated in its pleadings, by reference to the public record, a title interest superior to this Defendant's. That, Plaintiff could not do.
> 8. To the contrary, in a pending collateral foreclosure action, Plaintiff La Mer demonstrates its awareness that Defendant's claim/interest on the subject property were in fact not only valid and enforceable, but superior to its [own], thus there could be no "well-pled fact" pled by Plaintiff La Mer in this quiet title which could support a judgment that Defendant's claim/interest on the subject property is invalid and not well founded or even junior to its title interest.
> 9. A quiet title action against a party with a valid interest in the property, wrongfully seeking to invalidate that which is valid cannot support a judgment. Thus, either Plaintiff La Mer represented to this Court a false set of facts which is worse than "a misrepresentation inducing merely an incorrect factual determination by the trier of fact," or **this Court failed to note Plaintiff La Mer admitted in its pleadings that the**

> **Defendant had a valid interest in the subject property, fatal to the very cause of action it sought to plead.**

A.A.:37–38 (citations omitted) (emphasis added and omitted).

And at the hearing on the Bank's motion to vacate, the trial court questioned the Association's counsel as follows:

> **THE COURT: [Why does the Bank] have no interest in the property? Just because they won't foreclose their mortgage?**
>
> **MR. HEIDT: That they wouldn't even take the property back from us.** We were willing to give them the property. We had title. As a Condominium Association we had foreclosed the owner of the property out under our condominium claim of lien which was a separate lawsuit. We had acquired title pursuant to a Certificate of Title. We had knocked out every inferior interest in the property.
>
> **THE COURT: So why don't they have an interest in the property?**
>
> MR. HEIDT: Well, that's what we were saying. We were saying, in our complaint, **they don't appear to have an interest because they don't seem to want the property.** They don't seem to want to enforce their mortgage and they don't seem to want their property. We were offering the property to them. We are saying, we are the title-holder, you have a mortgage. If you have a real mortgage we are more than willing to offer and give you title to the property which we acquired through our certificate of title. As they've done throughout this case –
>
> **THE COURT: What's the legal theory that I can Quiet Title, knock their mortgage out.**
>
> MR. HEIDT: Well, Your Honor, at this point in time, that's not something you can concern yourself with

because at this point in time if there was a legal error in the Quiet Title Action that is not something that they can attack because they waited so long. . . .

THE COURT: I don't know how I'd have the authority to Quiet Title against somebody with a superior lien. I don't know how that would be a cause of action.

. . . .

THE COURT: Suppose I order someone to die in the electric chair on a traffic ticket. Do I have the authority to do that?

MR. HEIDT: That would be something you would have to ask to counsel. I have no experience in a criminal proceeding, so I can't --

THE COURT: Suppose I order to have your children taken from you because you haven't maintained the lawn and you violated the condo[] documents. I don't have the authority to do that. I'm not sure I got the authority to do this here.

MR. HEIDT: But the problem with what you're saying, Your Honor, is you're saying did I have the authority to do it when I did it and today that's not something you can look at. The only thing you can look at is whether or not you had subject matter jurisdiction. Yes, you did. This was an action to Quiet Title. This Court has subject matter jurisdiction over a Quiet Title Action.

THE COURT: Now, you're repeating yourself. **If I didn't have the authority to do it at the time I did it, then the judgment is a void judgment, it doesn't matter what I sign.**

A.A.: 95–99 (emphasis added).

ARGUMENT

I. THE QUIET-TITLE JUDGMENT IS VOID AS IT PURPORTS TO GRANT RELIEF THAT THE TRIAL COURT WAS NOT AUTHORIZED TO GRANT

On page 14 of its Answer Brief, the Association argues that the default judgment is not void, for if "a court has acquired jurisdiction of the subject matter and the parties, the judgment or the decree entered is binding even though erroneous . . . ." This argument lacks merit because it contradicts Florida law.

"[A] court may have jurisdiction of the parties and of the subject-matter of a cause, and still be without jurisdiction to enter in such cause a particular kind of decree which would be wholly unauthorized." *Childs v. Boots*, 152 So. 212, 214 (Fla. 1933). "[E]ven though a court may have duly acquired jurisdiction of the subject-matter, and although it may have properly obtained jurisdiction over persons of the parties, it may nevertheless be limited in its mode of procedure, and in the extent and character of its judgment, when those matters have been regulated by law." *Grace v. Hendricks*, 140 So. 790, 793 (Fla. 1932).

