Filing # 23668522 E-Filed 02/12/2015 12:01:08 AM

RECEIVED, 02/12/2015 12:03:39 AM, Clerk, Supreme Court

Case Nos. SC14-1265, SC14-1266 & SC14-1305
Lower Tribunal Case No. 5D12-3823

In the Supreme Court of Florida

Lewis Bartram, Gideon M.G. Gratsiani & The Plantation at Ponte Vedra, Inc.,

Petitioners,

v.

U.S. Bank, N.A.,

Respondent.

On Appeal from the Fifth District Court of Appeal

Gideon Gratsiani's Reply Brief

Paul Alexander Bravo
FBN# 38275
pabravo@pabravo.com

P.A. BRAVO
2525 Ponce De Leon Blvd., Suite 300
Coral Gables, Florida 33134
305.209.9019
service@pabravo.com

TABLE OF CONTENTS

Table of Contents i

Table of Citations iii

Table of Authorities iv

Introduction 1

Argument in Reply 3

I. U.S. Bank's claim that *Singleton* controls this case ignores this Court's explicit warnings that it does not implicitly overrule its prior decisions. The bank's claim also fails to acknowledge this Court's strict adherence to the principle that statutes are to be applied in accordance with legislative intent. As a result, even the bank's broad characterization of the holding in Singleton cannot control this case given that 95.11(2)(c) was enacted 30 years before the opinion was issued. 4

II. U.S. Bank's claim that the statute of limitations does not begin to run until a final judgment is entered in any case is not only nonsensical, it is directly contradicted by this Court's long-standing adherence to the doctrines of election and judicial estoppel. The law does not allow the bank to avoid the statute of limitations by taking a position that contradicts the factual realities of its relationship with Lewis Bartram. Once the bank elected to accelerate the future installment payments he owed, it had to either obtain a final judgment in that case, obtain Bartram's consent to reinstatement of the mortgage, or file a subsequent lawsuit prior to the expiration of the statute of limitations. 9

III. U.S. Bank's claim that Gratsiani cannot be heard by this Court because Patricia Bartram did not file an answer brief with the lower court is not supported by any legal authority. Similarly, its claim that this Court does not have the authority to fully resolve the issues in this case based on the scope of the 13

P.A. Bravo

www.pabravo.com

question certified by the lower court is also incorrect. As a result, this Court can and should determine that the trial court had the authority to strike the bank's mortgage from the public record either as an invalid cloud on title or an unreasonable restraint on alienation.

Conclusion 15

Certificate of Compliance with Font Requirement 16

Certificate of Service 16

TABLE OF CITATIONS

Cases

American Process Co. v. Florida White Pressed Brick Co., 56 Fla. 116 (Fla. 1908) 10

Barbe v. Villeneuve, 505 So. 2d 1331 (Fla. 1987) 9, 10, 11

Baskerville-Donovan Eng'rs, Inc. v. Pensacola Executive House Condo. Ass'n, Inc., 581 So. 2d 1301 (Fla. 1991) 8

