UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: 22–13009–EPK
Chapter: 11

In Re Bernstein Family Realty, LLC ,

Debtor.

PETITIONERS NOTICE OF DEATH OF CREDITOR WALTER SAHM AND OTHER OBJECTIONS FOR STATUS CONFERENCE

1. We are the Petitioners, individual Creditors Joshua, Jacob and Daniel Bernstein who filed this Involuntary petition against Bernstein Family Realty, LLC .
2. We are all over the age of 18 years.
3. We are in the process of retaining an honest and experienced attorney who we understand is able to practice in this Southern Florida Bankruptcy Court and she has 30 years of experience but has just recently battled Covid and parts of her family has had Covid and she is just getting back to regular work after having to reschedule some of her cases.

4. Her name is Inger Garcia, Esq. and she knows some of the background of our case and we believe she will appear for us on Wednesday if this Conference can not be briefly adjourned and rescheduled.
5. We are hoping she will have time to file her Appearance by later on Tuesday when out of a deposition but she did say she would be able to appear on Wednesday if this can not be rescheduled.
6. Both Josh and Jake Bernstein have Finals this week for college at Florida Atlantic University and Jake will not be able to be there on Wednesday if this can not get rescheduled.
7. We became aware that the Court granted Relief and we are trying to find out if Inger Garcia can appear for BFR, LLC too since we only want what is right for BFR, LLC anyway to get all proper assets recovered and pay all proper creditors but we have not had time to discuss this with Inger Garcia yet.
8. We are confused by the filing by attorney Bradley S Shraiberg for Walter and Patricia Sahm since we put in our Petition that Walter Sahm seems to be Deceased as of January 2021 but the attorney in this case seems to be appearing as if he is alive and what we understand is it would be the Estate of Walter Sahm that is entitled to anything if anything by now so we wanted

to notify the Court that our parents secured a Certificate of Death and we now file this so this Court knows about this.

9. This is one of the reasons why we hope this attorney can appear for us tomorrow if the Court is not able to reschedule because we don't understand all the legal tricks and procedures.

10. It does seem wrong that the attorney did not come in to this case for the Estate of Walter Sahm since our parents both filed Suggestions of Death in the State Case and then filed Emergency Motions to stop the Sale based on Suggestion of Death and it would seem that attorney Bradley S Shraiberg would know if he spoke to Walter Sahm for this case and if he was alive or not since the Death Certificate shows January of 2021 over 15 months ago.

11. We have attached these Emergency motions from the State Court since we do not know the law and all that but it seems logical that Deceased parties have to have an Estate or Personal Representative before the Court and we are concerned since Alan Rose has now appeared and according to a Transcript was also a direct part with Robert Sweetapple of the Final Judgment taken against the property that never notified the Court and parties was taken by someone who had died over 11 months before.

12. We are very sorry about this passing as we understand Walter Sahm was both a friend of our Grandfather's which is how the property transaction

occurred and then also befriended our Father and shared a lot of emails and texts with our Father according to him so Walter's Estate should know this.

13. Our parents also told us that according to a 3rd party named Glen who was interceding in the state court off the record that both Alan Rose, Robert Sweetapple and Patricia Sahm were trying to negotiate and extort our parents last minute before we filed still trying to act and push the case as if Walter had not passed away and didn't have an Estate so the last minute threats to our parents would not have been legal since the Estate was not involved anyway.
14. Our father also told us there is likely another conflict with attorney Bradley S. Shraiberg after first appearing here as if Walter Sahm was alive but further that this attorney also represented or attempted to represent one of our Father's own companies or similarly named company Iviewit.com, LLC right here in this very Bankruptcy Court back when many of the initial frauds of his companies occurred in 2001.
15. He gave us the case as U.S. Bankruptcy Court, Southern District of Florida (West Palm Beach) Bankruptcy Petition #: 01-33407-SHF as Chapter 7 Involuntary case where attorney Shraiberg is attorney of record for Debtor, iviewit.com LLC, 2255 Glades Rd #337 W Boca Raton, FL 33431 PALM BEACH-FL (561) Tax ID / EIN: 65-0927941.

16. Our father says that our Interests that should have benefitted us as Shareholders in Iviewit Technologies were at stake in that Involuntary Bankruptcy where Shraiberg appeared for Iviewit.com, LLC yet that is when some of the original frauds against his companies started and where he says he and members of the Board of those companies were not even aware this attorney was representing the Company and may have been doing it in a wrong company name.

17. While our Father is waiting for a Quadruple Bypass he says he can still testify and has previously given statements to the FBI, US AG, White House Counsel's Office, SEC, NY State Attorney General, Palm Beach Sheriff's Office, NY State Senate Judiciary and other bodies in relation to what is claimed as trillion dollar frauds against his Technologies and where Shraiberg was named as a Defendant in a NY Federal Case in the Southern District of New York CASE #: 1:07-cv-11196-SAS and he believes there are parts of that case that someone from Washington, DC is still involved with potentially even down here in Florida which he says kinda like Epstein took over a decade to sort out.

18. We have already told this Court that attorney Alan Rose and Ted Bernstein have never shared any of the BFR, LLC information with us and have directly held up Trust and Estate inheritance monies and directly denied us

from our own monies to try and save our asset and BFR, LLC but now our father tells us these same parties Alan Rose and Ted Bernstein are also part of denying and potentially "missing" Iviewit records that our Grandfather who set up BFR, LLC had and where our Grandfather was an original Seed investor in Iviewit and where millions of royalties have been held up and part of fraud for years.