As this Court has held, "It is not proper in foreclosure proceedings to try a claim of title superior or paramount to that of the mortgagor and even if a party having title is made a party and judgment entered after a hearing, it will not bind his interest . . . ." *Cone Bros. Constr. Co. v. Moore*, 193 So. 288, 290–91 (Fla.

1940); *accord Citimortgage, Inc. v. Henry*, 24 So. 3d 641, 643 (Fla. 2d DCA 2009). A judgment entered under those circumstances is "ineffectual." *Cone Bros.*, 193 So. at 427; *Citimortgage*, 24 So. 3d at 643.

The trial court recognized its limited authority. At the hearing on the motion to vacate, the court said, "I don't know how I'd have the authority to Quiet Title against somebody with a superior lien." A.A.:97. "If I didn't have the authority to do it at the time I did it, then the judgment is a void judgment, it doesn't matter what I sign." A.A.:99. The Association's counsel could articulate no legal theory authorizing the trial court to quiet title and extinguish the Bank's mortgage. *See* A.A.:96. Consistent with *Boots*, *Hendricks*, and *Cone Brothers*, the default judgment is void because it purports to grant relief not authorized by law.

II. THE COMPLAINT DID NOT JUST FAIL TO STATE A CLAIM, BUT IT ALSO NEGATED ANY POTENTIAL CAUSE OF ACTION

Throughout its brief, the Association describes its complaint as only failing to state a claim. The Association also argues on page 17 that there is no difference between a complaint that fails to state a claim and one that completely defeats any potential cause of action. These arguments are without merit and mischaracterize the deficiencies in the Association's complaint.

Authorities have noted a distinction between complaints that merely fail to state a claim and those that entirely negate the existence of any cause of action. *See* 49 C.J.S. *Judgments* § 56 (2014) ("[I]t has been broadly stated in some decisions that, where a complaint or similar pleading fails to state facts constituting a cause of action, the court lacks jurisdiction to render a judgment thereon, and that a judgment rendered thereon is ordinarily void, at least where it rests solely on allegations of a complaint so deficient in substance as conclusively to negative the existence of a cause of action at the time of its rendition."); *id.* § 262 ("The failure of the declaration, complaint, or petition to state a good cause of action may render void a judgment by default based thereon, where the facts alleged affirmatively show that the plaintiff has no cause of action.").

Here, the Association's complaint did not just omit an element or fail to allege factual matter to support a claim. Instead, it stated facts that negated the existence of any action to quiet title. The complaint admitted that the Bank had a valid, superior interest in the property. Consistent with the foregoing, the default judgment must be found void, as it is based on a complaint "so deficient in substance as conclusively to negative the existence of a cause of action at the time of its rendition." *Id.* § 56.

III. FINDING THE DEFAULT JUDGMENT VOID IS NOT INCONSISTENT WITH FEDERAL AUTHORITY

On page 20 of its Answer Brief, the Association argues that the Court of Appeal's decision should be upheld because it aligns with federal courts' interpretations of Federal Rule of Civil Procedure 60. This argument lacks merit, because no federal case cited by the Association says that a trial court can grant unauthorized relief or enter judgment on a complaint that negates a cause of action.

The Bank acknowledges that Florida Rule of Civil Procedure 1.540 is the state counterpart to Federal Rule of Civil Procedure 60, and Florida courts look to federal decisions to help interpret the state rule. *Wiggins v. Tigrent, Inc.*, 147 So. 3d 76, 82 (Fla. 2d DCA 2014); *Molinos Del S.A. v. E.I. Dupont de Nemours & Co.*, 947 So. 2d 521, 524–25 (Fla. 4th DCA 2006). Federal courts have held "a judgment is not void . . . simply because it is or may have been erroneous," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010), and that failure to state a claim is not grounds for relief under Rule 60(b), *see, e.g.*, *Gallagher Mortg. Co., Inc. v. Sonoma Wine Grp., Inc.*, No. 2:08-cv-599-Ftm-29SPC, 2010 WL 1416934, at *1 (M.D. Fla. Apr. 7, 2010).