Blumberg v. USAA Cas. Ins. Co., 790 So. 2d 1061 (Fla. 2001) 12, 13

Campbell v. Kaufman Milling Co., 42 Fla. 328 (Fla. 1990) 9

Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952) 7

Florida Nat'l Bank of Miami v. Bankatlantic, 589 So. 2d 255 (Fla. 1991) 8

Gralynn Laundry v. Virginia Bond & Mortg. Corp., 163 So. 706 (Fla. 1935) 12

Hearndon v. Graham, 767 So. 2d 1179 (Fla. 2000) 7

Hoffman v. Jones, 280 So. 2d 431 (Fla. 1973) 5

Home Credit Co. v. Brown, 148 So. 2d 257 (Fla. 1962) 8

Iglehart v. Phillips, 383 So. 2d 610 (Fla. 1980) 15

Palm Beach Co. v. Palm Beach Estates, 148 So. 544 (Fla. 1933) 11

Puryear v. State, 810 So. 2d 901 (Fla. 2002) 5

Singleton v. Greymar Assocs., 882 So. 2d 1004 (Fla. 2004) Throughout

Spradley v. Kemp, 596 So. 2d 506 (Fla. 1st DCA 1992) 14

P.A. Bravo

Travis Co. v. Mayes, 36 So. 2d 264 (Fla. 1948) 4

U.S. Bank, N.A. v. Bartram, 140 So. 3d 1007 (Fla. 5th DCA 2014) 5

Universal Const. Co. v. City of Fort Lauderdale, 68 So. 2d 366 (Fla. 1953) 7

Wiley v. Roof, 641 So. 2d 66 (Fla. 1994) 13

Williams v. Robineau, 168 So. 644 (Fla. 1936) 12

Statutes

§ 95.11(2)(c), Fla Stat. (2014) Throughout

Other Authorities

Oliver Wendall Holmes, *The Path of the Law* 1

P.A. Bravo

Introduction

Gratsiani's initial brief cited to 40 decisions of this Court in concluding that the lower court's decision is irreconcilably at odds with long-standing Florida law.[1] The decisions span over a century and a half, and they provide the Court's settled views on the issues of res judicata, statutory interpretation, the application of statutes of limitations, and the applicability of equitable principles under a broad range of circumstances. The purpose of Gratsiani's sweeping review of the law as articulated by this Court was to provide historical context for the issues in this case, and to remove any reasonable doubt that Gratsiani's conclusions are soundly and comprehensively supported by settled law. The brief's primary conclusion is that an inspection of the plain language of the applicable statutory provisions, and the application of settled principles of statutory interpretation - in light of the law as it existed when the provisions were enacted in 1974 - leads to the inescapable conclusion that the result of the lower court's decision could not have been intended by the Florida legislature. And that instead, the trial court correctly determined that U.S. Bank's mortgage is a cloud

---

[1] Excluding the Court's decision in *Singleton,* and the decision relied on for the applicable standard of review, Gratsiani relied on 38 of this Court's decision in articulating his position. In comparison, excluding *Singleton*, the decision U.S. bank relied on for the applicable standard of review, and the decision it relied on to argue that Gratsiani has waived all argument in this case, U.S. bank relied on only 2 of this Court's decisions in support of the positions taken in its brief.

P.A. Bravo
www.pabravo.com

on title that serves no legal purpose because it's enforcement is barred by the plain language of section 95.11(2)(c).

In response, U.S. Bank filed a 29 page reply brief that did not address, or even acknowledge, any of Gratsiani's arguments regarding section 95.11(2)(c), and did not discuss or attempt to distinguish the extensive authority on which he relied. Instead, U.S. Bank sought to have Gratsiani's brief stricken on standing grounds, and it devoted a short section of its brief to addressing his argument regarding cancellation of the mortgage. In that section, the bank argued only that the Court need not consider the argument because it is not part of the certified question, and it separately suggested that all of Gratsiani's arguments have been waived because his predecessor chose not to file an answer brief with the lower court. As was the case with U.S. Bank's arguments in support of its motion to strike Gratsiani's initial brief, and as will be discussed later in this reply, neither of these suggestions are supported by Florida law. If any party to this case has waived the ability to make any arguments or rely on any authority before this Court, it is U.S. Bank. Despite having ample time to prepare a response, and sufficient space in its brief to present one,[2] U.S. Bank has knowingly and intentionally waived any right to challenge the now uncontroverted arguments and legal conclusions made in Gratsiani's brief. With that said, the remainder of this brief will be devoted to

---

[2] U.S. Bank left 21 pages "on the table" in its answer brief. *See* Fla. R. App. P. 9.210(a)(5) ("The initial and answer briefs shall not exceed 50 pages in length…").

P.A. Bravo
www.pabravo.com

exposing the flaws in the arguments that U.S. Bank did make, and to demonstrating why they not only fail to show that the lower court's decision was correct, but that they also fail to provide a satisfactory answer to the question certified to this Court.

Argument

U.S. Bank's answer brief articulates the following arguments to support the lower court's decision: (1) the holding in *Singleton* controls this case; (2) U.S. Bank's filing of a complaint that elected to accelerate all payments due under the mortgage was not effective; (3) the district court of appeal decisions holding that the statute of limitation begins to run on the entire mortgage debt upon the election to accelerate were reversed by this Court in *Singleton*; (4) the express language of the bank's mortgage supports the finding that the election to accelerate is not effective until final judgment; (5) the bank was not required to give notice to the borrower of its abandonment of acceleration; (6) equitable and policy considerations support finding the bank's mortgage enforceable; and (7) the bank has a lien until March 1, 2040, regardless of the expiration of the statute of limitations in 95.11(2)(c). The flaws in arguments number (1) and (6) were articulated extensively in Gratsiani's initial brief and will receive a relatively cursory treatment in this reply. The failure of argument (7) was also directly addressed in the initial brief but will be expounded upon in light of the positions taken in the bank's answer. Finally, explaining the fundamental flaws

P.A. Bravo
www.pabravo.com

inherent in arguments (2), (3), (4), and (5) will form the bases for the remainder of Gratsiani's argument in reply.