19. So if possible we were hoping the Court could reschedule the Status Conference so Inger Garcia can have more time and we need to figure out how to retain an attorney for BFR, LLC if somehow the Court says permission is needed or some conflict.

20. And we are informing attorney Inger Garcia of what we have listed here as conflicts and objections with the attorneys for her to sort out what to do but wanted the Court to know that too and for consideration of adjourning tomorrow's Status Conference but at least 2 of us can attend and Inger Garcia should be able to as well as attorney.

Respectfully,

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571. Petitioners request that an order for relief be entered against the debtor under the chapter of 11 U.S.C. specified in this petition. If a petitioning creditor is a corporation, attach the corporate ownership statement required by Bankruptcy Rule 1010(b). If any petitioner is a foreign representative appointed in a foreign proceeding, attach a certified copy of the order of the court granting recognition.

I have examined the information in this document and have a reasonable belief that the information is true and correct.

Petitioners or Petitioners' Representative Attorneys

Name and mailing address of petitioner

JOSHUA BERNSTEIN

_____

Name

2753 NW 34TH STREET

_____

Number Street

BOCA RATON, FL 33434

_____ _____ _____

City State ZIP Code

Name and mailing address of petitioner's representative, if any

_____

Name

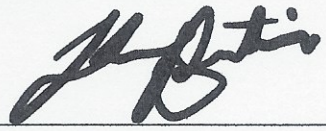
_____

Number Street

_____ _____ _____

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 05/23/2022
MM / DD / YYYY



Signature of petitioner or representative, including representative's title
JOSHUA BERNSTEIN, PETITIONER

DANIEL BERNSTEIN

Name

2753 NW 34TH STREET

Number Street

BOCA RATON, FL 33434

City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.
Executed on _____
MM / DD / YYYY

Signature of petitioner or representative, including representative's title
DANIEL BERNSTEIN, PETITIONER

JACOB BERNSTEIN

Name

2753 NW 34TH STREET

Number Street

BOCA RATON, FL 33434

City State ZIP Code

Name and mailing address of petitioner's representative, if any

Name

Number Street

City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 05/24/2022
MM / DD / YYYY

Signature of petitioner or representative, including representative's title
JACOB BERNSTEIN, PETITIONER

I declare under penalty of perjury that the foregoing is true and correct.
Executed on _____
MM / DD / YYYY

_____
Signature of petitioner or representative, including representative's title
JOSHUA BERNSTEIN, PETITIONER

DANIEL BERNSTEIN
_____
Name

2753 NW 34TH STREET
_____
Number Street

BOCA RATON, FL 33434
_____
City State ZIP Code

Name and mailing address of petitioner's representative, if any

_____
Name

_____
Number Street

_____
City State ZIP Code

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 5-23-2022
MM / DD / YYYY

_____
Signature of petitioner or representative, including representative's title
DANIEL BERNSTEIN, PETITIONER

EXHIBIT 1

STATE OF FLORIDA

THIS DOCUMENT HAS A LIGHT BACKGROUND ON TRUE WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY FLORIDA WATERMARK.

BUREAU of VITAL STATISTICS

AMENDED CERTIFICATION OF DEATH

STATE FILE NUMBER: 2021002655

DATE ISSUED: APRIL 15, 2022

DATE FILED: JANUARY 12, 2021

DECEDENT INFORMATION

NAME: WALTER E SAHM JR

DATE OF DEATH: JANUARY 5, 2021 SEX: MALE AGE: 078 YEARS

DATE OF BIRTH: JANUARY 1, 1943 SSN: ***-**-7482

BIRTHPLACE: EVANSVILLE, INDIANA, UNITED STATES

PLACE WHERE DEATH OCCURRED: INPATIENT

FACILITY NAME OR STREET ADDRESS: THE VILLAGES REGIONAL HOSPITAL

LOCATION OF DEATH: THE VILLAGES, SUMTER COUNTY, 32159

RESIDENCE: 8230 SE 177 WINTERTHUR LOOP, THE VILLAGES, FLORIDA 32162, UNITED STATES

COUNTY: MARION

OCCUPATION, INDUSTRY: SALES MANAGER, INSURANCE

EDUCATION: BACHELORS DEGREE EVER IN U.S. ARMED FORCES? NO

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC/HAITIAN ORIGIN

RACE: WHITE

SURVIVING SPOUSE / PARENT NAME INFORMATION

(NAME PRIOR TO FIRST MARRIAGE, IF APPLICABLE)