But none of the federal cases cited by the Association or found by the Bank hold that a court can enter relief that is unauthorized by law or that is based on a

complaint that negates the existence of a cause of action. *See, e.g., V. T. A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 (10th Cir. 1979) (cited by the Association); *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661 (1st Cir. 1990) (also cited by the Association). To the contrary, the Tenth Circuit in *Airco* stated that "[f]or a judgment to be void under Rule 60(b)(4), it must be determined that the rendering court was powerless to enter it." 597 F.2d at 224. That was the situation here. Accordingly, vacating the default judgment in this case would not be inconsistent with federal authority.

Even if the Court finds that vacatur of the default judgment would represent a state departure from federal precedent, the Bank maintains that departure is warranted. Florida courts have effectively voiced their disagreement with the federal rule already, finding by an overwhelming majority that judgments entered on non-cognizable claims are void. *See, e.g.*, *Big Bang Miami Entm't, LLC v. Moumina*, 137 So. 3d 1117, 1121 n.2 (Fla. 3d DCA 2014); *Bank of N.Y. Mellon v. Reyes*, 126 So. 3d 304, 308 (Fla. 3d DCA 2013); *Mauna Loa Invs., LLC v. Santiago*, 122 So. 3d 520, 522 (Fla. 3d DCA 2013); *Rhodes v. O. Turner & Co.*, 117 So. 3d 872, 875 (Fla. 4th DCA 2013); *Neuteleers v. Patio Homeowners Ass'n*, 114 So. 3d 299, 301 (Fla. 4th DCA 2013); *Se. Land Developers, Inc. v. All Fla. Site & Utils., Inc.*, 28 So. 3d 166, 168 (Fla. 1st DCA 2010); *Moynet v. Courtois*, 8

So. 3d 377, 378 (Fla. 3d DCA 2009); *Infante v. Vantage Plus Corp.*, 27 So. 3d 678, 680 (Fla. 3d DCA 2009); *Merrill Lynch & Co., Inc. v. Valat Int'l Holdings, Ltd.*, 987 So. 2d 703, 705 (Fla. 3d DCA 2008); *Horton v. Rodriguez Espaillat y Asociados*, 926 So. 2d 436, 437 (Fla. 3d DCA 2006); *Morales v. All Right Miami, Inc.*, 755 So. 2d 198, 198 (Fla. 3d DCA 2000); *Opti, Inc. v. Sales Eng'g Concepts, Inc.*, 701 So. 2d 1234, 1235 (Fla. 4th DCA 1997); *Lee & Sakahara Assocs., AIA, Inc. v. Boykin Mgmt. Co.*, 678 So. 2d 394, 396 (Fla. 4th DCA 1996); *Sec. Bank, N.A. v. BellSouth Adver. & Publ'g Corp.*, 679 So. 2d 795, 803 (Fla. 3d DCA 1996); *Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 494 (Fla. 3d DCA 1994); *DeCarlo v. Hubbard*, 571 So. 2d 82, 82 (Fla. 4th DCA 1990); *Becerra v. Equity Imps., Inc.*, 551 So. 2d 486, 488 (Fla. 3d DCA 1989); *Magnificent Twelve, Inc. v. Walker*, 522 So. 2d 1031, 1031–32 (Fla. 3d DCA 1988).

IV. THE BANK DID NOT CONSCIOUSLY REFUSE TO PARTICIPATE IN THE TRIAL COURT PROCEEDINGS

On page 17 of its Answer Brief, the Association states that the Bank "chose not to participate in the Lower Court Action, even after it had been served twice, and twice received notice of the hearing on the Motion for Entry of Final Judgment Quieting Title." The Association claims that the Bank made a "conscious refusal to participate in the court proceedings." These claims are untrue.

There is no evidence that the Bank chose not to participate in the quiet-title action. The record is devoid of any evidence that the Bank willfully decided not to participate. Bank of New York Mellon is a large corporation, and though the Bank employs systems to ensure that all papers are processed correctly, no system is perfect. As it had been more than a year after entry of judgment when the Bank discovered the oversight, the Bank could not seek vacatur based on excusable neglect. Thus, the Bank moved to vacate based only on the judgment's voidness. That is not evidence of a willful refusal to participate. The Bank's excusable neglect is not relevant to voidness or to the issues being decided in this case. But, to the extent the Association claims that the Bank decided to ignore the quiet-title action, that allegation is unfounded and should be rejected by this Court.

CONCLUSION

For the reasons stated here and in the Bank's Initial Brief on the Merits, Bank of New York Mellon requests that this Court quash the district court's decision and affirm the trial court's order vacating the default quiet-title judgment.

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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 January 20, 2015, 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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