I. U.S. Bank's claim that *Singleton* controls this case ignores this Court's explicit warnings that it does not implicitly overrule its prior decisions. The bank's claim also fails to acknowledge this Court's strict adherence to the principle that statutes are to be applied in accordance with legislative intent. As a result, even the bank's broad characterization of the holding in *Singleton* cannot control this case given that 95.11(2)(c) was enacted 30 years before the opinion was issued.

As explained at length in Gratsiani's initial brief, the statutory provisions involved in this case were enacted as a part of a sweeping legislation introduced in 1974. At that time, the law in Florida was settled that the statute of limitations on a contract due in installments begins to run on the whole debt at the moment of acceleration. [3] And, prior to the lower court in this case, every Florida appellate court that applied the provisions since their enactment consistently found that the statute of limitations in 95.11(2)(c) runs against the entire mortgage debt upon the exercise of the election to accelerate. Each of those courts' decisions was consistent with the law that existed prior to January 1, 1975, when 95.11(2)(c) was first enacted with the purpose of shortening the statute of limitations on mortgage foreclosures from 20 to 5 years. And, contrary to U.S. Bank's assertions, the holdings of those decisions remain the law

[3] *See, e.g., Travis Co. v. Mayes*, 36 So. 2d 264, 265 (Fla. 1948) (noting that "[t]he rule is also settled that when a mortgage in terms declares the entire indebtedness due upon default of certain of its provisions or within a reasonable time thereafter, the Statute of Limitations begins to run immediately the default takes place or the time intervenes").

P.A. Bravo
www.pabravo.com

today, irrespective of the Court's decision in *Singleton*. In fact, before it issued the *Singleton* opinion the Court took the "opportunity to expressly state that this Court does not intentionally overrule itself sub silentio." *Puryear v. State*, 810 So. 2d 901 (Fla. 2002). And long before that, the Court went as far as admonishing district courts in holding that a district court "does not have the authority to overrule a decision of the Supreme Court of Florida." *Hoffman v. Jones*, 280 So. 2d 431, 440 (Fla. 1973).

So the lower court's decision was incorrect whether viewed as holding that *Singleton* reversed prior Florida law on the application of the statute of limitations to mortgages containing acceleration clauses, or viewed as finding conflict between its decision and the prior decisions of this Court addressing the effect of acceleration. As this Court carefully explained, "[i]n the event of a conflict between the decision of a District Court of Appeal and this Court, the decision of this Court shall prevail until overruled by a subsequent decision of this Court." *Id.* The lower court's opinion declared that *Singleton* had overruled an unbroken line of decisions addressing the timeliness of actions to foreclose accelerated mortgages.[4] But nothing in the *Singleton* opinion suggests that the Court was overruling any decisions involving a statute of limitations, and the opinion does not even mention the word "statute" or discuss the

[4] *See US Bank Nat. Ass'n v. Bartram*, 140 So. 3d 1007, 1010 (Fla. 5th DCA 2014) (finding "that Singleton is applicable to the instant case and that the cases cited by Bartram and the HOA pre-date Singleton and, therefore, are not controlling").

P.A. Bravo
www.pabravo.com

timely filing of claims. So U.S. Bank's suggestions that *Singleton* is controlling in this case, and that the district court decisions that conflict with the lower court's decision have been overruled, are not only unsupported by law, but are also directly refuted by the holdings of this Court.

But even applying *Singleton* to the record on this appeal in the first instance does not compel the result that U.S. Bank defends in its answer – namely, the reversal of the trial court's entry of a final judgment barring foreclosure and cancelling the bank's mortgage. U.S. Bank mischaracterizes *Singleton*'s holding as broadly determining that a "mortgagee's attempted acceleration is not effective unless and until there is a final judgment that there has been a default and the mortgagee has a right to accelerate future payments." But the Court's actual articulation of the holding is exceptionally narrow: "For the reasons set out below we approve the decision in *Singleton* and hold that a dismissal with prejudice in a mortgage foreclosure action does *not necessarily* bar a subsequent foreclosure action on the same mortgage."[5]

---

[5] *Singleton v. Greymar Associates*, 882 So. 2d 1004, 1005 (Fla. 2004) (emphasis added). The Court again narrowly tailored its holding towards the end of the opinion by only "conclud[ing] that the doctrine of res judicata does not necessarily bar successive foreclosure suits, regardless of whether or not the mortgagee sought to accelerate payments on the note in the first suit." *Id.* at 1008 (emphasis added).