MARITAL STATUS: MARRIED

SURVIVING SPOUSE NAME: PATRICIA FARAGHER

FATHER'S/PARENT'S NAME: WALTER E SAHM SR

MOTHER'S/PARENT'S NAME: ANNE FREITAG

INFORMANT, FUNERAL FACILITY AND PLACE OF DISPOSITION INFORMATION

INFORMANT'S NAME: PATRICIA SAHM

RELATIONSHIP TO DECEDENT: WIFE

INFORMANT'S ADDRESS: 8230 SE 177 WINTERTHUR LOOP, THE VILLAGES, FLORIDA 32162, UNITED STATES

FUNERAL DIRECTOR/LICENSE NUMBER: ALEXIS GARCIA, F026901

FUNERAL FACILITY: NEPTUNE SOCIETY-SUMMERFIELD F064806
17350 SOUTH EAST 109TH TERRACE ROAD, SUMMERFIELD, FLORIDA 34491

METHOD OF DISPOSITION: CREMATION

PLACE OF DISPOSITION: SOUTHEASTERN CREMATORIES
HUDSON, FLORIDA

CERTIFIER INFORMATION

TYPE OF CERTIFIER: CERTIFYING PHYSICIAN

MEDICAL EXAMINER CASE NUMBER: NOT APPLICABLE

TIME OF DEATH (24 HOUR): 0351

DATE CERTIFIED: JANUARY 9, 2021

CERTIFIER'S NAME: PABLO DOLDY CARDONA

CERTIFIER'S LICENSE NUMBER: ME120187

NAME OF ATTENDING PRACTITIONER (IF OTHER THAN CERTIFIER): NOT ENTERED

DATE AMENDED: 05/21/2021 ANY CERTIFICATION ISSUED PRIOR TO THE AMENDED DATE MAY BE NULL AND VOID.
The first five digits of the decedent's Social Security Number have been redacted pursuant to §119.071(5), Florida Statutes.

, STATE REGISTRAR

REQ: 2023881554

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.

WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND, GOLD EMBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIAL LINES WITH TEXT. THE DOCUMENT WILL NOT PRODUCE A COLOR COPY.

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DH FORM 1946 (03-13)

CERTIFICATION OF VITAL RECORD

Florida HEALTH

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED

EXHIBIT 2

Filing # 147804333 E-Filed 04/17/2022 02:19:57 AM

IN THE CIRCUIT COURT OF THE l5TH 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

Emergency Motion for an Order Directing Clerk to Cancel Sale upon Abatement of Proceedings - Suggestion of Death -Fact of Death on Record confirmed by Deputy Chief Registrar. Sumter County, State of Florida Official State Death Certificate And for Abatement of all other Motions And Hearings; Referral to Florida Bar OR SHOW CAUSE

EMERGENCY MOTION FOR ORDER DIRECTING CLERK TO CANCEL IMMINENT FORECLOSURE SALE SCHEDULED FOR APRIL 20, 2022 ;

AND ORDER OF ABATEMENT UPON CONFIRMED SUGGESTION OF DEATH - FACT OF DEATH STATED UPON RECORD OF INDISPENSABLE PARTY PLAINTIFF WALTER E. SAHM CONFIRMED BY OFFICIAL SUMTER COUNTY HEALTH DEPARTMENT RECORDS AND DEPUTY CHIEF REGISTRAR;

AND FURTHER ABATEMENT OF REQUEST FOR EMERGENCY HEARING BY DEFENDANTS ON 1.530 AS PROCEDURALLY OUT OF ORDER DUE TO ABATEMENT BY THE DEATH OF PLAINTIFF WALTER SAHM AND REFERRAL TO FLORIDA BAR OF COUNSEL SWEETAPPLE OR SHOW CAUSE

COMES NOW, Defendant Candice Bernstein, who respectfully shows this Court as follows:

1. I am the Defendant Candice Bernstein, an indispensable party with rights of beneficial ownership and possession of the real property that is the subject of this foreclosure action at 2753 NW 34th St, Boca Raton, FL 33434 located in Palm Beach County.
2. In addition to the published articles from Plaintiff Walter Sahm's college alma mater Notre Dame stating the Fact of the Death on Jan. 5, 2021 on the Record, yesterday on April 15, 2022 the Fact of Death **was further Confirmed and verified by Jennifer Stansfield, Chief Deputy Registrar of Sumter County Health Department 8015 E CR-466 The Villages, FL 32162 PH:352-689-4675\with** Official State of Florida Death Certificate STATE FILE NUMBER 2021002655 which is to be Mailed on Monday and was confirmed as occurring *on Jan. 5, 2021, **over 15 months ago**.*
3. Thus I am making this Emergency Motion for an Order Directing the Clerk to Cancel the Foreclosure Sale of April 20, 2022, Order of Abatement of action pending proper Substitution of Deceased Plaintiff Walter Sahm, thus

holding in abeyance the Emergency Motion by Counsel Ferderigos until at least a proper Substitution occurs and further Referring Counself Sweetapple to the Florida Bar.

4. I am a named party Defendant with standing and rights of equity and beneficial ownership in the subject property having lived and contributed both financially and by my own labor to the upkeep and maintenance of the property for over 13 years and essentially having a Life Estate in the subject property as intended by my father in law Simon Bernstein and his wife, my mother in law Shirley Bernstein.
5. The subject property was specifically selected and purchased so my in-laws Simon and Shirley could be close to Eliot and our children, Joshua, Jacob and Daniel Bernstein.
6. I have lived at the subject property during these entire 13 plus years together with my husband Eliot I. Bernstein, who was in business with his father Simon which included investments and business deals between Simon and Eliot in his Technology interests and inventions. I have helped provide support, upkeep and maintenance to the home during this entire time.
7. Both my husband Eliot and William Stansbury, a business friend and partner of Simon Bernstein, can testify to the Asset Protection Planning by Simon Bernstein to protect the home and subject property so our children would

always have a place to live and so would Eliot and myself as long as we chose as shown by the Sworn Affidavit of William Stansbury now filed in this Record as an Exhibit during the Motion for Rehearing process under 1.530. See Document No. 140 ECaseview.

