IN THE CIRCUIT COURT OF THE I5TH 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

MOTION FOR REHEARING

COMES NOW, Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, by and through their undersigned Attorney, pursuant to Fla.R.Civ.P.Rule 1.530, files this Motion for Rehearing as follows:

1. A hearing was held on November 11, 2021 on the Plaintiff's Motion for Summary Final Judgment of Foreclosure, Taxation of Costs, and Award of Attorney Fees that had been filed on (08/05/2021).

2. At the date of the hearing held on November 11, 2021, service had not been properly effectuated for Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, who are considered indispensable parties to the above referenced case for the following reasons: (1) Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN were all eighteen (18) years old at the time the complaint was filed. (2) the home in foreclosure was paid for by the Defendants trust (3)

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the Defendants have a financial interest in this foreclosure actions. Thus, the Defendants would be necessary parties essential to this suit[1].

3. **SUMMARY JUDGEMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT INDISPENSIBLE PARTIES BEING PROPERLY SERVED**: The Defendants were material parties in this case and must be made parties.[2] The Court should not have made a ruling on the Motion for Summary Judgment when the Defendants had not been properly served.[3] The Defendants rights and interests had not been properly before the Court, when the summary judgment was granted.[4] Thus, ruling on the summary judgment was improperly ruled on without the Defendants having been served and this Court having jurisdiction over these material parties.

4. **SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT INDISPENSIBLE PARTIES HAVING OPPORTUNITY TO CONTEST ALLEGATIONS**: A summary judgment should only be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.Fla. R. Civ. P. 1.510. Furthermore, The court shall state on the record the reasons for granting or denying the motion. *Id*. The Defendants contest the allegations set forth in the Complaint. Thus, there is a genuine issue of material facts. However, they were never properly noticed or served.

5. **SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT AN AFFIDAVIT SUBMITTED AT HEARING:** At the time of the hearing, the Plaintiffs never submitted an affidavit, as required to make a ruling on a summary judgment. Thus, it was not ripe for the Court to rule on a Summary Judgment absent an affidavit. Fla. R. Civ. P. 1.510(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on

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[1] "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. 3d 616, 618 (Fla. Dist. Ct. App. 2016)

[2] All persons materially interested in subject-matter of suit must be made parties. Oakland Properties Corp. v. Hogan, 96 Fla. 40, 117 So. 846 (1928)

[3] Court cannot properly adjudicate matters involved, when it appears necessary and indispensable parties have not been served or are not in some way before court. Oakland Properties Corp. v. Hogan, 96 Fla. 40, 117 So. 846 (1928)

[4] Rights and interests of necessary parties cannot be adjudicated when they are not properly before court. Oakland Properties Corp. v. Hogan, 96 Fla. 40, 117 So. 846 (1928)

personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

6. During the hearing held on November 11, 2021, Counsel for the Plaintiffs, stated to the Court the relief being sought was a foreclosure on the original note and to get a money judgment against a dissolved entity. [Transcript pg. 5, line7-9] It was clear during this hearing, the Plaintiff were not seeking possession of the property. There was no affidavit presented to the Court that cited any money amount being sought. [Transcript: pg 7, line 9-10]. This Court stated there would be a hearing on fees [Transcripts: pg 13, line 24-25]

7. Counsel for the Plaintiff's acknowledges, the Leslie Ferderigos, Esq. appeared on behalf of the children. Furthermore, Plaintiffs counsel stated he believed that Leslie Ferderigos, Esq. was representing the Entity, not just the children. [Transcripts: pg 17, line 9-12]. Thus, Counsel for the Plaintiff, should have supplied Ms. Ferderigos with any correspondence submitted to this Court, which they failed to do.

8. **ATTORNEY FEES SHOULD HAVE BEEN DETERMINING AFTER A HEARING WAS HELD**: The Court specifically, stated they would not set a sale date until the Court received a finalized affidavit [Transcripts: pg 19, line 6-10]. However, Plaintiffs Counsel added attorney fees into the Final Judgment absent a hearing. Furthermore, Counsel for the Plaintiff submitted an Attorney Fee Affidavit, never setting it for hearing to determine the reasonableness of attorney fees.

9. **FINAL JUDGMENT WAS NOT CONSENTED TO:** On December 21, 2021, this Court entered a Final Judgment, based on the representation that the parties consented to this Final Judgment. However, counsel for the defendants was not given a copy nor had any discussions that led to the consent of a Final Judgment. Furthermore, a money value of $110,000.00 was indicated in the Final Judgment, as well as, other costs, including Attorney Fees in the amount of $52,005.50, Real Property Taxes paid by Lender of $38,596.62, Default Interest at 18% for $149,122.56, and Interest on the note for $3,850.00. The total money due according to the Final Judgment was $353,574.68. At no time did the Defendants counsel have any contact nor was given any proposed Final Judgment to review prior to it being submitted to the Court and signed by the Judge. The Final Judgment gives Right of Possession to the person named on the certificate of title, having not reviewed any potential lease/rental agreements. Further, the Defendants did not consent to the entry of this Final Judgment, as falsely represented in the signed Final Judgment.

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10. **FAILURE TO NOTICE OR PROVIDE PROPOSED JUDGMENT TO DEFEDANTS COUNSEL:** Counsel for the Plaintiff, falsely states in his letter to this Court that counsel of record had been provided copies. However, Counsel for the Defendants, LESLIE FERDERIGOS, ESQ. had never spoken to ROBERT SWEETAPPLE, ESQ. or any representative from his firm since the hearing. ROBERT SWEETAPPLE, ESQ. never submitted anything for review prior to submitted it to this Court.

11. **COUNSEL FOR THE PLAINTIFF SHOULD BE SANCTIONED FOR EX-PARTE COMMUNICATIONS WITH THIS COURT**: LESLIE FERDERIGOS, ESQ. requests this Court to Order ROBERT SWEETAPPLE, ESQ. all written proof of his attempts to allow Ms. Ferderigos, to review anything submitted to this Court.

WHEREFORE, Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, requests this Court to:

A. Vacate the Final Judgment Entered on December 21, 2021
B. Order a Hearing on Attorney Fees
C. Sanction Counsel for the Plaintiffs for intentional misconduct by misleading this Court that Counsel for the Defendants had been copies and consented to the Final Judgment
D. Award Attorney Fees for Defendants Counsel for having to bring forth this Motion
E. All Other remedies necessary and just under statute

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CERTIFICATE OF SERVICE

WE DO CERTIFY, that a copy of the foregoing has been furnished electronically with the Clerk of Courts by using the EPORTAL system to all parties of record in the pending case to include: ROBERT SWEETAPPLE, ESQ. bsweetapple@sweetapplelaw.com

1-5-2022
Dated

/s/Leslie Ferderigos
Leslie Ferderigos, Esq.
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