P.A. Bravo
www.pabravo.com

As explained in Gratsiani's initial brief, the portions of the opinion discussing the effect of acceleration did so in hypothetical terms.[6] And even if they hadn't, the entire discussion contemplates a subsequent action being barred by *res judicata*, and *solely* because of the preclusive effect of the prior dismissal, not the statute of limitations. And although at least one amicus has described the differences between these defenses as "distinctions without difference,"[7] the approach this Court has consistently taken with respect to each could hardly be more divergent.[8] So the notion that language discussing the effect of acceleration in the context of one of the defenses can simply be plucked from an opinion and relied on word-for-word in support of its effect in the context of the other is fundamentally disingenuous.[9] In fact, this Court has

---

[6] *See Singleton*, 882 So. 2d at 1007 (explaining in general terms that "[f]or example, a mortgagor may prevail ... in those instances ... under those circumstances" and "[f]or example, we can envision many instances in which the application of the *Stadler* decision would result in unjust enrichment or other inequitable results"). Notably, *Stadler* also did not involve the statute of limitations.

[7] *See* Amicus Curiae Brief, American Legal and Financial Network, at 5.

[8] For instance, the Court's application of statutes of limitations necessarily involve discussions of accrual *and* tolling in light of a time-element, whereas the application of res judicata is concerned with adjudication as opposed to time. *Hearndon v. Graham,* 767 So. 2d 1179, 1184-85 (Fla. 2000) (explaining that the "determination of whether a cause of action is time-barred may involve the separate and distinct issues of when the action accrued and whether the limitation period was tolled . . ."); *Universal Const. Co. v. City of Fort Lauderdale*, 68 So. 2d 366, 370 (Fla. 1953) (finding "that simple justice demands there be an unquestionable, direct and official adjudication of [the] question" for res judicata to apply).

[9] U.S. Bank's brief does not even address legislative intent despite the fact that the Court has consistently applied statutes of limitations in accordance with their plain language. *See, e.g., Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952)

P.A. Bravo

www.pabravo.com

applied a number of different rules to acceleration clauses in different contexts.[10] Finally, as fully articulated in Gratsiani's initial brief, to the extent that *Singleton* announced a change in law, nothing in the opinion can be used to interpret 95.11(2)(c) because it was issued twenty years after the provision's enactment.[11]

II. U.S. Bank's claim that the statute of limitations does not begin to run until a final judgment is entered in *any* case is not only nonsensical, it is directly contradicted by this Court's long-standing adherence to the doctrines of election and judicial estoppel. The law does not allow the bank to avoid the statute of limitations by taking a position that contradicts the factual realities of its relationship with Lewis Bartram. Once the bank elected to accelerate the future installment payments he owed, it had to either obtain a final judgment in that case, obtain Bartram's consent to reinstatement of the mortgage, or file a subsequent lawsuit prior to the expiration of the statute of limitations.

(emphasizing that "[w]e cannot write into the law any other exception, nor can we create by judicial fiat a reason, or reasons, for tolling the statute since the legislature dealt with such topic and thereby foreclosed judicial enlargement thereof").

[10] *See, e.g., Home Credit Company v. Brown,* 148 So. 2d 257, 259 (Fla. 1962) (explaining that "the problem of usury resulting from a bonus or reserved interest is apparently affected by a contingent early maturity 'if the note and mortgage contained an acceleration clause'" and that the "treatment of the acceleration problem in our cases thus represents an anomalous but long standing disregard of the general rule" regarding "the usurious character of a contract . . ."); *Florida Nat. Bank of Miami v. Bankatlantic*, 589 So. 2d 255, 257 (Fla. 1991) (holding that "a note imposing a penalty for prepayment was applicable after [the bank] elected to declare the note due and payable in full, pursuant to a separate optional default-acceleration clause").

[11] As this Court has succinctly explained, the Court's interpretation of a term in a case decided after the enactment of a statutory provision cannot be used in interpreting the language of that provision. *See Baskerville-Donovan Eng's, Inc., v. Pensacola Exec. House Condominium Ass'n, Inc.,* 581 So. 2d 1301, 1302-1303 (Fla. 1991) (emphasizing that "[t]o the extent our recent cases may have applied a different gloss to the concept of privity for these limited circumstances, the legislature would have been unaware of it when enacting the law in 1974").