8. This affidavit of Mr. Stansbury confirms the constructive Life Estate nature of my rights in the subject property and together with rights of equity and beneficial ownership I therefore have proper standing to bring this Emergency Motion for an Order Directing the Clerk to Cancel the Scheduled Foreclosure Sale currently Scheduled for April 20, 2022.
9. The 4th DCA recently quoted in January of this year 2022 as the Rehearing was starting the following, "[T]he general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a complete decree may be made binding upon all parties." Two Islands Dev. Corp. v. Clarke, 157 So.3d 1081, 1084 (Fla. 3d DCA 2015) (quoting Sheoah Highlands, Inc. v. Daugherty, 837 So.2d 579, 583 (Fla. 5th DCA 2003)) and further that , (**"For these reasons, no doubt, this court has repeatedly held that persons whose interests will necessarily be affected by any decree that can be rendered in a cause are necessary and indispensable parties and that the court will not proceed without them.").** See, Fla.

Dep't of Transp. v. Lauderdale Boat Yard, LLC No. 4D20-1184 (Fla. Dist. Ct. App. Jan. 5, 2022.

10. The Stansbury affidavit shows he was not only named Successor Trustee for several of Simon Bernstein's Trusts but further that far than sufficient assets were or should have been available to Satisfy the Sahm Note upon his death in Sept. of 2012 which is supported by the Walter Sahm handwritten letter to Ted Bernstein referencing a Direct Income stream to have done so meanwhile instead for years Ted Bernstein and other attorneys ike Alan Rose and now Counsel Sweetapple conceal and hold material facts from Courts and parties using the Courts as a weapon.
11. So there are meritorious defenses and issues in these rights to be adjudicated in a proper case and proper jurisdiction if this action even survives.
12. Because these rights are now in imminent jeopardy of being lost to an improper Sale I have standing to bring this Emergency Motion.

NATURE OF EMERGENCY - IMMINIENT PENDING SALE APRIL 20, 2022 JUST 4 DAYS AWAY WHILE PLAINTIFF COUNSEL SWEETAPPLE CONTINUES TO ACT IN VIOLATION OF ABATEMENT AND SUGGESTION OF DEATH OF PLAINTIFF WALTER SAHM

13. On April 4, 2022 under ECASEVIEW Document No. 149 my husband Eliot Bernstein filed a SUGGESTION OF DEATH of Indispensable Party Walter

Sahm as a Fact on the Record **which was SERVED by the E-Florida CAD system on Plaintiff's Counsel Robert Sweetapple.**

14. This Suggestion of Death contained 2 URL Links to articles including the College Alma Mater of Plaintiff Walter Sahm at Notre Dame Honoring and Respecting the Passing of this basketball star for the Fighting Irish and listed the Date of Death as Jan. 5, 2021.

15. Two days later on April 6, 2022 I also filed a Suggestion of Death for Plaintiff Walter Sahm under ECASEVIEW Document No. 156 and in Document No. 157 attached as an Exhibit the full print outs of the articles stating the Fact of Plaintiff Walter Sahm's Death on the Record.

16. **Plaintiff's Counsel Robert Sweetapple was again Served Electronically with the Suggestion of Death of his Client Walter Sahm in my filing April 6, 2022** by the CAD E Service system.

17. Both my Suggestion of Death and my Husband Eliot's Suggestion of Death cited very clear English language in Caselaw from the 4th DCA and other DCAs making it very clear that once the Fact of the Death is Suggested on the Record the Case Abates, the Lawyer's authority to represent the Deceased person Terminates and any proceedings that continued without the indispensable party being properly substituted are nullites and void.

18. The filings also raised the question of when Counsel Sweetapple first knew of the Death of his Indispensable Plaintiff Party client Walt Sahm but that **at the very least Counsel Sweetapple had to know of the Death by the time he filed for the Notice of Summary Judgment in August of 2021 nearly 8 months ago now.**

19. Despite the clear notice of Death and English language showing Counsel Sweetapple's right to represent Walt Sahm terminated upon Death until some proper Substitution, ***the very next day on April 7, 2022 Counsel Sweetapplle without Responding or Filing ANY PROPER SUBSTITUTION f***or **Deceased Walter Sahm and Without authority to Act for Deceased Walter Sahm filed a Notice of Sale in his Name** under ECASEVIEW Document No. 158 **which is VOID and a NULLITY as a DECEASED PERSON CAN NOT FILE A LEGAL NOTICE FOR SALE IN COURT.**

20. Even more egregious, just 4 days ago on April 12, 2022, in an effort to minimize attorneys fees and unnecessary litigation, I emailed a Request to Counsel Sweetapple to Stipulate to Cancel the Sale and Vacate the Final Judgment or alternatively Stay the Judgment during 1.530 and on Appeal if necessary. See Attached Exhibit.

21. This email again noticed Counsel Sweetapple of the Suggestion of Death of Plaintiff Walt Sahm and the clear case law showing no authority to act and abatement occurs until proper Substitution of proper party such as a Personal Representative, Curator or Guardian ad Litem and that all proceedings until Substitution occurred are a nullity.

22. The email also asked Counsel Sweetapple the following Questions to get Discovery on the Deceased Party and efforts to Substitute with a proper party as follows: "1. When did you find out about the Death of Wallt Sahm? 2. Is there an Estate case opened? If so has a PR been appointed and who is it? 3. What is the status of that process?" See Exhibit.

23. Yet, clearly showing no sign of following process or procedure, 2 days later on April 14, 2022 Counsel Sweetapple filed the Notice of Publication of the Sale showing he has no intention of following the Suggestion of Death law and simply plans to steamroll forward with an illegal sale **making this Motion a proper motion filed as an EMERGENCY** See Filing #: 147731040; Filing Time: 04/14/2022 03:40:31 PM ET; Filer: Robert A Sweetapple 561-392-1230 2022.4.14. Proof of Publication WPB 7153971.pdf.

