Filing # 141443572 E-Filed 01/06/2022 12:24:21 AM

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and
PATRICIA SAHM,

Plaintiffs,

v.

BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS.

Defendants

CANDICE BERNSTEIN, MOTION FOR REHEARING 1.530 TO VACATE A FINAL JUDGMENT OF FORECLOSURE, DISMISSAL OF THE ACTION OR TO RE-ASSIGN THE ACTION TO A NEUTRAL JUDGE OUTSIDE THE 15TH JUDICIAL

1. I am a Defendant and interested party Candice Bernstein who now makes this motion for Rehearing under Rule 1.530 to Vacate a "Final Judgment" signed by Judge Kastrenakes on Dec. 21, 2021 and to Dismiss the action or alternatively Re-Assign the action to a neutral Judge outside the 15th Judicial and for other relief as appropriate.

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JUDGE KASTRENAKES CONTINUED "FRAUD" IN THE PROCEEDINGS BY FALSELY CLAIMING THE "FINAL JUDGMENT" WAS "ON CONSENT" AND THUS MUST BE VACATED

2. In addition to the many genuine issues of material facts and defenses making Summary Judgment improper that were not considered by Judge Kastrenakes, Judge Kastrenakes continued an ongoing fraud through multiple proceedings by falsely claiming in the "Final Judgment" that the Judgment was "On Consent" when in fact both Eliot Bernstein and attorney Leslie Ferderigos as counsel for Josh, Jake and Danny Bernstein both raised genuine issues of material facts and defenses Opposing any Final or Summary Judgment at a hearing held on Nov. 22, 2021 and did not "consent" to any such Judgment but in fact sought to Amend the Defenses but was steamrolled over by the Judge who was actively STEERING and making TACTICAL SUGGESTIONS to Plaintiff's counsel throughout the short hearing. See Exhibit 1 Transcript.

3. Judge Kastrenakes has actual knowledge that claiming any such Judgment "On Consent" is fraud as the papers that went to the Court by Plaintiff's attorney were dated Dec. 21, 2021 and the Judge signed the Judgment the same date and the papers did not show any due process procedure by Plaintiffs for any Defendant to Object or Contest or propose an alternate Judgment.

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4. More importantly it was obvious by the submission of Plaintiff that neither myself nor attorney Leslie Ferderigos were even served any such papers in the first instance.
5. This type of knowing fraud is a continuation of ongoing frauds in the Courts of the 15th Judicial dating back to now former Judge Martin Colin's Court where falsified Notaries and other fraudulent documents were exposed ultimately leading to the Disbarment of one attorney Robert Spallina and a Suspension of Donald Tescher and is an additional basis for Judge Kastrenakes to Disqualify on his own motion and for the proceedings to be transferred out of the 15th Judicial where not only are there multiple open Criminal Complaints with Palm Beach Sheriff Bradshaw involving the proceedings but Reports to the FBI and related proceedings in Federal court involving some of the core parties to the frauds in these Trusts and Estate cases.
6. In fact, Judge Kastrenakes illegally "bypassed" the Summary Judgment process itself, did not issue any substantive ruling on Summary Judgment denying Defendants a due process basis to contest and understand any such determination.
7. To the contrary, while showing improper bias and prejudice in favor of Plaintiffs against the Defendants, Judge Kastrenakes permitted some "out of

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court evidentiary type process" between Plaintiff's counsel and attorney Alan Rose to "confirm" and verify evidence of fees in the case wholly denying Defendants aay fair or due process basis to know about such process, understand such process and denied any meaningful opportunity to be heard and object by Defendants all denying due process and rendering the Final Judgment void and a nullity. See Exhibit 1.

8. Most alarming and creating a reasonable fear that a fair trial can not be had before this Judge is his repeated "Steering" and "Directing" of Plaintiff's attorney at the Nov. 22, 2021 Hearing even where it relates to the ultimate relief sought as Plaintiff only sought a Money Judgment but the Judge "steered" a request for Foreclosure which involves equity determinations and also potentially an improper relief that could significantly harm my interests with my wife and children. See Exhibit 1.

9. Even more egregious where all matters must now be Reported to proper Oversight bodies as the Florida Bar and Judicial Qualifications Commission among others is the Judge continuing this action with full actual knowledge that there is No Personal Jurisdiction over the indispensable party BFR, LLC itself nor proper service over indispensable parties Josh, Jake and Danny Bernstein.

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10. The lack of personal jurisdiction over BFR is obvious as even the Third Amended Complaint by Plaintiff was Served on a Resigned Registered Agent Donald Tescher who had Resigned from all Bernstein matters in 2014 after the original frauds were exposed and further resigned as Agents by at least early Feb. 2017. See Exhibits 2 and 4.
11. BFR has no Counsel and no proper Default was ever taken and BFR itself in addition to myself, husband Eliot Bernstein and sons have Counterclaims and defenses which have never been heard and prevent Summary Judgment.
12. The Court makes it obvious that Summary Judgment was not proper as it does not even know "who owes who" much less that the Plaintiff's are not equally liable for their bad faith litigation and unclean hands and unclean hands is a further basis to deny equitable remedy of foreclosure.
13. As indispensable parties any Judgment such as Summary Judgment is Void without peronsal jurisdiction over the adult children by proper service. Community Fed. Sav. Loan v. Wright 452 So. 2d 638, 641 (Fla. Dist. Ct. App. 19).
14. "Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder." Citibank, N.A. v. Villanueva, 174 So.3d 612, 613 (Fla. 4th DCA 2015) (quoting Hertz Corp. v. Piccolo, 453 So.2d 12, 14 n. 3 (Fla.1984)) Parker v. Parker, 185 So.