P.A. Bravo
www.pabravo.com

Even assuming that the dicta in *Singleton* discussing acceleration clauses in mortgages is in some way controlling in this case, U.S. Bank's suggestion that it can elect to accelerate its mortgage as many times as it wishes without any statute of limitations consequences is still plainly contradicted by the explicit holdings of various decisions handed down by this Court both before and after *Singleton*. As this Court first articulated at the turn of the last century, "[a] party cannot, either in the course of litigation or in dealings in pais, occupy inconsistent positions." *Campbell v. Kauffman Milling Co.*, 42 Fla. 328, 342 (Fla. 1900) (quoting *Bigelow on Estoppel*). In the same case, the Court went on to clarify the "rule of election" by explaining as follows:

> "And, where a man has an election between several inconsistent courses of action, *he will be confined to that which he first adopts*. The election, if made with knowledge of the facts, is in itself binding. It *cannot be withdrawn without due consent*. It cannot be withdrawn *though it has not been acted upon by another by any change of position*.

Id. at 342-43 (emphasis added). In a far more recent case, the Court explained that the "election of remedies doctrine is an application of the doctrine of estoppel and operates on the theory that a party electing one course of action should not later be allowed to avail themselves of an incompatible course." *Barbe v. Villeneuve*, 505 So. 2d 1331, 1332 (Fla. 1987). The Court further explained that although the "doctrine only applies where the remedies in question are coexistent and inconsistent," a finding of inconsistency only requires that they "proceed from opposite and irreconcilable claims

P.A. Bravo
www.pabravo.com

of right and must be so inconsistent that a party could not logically follow one without renouncing the other." *Id.* at 1333.

In light of the settled doctrine of election, U.S. Bank's arguments regarding acceleration are untenable. The bank's mortgage provides it coexistent but inconsistent remedies for enforcing its mortgage after default – a suit on installments *or* suit on an accelerated basis. In other words, the bank could not logically accelerate without renouncing the right to treat future payments as individual defaults and vice versa.[12] Once the bank elected to choose the latter and it filed a complaint explicitly giving notice of that election, it waived its coexistent and inconsistent option of treating future payments as individual defaults.[13] And the doctrine of election prevents the bank from changing course without consent of the borrower *irrespective* of whether or not there has been a detrimental change in position. The law simply does not allow it to approbate and reprobate on its acceleration election to suit whatever need it finds expedient at one

[12] U.S. Bank itself acknowledges the inconsistency by comparing the dismissal of an action to a successful reinstatement of the mortgage. *See* Answer Brief at 21 (claiming that the mortgage provides for reinstatement "because the lender can achieve the same result by simply dismissing (or allowing the dismissal of) the foreclosure action before there is a final judgment").

[13] *See, e.g., American Process Co. v. Florida White Pressed Brick Co*., 56 Fla. 116 (Fla. 1908) (explaining that "[i]f the allegations of facts necessary to support one remedy are substantially inconsistent with those necessary to support the other, then the adoption of one remedy waives the right to the other").

P.A. Bravo
www.pabravo.com

particular time or another.[14] When U.S. Bank elected to accelerate its mortgage it necessarily waived the right to treat each individual installment as a separate default. And no matter how it attempts to spin the issue after the fact, Florida law knows no such concept as the waiving of an informed and intentional waiver of a right.[15]

So although U.S. Bank accuses the petitioners in this case of "building a legal fiction with no basis in the law or the mortgage," the only fiction before this Court is the notion that a party can seek relief from a court in this state based upon the existence of a fact shown on the face of its own pleading, only to return on a later date, in a subsequent case, to renounce the existence of that very fact. U.S. Bank accelerated its mortgage on May 15, 2006. Prior to that day it had a choice of whether or not to accelerate the mortgage. After that day it either had to obtain a judgment in the

---

[14] *See, e.g., Barbe v. Villeneuve,* 505 So. 2d 1331, 1333 (Fla. 1987) (quoting *American Process Co.* approvingly for the proposition that "[a] party will not be permitted to enforce wholly inconsistent demands respecting the same right[s]" because "[i]t is not permissible to both approbate and reprobate in asserting the same right in the court").

[15] U.S. Bank relies heavily on the peculiar argument that the election to accelerate is irrelevant because acceleration is only effective if a final judgment is entered. Of course the argument is also convenient given that if it were true, section 95.11(2)(c) would never apply. Expedience aside, long-standing Florida law confirms that it is not true. *See, e.g., Palm Beach Co. v. Palm Beach Estates,* 148 So. 544, 548 (Fla. 1933) (explaining that "[t]o 'successfully assume a position to the prejudice of an adversary,' within the stated rule, does *not at all* require that the party to be estopped shall prevail in getting a successful result by way of a judgment against his adversary.") (Emphasis added).