3 RECENT 4TH DCA CASES UPHOLDING SUGGESTION OF DEATH RULES MANDATING CANCELLATION OF SALE UPON ABATEMENT OF ACTION

24. There are at least 3 recent 4th DCA cases that uphold the Suggestion of Death rules making the actions of Counsel Sweetapple void and without effect and having no authority to have filed a Notice of Summary Judgment, Summary Judgment, and Final Judgment in Walter Sahm's name much less stood in front of this Court representing Walter Sahm as if he was alive but actually being Deceased appearing before the Court as a deceased man.

25. In a similar case from from just 3 months ago January of 2022, the 4th DCA noted, "Although counsel also represented the wife at the time of the hearing, **that would not equate to counsel being able to represent his deceased client or any future executor yet appointed.** See Rogers v. Concrete Scis, Inc., 394 So.2d 212, 213 (Fla. 1st DCA 1981) (**recognizing that death terminates the attorney-client relationship); Sullivan v. Sessions, 80 So.2d 706, 707 (Fla. 1955) (**recognizing that a personal representative stands in the decedent's shoes)." See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022) 4th, DCA.

26. And further, "Thus, the Schnurrs' counsel was without power on September 12 to accept the remittitur at that hearing. See Rogers, 394 So.2d at 213

(finding that plaintiff's attorney could not accept a pending settlement offer after plaintiff's death **because "[t]he death of a client terminates the relationship between the attorney and client and the attorney's authority to act by virtue thereof is extinguished**").” See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022) 4th, DCA.

27. In a 2019 4th DCA case the well established law on Suggestion of Death was noted, “**Obviously, upon the former wife's death, she ceased to be present before the court. Additionally, absent a valid order substituting the estate, the estate was not before the court** on June 19, 2017, either. **It is error to enter judgment against a non-present party.** Floyd v. Wallace , 339 So. 2d 653, 654 (Fla. 1976) (**finding cause of action abated upon death of indispensable party and court erred in "adjudicating the rights of the parties without having all of them actually or constructively before it" before properly substituting party in deceased respondent's case)**. See,

28. Still, **Because neither the former wife nor the estate was properly before the court** at the time the fee order was entered, that order **was void ab initio.** In such circumstances, t**he trial court should have abated proceedings until the substitution of the estate or personal**

representative. See Mattick v. Lisch , 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018) (stating that upon suggestion of death, correct course is to abate action until "the estate or a proper legal representative" is substituted). **See In re Marriage of Kirby 280 So. 3d 98, 100 (Fla. Dist. Ct. App. 2019) 4th DCA**

29. In 2020 the 4th DCA again applied the same rules on Suggestion of Death which goes back in Florida history over 50 years, **"If an indispens[a]ble party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).'** " Schaeffler , 38 So. 3d at 799 (quoting Cope v. Waugh , 627 So. 2d 136, 136 (Fla. 1st DCA 1993)). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent proceedings."** Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) (**finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings)."** See, De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).

30. Still, "**[I]t is well-settled that 'an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.'** " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129

S.W.3d 701, 704 n.1 (Tex. App. 2004)" and "**Error occurred, however, when Plaintiff elected to actively continue the litigation,** pursuant to his complaint filed against the fictitious "John Doe," commenced when no estate had been opened and no personal representative appointed. See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019) ; Adeland, 881 So. 2d at 710 ("**If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substitute**d."); see also Mattick v. Lisch , —– So.3d ——–, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party defendant and served** with the complaint. See In re Marriage of Kirby , 280 So. 3d at 100." SEE 4TH DCA De La Riva v. Chavez

31. 303 So. 3d 955, 959 (Fla. Dist. Ct. App. 2020)

32. Because Walter Sahm is a Party Plaintiff, was part of the transactions negotiated with Simon Bernsteiin, part of the Note and Mortgage, issued Handwritten letters to Ted Bernstein to Collect the Note balance due and Handwritten letters to Eliot Bernstein admitting our interest in the home and emailing my husband Eliot about our oldest son Joshua being OVER 18 BEFORE the 3rd Amended Complaint filed and knowing our identities for

years before 2013, Walter Sahm is an Indispensable party and now his Estate must be Substituted with a Proper Representative and all actions since his death Nullified as Void ab inito leaving NO Authority for Counsel Sweetapple to have filed for Summary Judgment or Final Judgment and no authority to have Filed for Notice of Sale or conduct sale in Walt Sahm's name. The action must be abated.

33. **Because there is no Proper Substitution for Deceased Plaintiff Walter Sahm, there is no proper party for Defendants to even Negotiate a Total Settlement with at this time.**

THE PENDING REHEARING UNDER 1.530 IS ADDITIONAL GROUNDS TO CANCEL SALE AS JUDGMENT IS SUSPENDED AND CAN NOT BE ENFORCED WHILE PENDING

34. Further, the case law also seems very clear in all District Courts of Appeal that: **While a motion for rehearing is pending, the trial court retains "complete control of its decree with the power to alter or change it .... " State ex rel. Owens v. Pearson , 156 So.2d 4, 7 (Fla. 1963). For this reason, it is well settled that "enforcement of a final judgment is suspended" by the filing of a timely motion for rehearing . 944**

CWELT–2007 LLC v. Bank of Am., N.A. , 194 So.3d 470, 471 (Fla. 3d DCA 2016).