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3d 616, 618 (Fla. Dist. Ct. App. 2016) Appellant was given the right to do so. See Fla. R. Civ. P. 1.190(e) ; Fla. R. Civ. P. 1.170(f)."

15. I sought to amend as freely allowed on Nov. 22, 2021 and was shut down by a steered improper proceeding and was not even addressed by the Court.
16. See, 3rd DCA where Pro Se Motion made day before summary Judgment hearing to amend affirmative defenses and responsive pleadings was denied by Trial court but reversed and granted by 3rd DCa Profitable Princess Prop v. Rodriguez 523 So. 2d 751, 752 (Fla. Dist. Ct. App. 1988 We believe the appellant has presented at least the basic structure of a possibly meritorious defense and that the trial judge erred in summarily rejecting that defense. We find support for this conclusion in Hilsenroth v. Kessler, 446 So.2d 147 (Fla. 3d DCA 1983). We believe that for purposes of determining whether the appellees are entitled to summary judgment, the trial judge should consider the defense sought to be asserted by the appellant. Accordingly, we reverse and remand for further proceedings."

JUDGE KASTRENAKES FAILED TO CONSIDER EQUITY AND UNCLEAN HANDS AND ERRED BY GRANTING FORECLOSURE TO PLAINTIFF AND FURTHER "STEERED" PLAINTIFF TO SEEK FORECLOSURE INSTEAD OF SIMPLE MONEY JUDGMENT

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17. Florida Supreme Court has made clear the use of Equity and Fairness to decide foreclosures and prevent Fraud is ESSENTIAL exercise of their jurisdiction - Griffin v. Lasalle Bank, N.A. No. SC18-1132, at *4 (Fla. Feb. 6, 2020). However, a court of equity has the power to set aside the sale of mortgaged property made pursuant to foreclosure "to protect parties from all fraud, unfairness, and imposition." Macfarlane v. Macfarlane, 39 So. 995, 998 (Fla. 1905). This Court has reemphasized "that the trial courts' use of their equity powers in resolving disputes pertaining to judicial foreclosure sale set aside actions is essential." Arsali v. Chase Home Fin. LLC, 121 So. 3d 511, 518 (Fla. 2013).

IMPROPER SERVICE OF PROCESS UPON BFR, LLC AND JOSH, JAKE AND DANIEL BERNSTEIN

18. Service on myself and husband Eliot as Guardian was not proper for two of the children who were not Minors at time of service and instead were adults. As indispensable parties any Judgment such as Summary Judgment is Void without personal jurisdiction over the adult children by proper service. Community Fed. Sav. Loan v. Wright 452 So. 2d 638, 641 (Fla. Dist. Ct. App. 19) and Rosenberg v. Bakerman

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481 So. 2d 29 (Fla. Dist. Ct. App. 1986) Based upon appellees' failure to name and serve the titleholder of the subject property in their mortgage foreclosure action, we reverse. Hubbard v. Highland Realty Investment Co., 115 Fla. 834, 156 So. 322 (1934); Community Federal Savings Loan Association v. Wright, 452 So.2d 638 (Fla. 4th DCA 1984); Davanzo v. Resolute Insurance Co., 346 So.2d 1227 (Fla. 3d DCA 1977); Chapman v. L N Grove, Inc., 265 So.2d 725 (Fla. 2d DCA 1972). Reversed and remanded for further proceedings consistent with this opinion.

19. This is all aggravated by the knowing fraud of imposing the GAL on my son Josh Bernstein in the first instance illegally which was known and is a defense in the proceeding. See Cease and Desist Exhibit 3.

DISQUALIFICATION LEVEL "STEERING" BY JUDGE KASTRENAKES

20. "When a judge enters into the proceedings and becomes a participant or an advocate, a shadow is cast upon judicial neutrality." R.O. v. State, 46 So. 3d 124, 126 (Fla. 3d DCA 2010); see also Williams v. State, 160 So. 3d 541, 544 (Fla. 4th DCA 2015). ***Trial judges must studiously avoid the appearance of favoring one party in a lawsuit, and suggesting to counsel or a party how to proceed strategically constitutes a breach of this principle.*** See Chastine v. Broome, 629 So.2d 293 (Fla. 4th DCA 1993)

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(holding that a trial judge's provision of strategic advice to a party during a trial demonstrated impermissible bias); see also J.F. v. State, 718 So.2d 251 (Fla. 4th DCA 1998) (disapproving a trial judge who assisted with a delinquency prosecution by requesting the production of additional State's evidence).

21. "Prejudice of a judge is a delicate question to raise, but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge against whom raised should be prompt to recuse himself." –Livingston v. State, 441 So.2d 1083, 1085 (emphasis added). Where there is any legally sufficient basis, whether factually accurate or not, for a founded fear of possible prejudice to exist in the mind of a defendant, recusal is mandated. See, e.g., Management Corporation of America, Inc. v. Grossman, 396 So.2d 1169 (Fla. 3rd DCA 1981).
22. Moreover the Complaint is jurisdictionally defective in describing the proper role and status and actions regarding BFR and as a Defendant the evidence submitted was never served much less 40 days before the hearing.
23. Full rights are reserved to Amend this filing as proper.

WHEREFORE it is respectfully prayed for an Order Vacating the final judgment and dismissing the action and alternatively re-assigning the action to a neutral judge outside the 15th judicial and such other relief as just and proper.

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/s/Candice Bernstein
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CERT IFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 1st day of January 5, 2022.

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