P.A. Bravo

www.pabravo.com

foreclosure case it initiated, file a subsequent case before May 16, 2011,[16] or get the borrowers consent to reinstate the mortgage.[17] The bank did not do any of the above. And, as a result, it must suffer the harsh consequences that the law imposes for its failure to do so.

This Court recently confirmed the doctrine of election when it applied the closely related principle of judicial estoppel to bar a claim not otherwise barred by the statute of limitations in *Blumberg v. USAA Cas. Ins. Co.*, 790 So. 2d 1061 (Fla. 2001). In that case, the Court explained that "[j]udicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial, including quasi-judicial, proceedings" and that "the doctrine prevents parties from making a mockery of the justice system by inconsistent pleadings. *Id.* at 1066 (internal quotations omitted). The Court had previously justified the related, and often indistinguishable, doctrines of election and judicial estoppel by explaining that "courts cannot permit a vacillating and capricious litigant to blow hot and cold or play fast and

[16] *See, e.g., Williams v. Robineau,* 168 So. 644, 646 (Fla. 1936) (emphasizing that "[o]nly full satisfaction of the right asserted will raise an estoppel to the pursuit of consistent remedies").

[17] *See, e.g., Gralynn Laundry v. Virginia Bond & Mortg. Corp.*, 163 So. 706, 708 (Fla. 1935) (noting that "[t]he rule is well settled that an election once made between existing remedies which are inconsistent is not only irrevocable and *cannot be withdrawn without consent*, even though it has not been acted upon by another to his detriment, but it is also conclusive and constitutes an absolute bar to any action, suit, or proceeding based upon a remedial right inconsistent with that asserted by the election") (emphasis added).

P.A. Bravo
www.pabravo.com

loose by indecision and uncertainty." And that is precisely what U.S. Bank is attempting to do in this case. Its theory requires that the Court allow it to advance an argument based on its supposed renouncement of an election it made in connection with a prior case for the sole purpose of avoiding one of the most fundamental principles of American jurisprudence – the statute of limitations.[18] Nothing in the bank's brief can change the realities of this case, and nothing in the law supports a theory that allows a party to unilaterally pick-and-choose how it will deal with another. As this Court creatively articulated in *Blumberg*, "[t]he courthouse should not be viewed as an all-you-can-sue buffet, in which litigants can pick and choose which [decisions] they want and which they do not." *Blumberg* 790 So. 2d at 1067.

III. U.S. Bank's claim that Gratsiani cannot be heard by this Court because Patricia Bartram did not file an answer brief with the lower court is not supported by any legal authority. Similarly, its claim that the Court doesn't have the authority to fully resolve the issues in this case based on the scope of the question certified by the lower court is also incorrect. As a result, this Court should determine that the trial court had authority to strike the bank's mortgage from the record either as an invalid cloud on title or an unreasonable restraint on alienation.

U.S. Bank claims in its brief that Gratsiani's arguments have all been waived simply because Patricia Bartram chose not to file an answer brief in support of the trial

[18] A principle so fundamental that the right to rely on it once it has accrued is a constitutional right in this state. *See, e.g., Wiley v. Roof,* 641 So. 2d 66, 68 (Fla. 1994) (emphasizing that "[t]he law does not prioritize rights over remedies" and that "[o]nce the defense of the statute of limitations has accrued, it is protected as a property interest just as the plaintiff's right to commence an action is a valid and protected property interest").

P.A. Bravo
www.pabravo.com

court's judgment. It's only guidance to this Court on that point is an inapplicable and irrelevant case where the Court found that a party had waived an argument by not including it in the briefing before *this* Court, not a district court of appeal or even the trial court. In reality, nothing in the rules of procedure or in this state's law require a party to file an answer brief. *See, e.g., Spradley v. Kemp*, 596 So. 2d 506 (Fla. 1st DCA 1992) (noting that "[a]dmittedly, appellees are not required to file a brief"). And it makes sense that an answer is not required to avoid waiver given the fact that an appellee is not adversely effected, particularly in light of the expense of appellate litigation. The reality in this case is that once Patricia Bartram's interest was adversely effected, Gratsiani filed a motion for rehearing raising the very arguments he has made to this Court. As a result, nothing has been waived.