35. **Here, the foreclosure sale must be set aside because it was conducted while the defendant's timely motion for rehearing directed at the foreclosure judgment was pending. See , e.g. , Diaz v. U.S. Bank, N.A. , 239 So.3d 151, 152 (Fla. 3d DCA 2018).** See 4th DCA Francois v. Library Square Ass'n, Inc. 250 So. 3d 728 (Fla. Dist. Ct. App. 2018.
36. Because the Motions for Rehearing are Pending and have not been Decided the Judgment is Suspended and can not be Enforced while Pending thus the Notice of Sale and Notice of Publication are further Void as acts attempting to Enforce the Judgment while Suspended and the Sale must now be canceled and the Clerk instructed to Cancel the Sale immediately.

BECAUSE THE ACTION IS ABATED BY SUGGESTION OF DEATH WALTER SAHM, ALL HEARINGS SUCH AS COUNSEL FERDERIGOS MOTION ON 1.530 MUST BE ABATED AND HELD IN ABEYANCE AS PROCEDURALLY OUT OF ORDER PENDING PROPER SUBSTITUTION FOR DECEASED PLAINTIFF WALTER SAHM

37. Because the action is abated and must be Ordered as abated pending proper substitution of indispensable party Plaintiff Walter Sahm, the Emergency

Hearing requested by Counsel Ferderigos must now be abated and held in abeyance pending proper substitution of Deceased Plaintiff Walter Sahm.

REFERRAL OF PLAINTIFF COUNSEL SWEETAPPLE TO FLORIDA BAR Or to Show Cause - DUTY OF CANDOR TO COURT AND PARTIES VIOLATED BY COUNSEL SWEETAPPLE 4TH DCA J.L. Prop. Owners Ass'n v. Schnurr

4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022)

"Deceased Plaintiff Walter Sahm" "Appearing' in Action Deceased for over 15 Months, Filing Notices of Hearings, Arguing Summary Judgments, Submitting Final Judgments, Submitting Notices of Sales and Publication

38. When it comes to Suggestion of Death, "As we have previously held, "[t]he rule does not spell out any specific requirements for the content of the suggestion of death , and we decline to add requirements that are not stated in the rule." Vera v. Adeland, 881 So.2d 707, 709 (Fla. 3d DCA 2004). All that is required is that the notice contain sufficient information necessary for any other party to move for substitution. Id. at 709–10 ; see also Martin v. Hacsi, 909 So.2d 935, 936 (Fla. 5th DCA 2005) (holding that the suggestion of death need not contain anything other than the fact of death). See, 3rd

DCA Feller v. R.J. Reynolds Tobacco Co., 240 So. 3d 61 (Fla. Dist. Ct. App. 2018).

39. Counsel Sweetapple has had OFFICIAL Notice in this action of the Statement of Fact of the Death and Suggestion of death of his Client Walter Sahm since at least my Husband's Suggestion of Death on April 2022, See ECASEVIEW Doc 149 and again my filing 2 days later Doc 156.

40. The 4th DCA cases and others cite cases going back to 1981 and earlier and Florida Bar articles are published on Suggestion of Death and what to do when a Client dies so Counsel Sweetapple can not claim ignorance of any of the rules and certainly not after being formally noticed. "**The death of a client terminates the relationship between the attorney and client and the attorney's authority to act by virtue thereof is extinguished. Bec Construction Corp. v. Gonzalez, 383 So.2d 1093 (Fla. 1st DCA 1980). See also Brickell v. McCaskell, 106 So. 470, 90 Fla. 441 (1925). Thus, the attorney here had no authority to accept the offer under the circumstances**." See, 1st DCA Rogers v. Concrete Sciences, Inc.

41. 394 So. 2d 212, 213 (Fla. Dist. Ct. App. 1981)

42. Just a few months ago on Jan. 5, 2022 the 4th DCA noted the following in a case where the Counsel ONLY knew about the Death for 5 days but still Waited until the END of a Hearing to Notify the Court and other parties

saying, “Finally, it must be noted, that "**[a]n attorney is first an officer of the court, bound to serve the ends of justice with openness, candor, and fairness to all."** Ramey v. Thomas, 382 So.2d 78, 81 (Fla. 5th DCA 1980); see also R. Regulating Fla. Bar 4-3.3. "**[T]he duty of candor imposes an obligation on counsel to notify the court of any development that may conceivably affect the outcome of the litigation .** . . ." Merkle v. Guardianship of Jacoby, 912 So.2d 595, 600 (Fla. 2d DCA 2005). **The passing of Mr. Schnurr would clearly fall under the category of such an event. Candor to the court ought to be timely, never belated. See id. (noting that the duty of candor compels "prompt disclosure"**). It is regrettable that counsel did not immediately, at the beginning of the September 12 hearing, disclose the information to opposing counsel and the trial court, if not earlier upon being notified of Mr. Schnurr's death.” See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474, at *10 (Fla. Dist. Ct. App. Jan. 5, 2022)

43. **Here it is over 15 MONTHS with NO NOTICE in the Action from Counsel Sweetapple on the Death of his Client** who Not only Refuses to Stipulate and Answer Questions on the Death but Continues to File as a Deceased Person Notices of Sale and Publication after illegally filing Notices

of Summary Judgment Hearings and arguing Summary Judgment and filing Final Judgments for a Deceased person with no authority.

44. This is a Fraud on the Court, wasting of Judicial resources, imposition of parties time where no real party present to Settle.

45. Either way certainly a fraud upon the parties and Court and when added to taking False Default against BFR under 2nd Amendment Complaint knowing it was replaced by 3rd Complaint and Service not proper, and not properly naming or Serving parties and colluding with Alan Rose who has withheld Trusts and Documents and Accountings of BFR records and other Estate and Trust monies that could have Satisfied the Sahms and taking an Illegal GAL against our son Joshua knowing he is 18 yet he “colludes” and “confers” with Sweetapple, this egregious conduct must cease and Counsel Sweetapple Referred to the Florida Bar or Ordered to Show Cause why not.

46. Concealment of material facts not only can be a fraud on the Court but lead to Dismissal with Prejudice: **The trial court's decision to dismiss this case with prejudice is supported by "the need to maintain [the] institutional integrity [of the judicial system] and the desirability of deterring future misconduct."** Ramey , 993 So.2d at 1020 (quoting Aoude v. Mobil Oil Corp. , 892 F.2d 1115, 1118 (1st Cir. 1989)) (alteration supplied). It is immaterial that Appellant does not appear to have had (or concealed) any prior neck injury

because "**where a party lies about matters pertinent to his own claim, or a portion of it , and perpetrates a fraud that permeates the entire proceeding, dismissal of the whole case is proper." Cox , 706 So.2d at 47 (citing Savino v. Fla. Drive In Theatre Mgmt., Inc. , 697 So.2d 1011 (Fla. 4th DCA 1997)**) (emphasis added). Accordingly, the trial court did not abuse its discretion in dismissing Appellant's suit. See, Wallace v. Keldie 47.249 So. 3d 747, 754 (Fla. Dist. Ct. App. 2018).

WHEREFORE it is respectfully prayed for an EMERGENCY ORDER Directing the Clerk of the Court to Cancel the Foreclosure Sale scheduled for April 20, 2022 and further ABATING the Action until Proper Substitution of Deceased Walter Sahm and Abating all Hearings until such time and Referring Counsel Sweetapple to Florida Bar or Ordering to Show Cause why not and for such other relief as is just and proper.

April 17, 2022

/s/Candice Bernstein

Candice Bernstein
2753 NW 34th St
Boca Raton, FL 33434
561-245-8588
tourcandy@gmail.com

CERT IFICAT E 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 17th day of April, 2022.

/s/Candice Bernstein
Candice Bernstein
2753 NW 34th St
Boca Raton, FL 33434
561-245-8588
tourcandy@gmail.com

EXHIBIT TO EMERGENCY MOTION TO DIRECT CLERK TO CANCEL SALE

CASE NO.: 50-2018-CA-002317

FILED BY CANDICE BERNSTEIN - **EMAIL SHOWING APRIL 12, 2022 REQUEST TO PLAINTIFF COUNSEL SWEETAPPLE TO STIPULATE TO CANCEL SALE, VACATE FINAL JUDGMENT,, MINIMIZE ATTORNEYS FEES, REQUEST FOR SUGGESTION OF DEATH INFORMATION**

SEE EMAIL REQUEST FOR STIPULATION BELOW

From: Candice Bernstein <TOURCANDY@gmail.com>

Date: April 12, 2022 at 4:49:36 PM EDT

To: Eliot Bernstein <iviewit@gmail.com>, amorburger@bellsouth.net, iviewit@iviewit.tv, LKJESQ@lkjesq.com, CSABOL@sabollaw.com, Sara@sabollaw.com, clara.c.ciadella@gmail.com, cmiller@sweetapplelaw.com, pleadings@sweetapplelaw.com, paralegal@sweetapplelaw.com, ARose@mrachek-law.com, mchandler@mrachek-law.com, blewter@mrachek-law.com, Dtescher@tescherlaw.com, agehle@tescherlaw.com, rspallina@tescherlaw.com, kmoran@tescherlaw.com, aciklin@ciklinlubitz.com, service@ocalawyers.com, tdodson@ocalawyers.com, slessne@gunster.com, lvanegas@gunster.com, eservice@gunster.com, dzlewis@aol.com, boconnell@ocalawyers.com, Janet.Craig@opco.com, Hunt.Worth@opco.com, ted@lifeinsuranceconcepts.com, mayanne.downs@gray-robinson.com, leslie@leslieannlaw.com, leslie@fightingfirm.com, TeleNetJosh@gmail.com, telenetjake@gmail.com, dannymojo1@gmail.com, rsweetapple@sweetapplelaw.com, bsweetapple@sweetapplelaw.com, Nalzate@sweetapplelaw.com, legalassistant@sweetapplelaw.com, mandelappeals@gmail.com, roberta@mandellawgroup.com, paralegal@mandellawgroup.com

Subject: Counsel Sweetapple, April 12, 2022 Request to Stipulate to Cancel Notice of Sale, Cancel Sale, Vacate Judgment, or Stay and Request for Suggestion of Death Information

Mr. Sweetapple,

I am requesting in the interest of minimizing attorney's fees, unnecessary litigation and interest of justice that you and your client (s) Voluntarily Stipulate as follows:

1. Cancel the Notice of Sale and Cancel Sale by formal Motion on Record; AND

2. Stipulate to Vacate the Final Judgment OR Stipulate to Stay the Final Judgment Cancelling any Sale while 1.530 Rehearing Pending and further on Appeal if an Appeal is necessary.