U.S. Bank also attempts to convince this Court that its power in this case is limited to consideration of issues framed by the specific question certified by the lower court. But on this point, the bank gives absolutely no guidance as to how it has formed its conclusion. The glaring lack of citation aside, this Court has unequivocally held that once it has "jurisdiction on the basis of [] certified questions, we have jurisdiction over all issues." So the Court certainly has the ability to answer the issue of whether or not section 95.281 of the Florida Statutes prevents a trial court from entering a judgment cancelling a mortgage from the public record. And given the importance of the issue, the Court should in fact reach that point. As Gratsiani has already argued, a lien in

P.A. Bravo
www.pabravo.com

Florida is nothing if it is not a right to foreclose. So once a trial court determines that a particular lien cannot be foreclosed, it serves no purpose whatsoever and should be stricken as an invalid cloud that slanders the owner's title. In addition, an unforeclosable lien violates the long-standing principle of property law and the policy of this state against unreasonable restraints on alienation.[19] But whatever the theory ultimately adopted, the trial courts of Florida have the power to enter judgments striking a barred mortgage from the public record.[20]

Conclusion

For the reasons articulated this reply, and those explained in far more detail in his initial brief, Gideon M.G. Gratsiani, graciously requests that the Court reverse the decision of the lower court and enter a mandate reinstating the final judgment entered by the trial court.

Dated: February 11, 2015
Miami, FL

---

[19] *See, e.g., Iglehart v. Phillips*, 383 So. 2d 610, 614 (Fla. 1980) (explaining that "the test which should be applied with respect to restraints on alienation is the test of reasonableness," that the "validity or invalidity of a restraint depends upon its long-term effect on the improvement and marketability of the property," and that "[o]nce that effect is determined, common sense should dictate whether it is reasonable or unreasonable"). Common sense dictates that a lien that has purpose other than to cloud title to real estate is unreasonable.

[20] In his initial brief Gratsiani noted that the Declaratory Judgment Act provided trial courts with the necessary power. But that isn't to say that court's sitting in equity don't inherently have such power anyhow. *See id.* at 617 (explaining that "[w]hen the equity powers of the court have been brought into an action, its active jurisdiction will be continued until full justice has been done between the parties").

P.A. Bravo
www.pabravo.com

Respectfully submitted,
P.A. Bravo, P.A.
2525 Ponce De Leon Blvd, Suite 300
Coral Gables, FL
305.209.9019
pabravo@pabravo.com
service@pabravo.com

By: */s/Paul Alexander Bravo*
Paul Alexander Bravo
Florida Bar No. 38275

Certificate of Service

I hereby certify that on November 5, 2014, a true copy of the foregoing was sent via email to the parties on the service list below.

/s/Paul Alexander Bravo
Paul Alexander Bravo

Certificate of Compliance with Font Requirement

I certify that this brief was typed in 14-point Times New Roman font.

/s/Paul Alexander Bravo
Paul Alexander Bravo

SERVICE LIST

Counsel for U.S. National Bank

Heidi J. Weinzetl, Esq.
Michael D. Starks, Esq.
Baker, Donelson, Bearman
Caldwell & Berkowitz, PC
Bank of America Center
390 North Orange Avenue
P.O. Box 1549
Orlando FL, 32802
hweinzetl@bakerdonelson.com
mstarks@bakerdonelson.com
tzasada@bakerdonelson.com
tgoff@bakerdonelson.com

William P. McCaughan
Steven R. Weinstein
K&L Gates LLP
200 South Biscayne Blvd.
39th Floor
Miami, FL 33131
William.mccaughan@klgates.com
Steven.weinstein@klgates.com

Counsel for the Plantation at Ponte Vedra, Inc.

T. Geoffrey Heekin, Esq.
Hunter Malin, Esq.
Catherine R. Michaud, Esq.
Heekin, Malin & Wenzel, P.A.
P.O. Box 477
Jacksonville, FL 32201
gheekin@jax-law.com
hmalin@jax-law.com
cmichaud@jax-law.com

Joel S. Perwin, Esq.
jperwin@perwinlaw.com
169 E. Flagler Street
Suite 1422
Miami, FL 33131

Counsel for Gideon Gratsiani

Paul Alexander Bravo
Jason Bravo
P.A. Bravo, P.A.
2525 Ponce De Leon Blvd, Suite 300
Coral Gables, FL 33134
jbravo@pabravo.com
service@pabravo.com

Counsel for Lewis Brooke Bartram

Micahel Alex Wasylik, Esq.
Ricardo & Wasylik, PL
P.O. Box 2245
Dade City, FL 33526
service@ricardolaw.com

Thomas R. Pycraft, Esq.
Pycraft Law, LLC
2825 Lewis Speedway, Suite 107
St. Augustine, FL 32084
tom@pycraftlaw.com
service@pycraftlaw.com

Dineen Pashoukos Wasylik, Esq.
DPW Legal
P.O. Box 48323
Tampa, FL 33646
dineen@ip-appeals.com
service@ip-appeals.com

Kendall B. Coffey, Esq.
Jeffrey B. Crockett, Esq.
Daniel F. Blonsky, Esq.

SERVICE LIST

2601 S. Bayshore Drive, PH
Miami, FL 33133
kcoffey@coffeyburlington.com
jcrockett@coffeyburlington.com
dblsonky@coffeyburlington.com
vmontejo@coffeyburlington.com
grogue@coffeyburlington.com
service@coffeyburlington.com

Counsel for Florida Alliance for Consumer Protection and Florida Consumer Action Network

Alice M. Vickers, Esq.
Florida Alliance for Consumer Protection
623 Beard Street
Tallahassee, FL 32303
alicevickers@flacp.org

Counsel for Brevard County Legal Aid, Inc.

Sarah E. Mattern, Esq.
Brevard Legal Aid
1038 Harvin Way Ste 100
Rockledge, FL 32955-3254
eservice@brevardlegalaid.org
sarahmattern@brevardlegalaid.org

Counsel for Florida Consumer Umbrella Group of Florida Legal Services, Inc.

Kimberly L. Sanchez, Esq.
Community Legal Services of Mid-Florida
122 E Colonial Dr Ste 200
Orlando, FL 32801-1219
kimberlys@clsmf.org
dulcef@clsmf.org
miam@clsmf.org

Counsel for American Legal and Financial Network

Robert R. Edwards, Esq.
Johnathan I. Meisels, Esq.
Robertson, Anschutz & Schneid, PL
6409 Congress Avenue, Suite 100
Boca Raton, FL 33487
redwards@rasflaw.com
mail@rasflaw.com
lsarvey@rasflaw.com

Shaib Y. Rios, Esq.
Curtis J. Herbert, Esq.
Brock and Scott PLLC
1501 NW 49th Street, Suite 200
Fort Lauderdale, FL 33309
Sahib.rios@brockandscott.com
Curtis.herbert@brockandscott.com

Robyn R. Katz, Esq.
Jane E. Bond, Esq.
McCalla Raymer, LLC
225 E. Robinson Street, Suite 660
Orlando, FL 32801
rrk@mccallaraymer.com
jnb@mccallaraymer.com

Melissa A. Giasi, Esq.
Richard S. McIver, Esq.
Kass Shuler, P.A.
1505 N. Florida Avenue
Tampa, FL 33602
mgiasi@kasslaw.com
rmciver@kasslaw.com

P.A. Bravo
www.pabravo.com

SERVICE LIST

Andrea R. Trombert, Esq.
Gladstone Law Group, P.A.
1499 W. Palmetto Park Road, Ste 300
Boca Raton, FL 33486
atromberg@gladstonelawgroup.com

Elizabeth R. Wellborn, Esq.
Elizabeth R. Wellborn, P.A.
350 Jim Moran Blvd, Suite 100
Deerfield Beach, FL 33442
wellborn@erwlaw.com

Michelle G. Gilbert, Esq.
Jennifer Lima-Smith
Gilbert Garcia Group, P.A.
2004 Pan American Cir., Suite 110
Tampa, FL 33607
mgilbert@gilbertgrouplaw.com
jlima-smith@gilbertgrouplaw.com

Counsel for National Association of Consumer Advocates

Lynn E. Drysdale, Esq.
Jacksonville Area Legal Aid Inc.
126 W Adams St
Jacksonville, FL 32202-3849
Lynn.drysdale@jaxlegalaid.org
jalaconsumer@jaxlegalaid.org
Counsel for Bradford Langworthy

Peter D. Ticktin, Esq.
Timothy R. Quinones, Esq.
The Ticktin Law Group, P.A.
600 W Hillsboro Blvd Ste 220
Deerfield Beach, FL 33441-1610
Serv512@legalbrains.com
Serv515@legalbrains.com

Counsel for Upside Property Investment

John S. Mills, Esq.
Andrew D. Manko, Esq.
The Mills Firm
203 N. Gadsden Street, Suite 1A
Tallahassee, FL 32301
jmills@mills-appeals.com
amanko@mills-appeals.com
service@mills-appeals.com

P.A. Bravo

www.pabravo.com