As you are or should be aware, I filed a Suggestion of Death stating the Fact of the Death on the Record under ECaseview Document NO. 156 and my husband Eliot Bernstein also filed a Suggestion of Death suggesting the Fact of the Death of Plaintiff Walter Sahm, your client, on the Record under ECaseview Document No 149.

Without regard to law or process or due process with knowledge that these Suggestions of Death were formally made on the Record, you proceeded to file the Notice of Sale under your name as a Licensed attorney on April 7, 2022. under ECaseview Document No. 158. The Notice of Sale was improperly filed in the name of Plaintiff Walter Sahm who has been deceased since Jan of 2021 according to the Suggestion of Death made on the record as shown above.

The law of Suggestion of Death appears very clear in all the District Courts of Appeal and I specifically cited the recent 2020 4th DCA case of De La Riva v. Chavez

303 So. 3d 955 (Fla. Dist. Ct. App. 2020) which states in part as follows:

> "**If an indispens[a]ble party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).' " Schaeffler , 38 So. 3d at 799** (quoting Cope v. Waugh , 627 So. 2d 136, 136 (Fla. 1st DCA 1993)). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent**

proceedings." Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) **(finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings).**

[I]t is well-settled that 'an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.' " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129 S.W.3d 701, 704 n.1 (Tex. App. 2004)). "[O]nly when the proper party is in existence may it then be properly served and substituted ...." Stern v. Horwitz , 249 So. 3d 688, 691 (Fla. 2d DCA 2018) (citations omitted) (emphasis added).

E**rror occurred, however, when Plaintiff elected to actively continue the litigation, pursuant to his complaint** filed against the fictitious "John Doe," commenced **when no estate had been opened and no personal representative appointed. See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019)** ; Adeland, 881 So. 2d at 710 ("If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substituted."); see also Mattick v. Lisch , —— So.3d ——, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party defendant and served with the complaint.** See In re Marriage of Kirby , 280 So. 3d at 100.

Thus, the first amended complaint violated Rule 1.260(a)(1) and the subsequent proceedings prior to the filing of the second amended complaint were a nullity. See Schaeffler , 38 So. 3d at 799-800. (Emphasis added see De La Riva 4th DCA as cited above.

Schaeffler which is cited by De La Riva in 2020 is also a 4th DCA case.

The formal motions further cited well established case law showing that the authority to act on behalf of the deceased person terminated upon death until a proper party substituted thus the entire Summary Judgment and Final Judgment and Notice of Sale are a nullity under law.

Further, the case law also seems very clear in all District Courts of Appeal that:

> **While a motion for rehearing is pending, the trial court retains "complete control of its decree with the power to alter or change it .... " State ex rel. Owens v. Pearson , 156 So.2d 4, 7 (Fla. 1963). For this reason, it is well settled that "enforcement of a final judgment is suspended" by the filing of a timely motion for rehearing . 944 CWELT–2007 LLC v. Bank of Am., N.A. , 194 So.3d 470, 471 (Fla. 3d DCA 2016).**

> **Here, the foreclosure sale must be set aside because it was conducted while the defendant's timely motion for rehearing directed at the foreclosure judgment was pending. See , e.g. , Diaz v. U.S. Bank, N.A. , 239 So.3d 151, 152 (Fla. 3d DCA 2018).** See 4th DCA Francois v. Library Square Ass'n, Inc.
>
> 250 So. 3d 728 (Fla. Dist. Ct. App. 2018.

Thus, your Notice of Sale is invalid as violating the Rule on Suggestion of Death and because the Judgment is Suspended as the Rehearing is still pending.

We can Stipulate to Hearing dates on the 1.530 as well.

A formal motion for Cancellation of the Notice of Sale and Sale and Abatement and Stay will be filed if you do not agree to Stipulate within 48 hours.

Also;, since you should have known about the Death of Walt Sahm in Jan. of 2021, please provide:

1. When did you find out about the Death of Wallt Sahm?

2. Is there an Estate case opened? If so has a PR been appointed and who is it?

3. What is the status of that process?

I await your reply.

Candice Bernstein

tourcandy@gmail.com

+15618867627

EXHIBIT 3

Filing # 147805345 E-Filed 04/17/2022 05:01:22 AM

IN THE CIRCUIT COURT OF THE l5TH 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,
Et al

Defendants

Emergency Motion for an Order Directing Clerk to Cancel Sale upon Abatement of Proceedings - Suggestion of Death -Fact of Death on Record confirmed by Deputy Chief Registrar. Sumter County, State of Florida Official State Death Certificate Number And for Abatement of all other Motions and Hearings; Referral to Florida Bar OR SHOW CAUSE

EMERGENCY MOTION FOR ORDER DIRECTING CLERK TO CANCEL IMMINENT FORECLOSURE SALE SCHEDULED FOR APRIL 20, 2022 ;

AND ORDER OF ABATEMENT UPON CONFIRMED SUGGESTION OF DEATH - FACT OF DEATH STATED UPON RECORD OF INDISPENSABLE PARTY PLAINTIFF WALTER E. SAHM CONFIRMED BY OFFICIAL SUMTER COUNTY HEALTH DEPARTMENT RECORDS AND DEPUTY CHIEF REGISTRAR;

AND FURTHER ABATEMENT OF REQUEST FOR EMERGENCY HEARING BY DEFENDANTS ON 1.530 AS PROCEDURALLY OUT OF ORDER DUE TO ABATEMENT BY THE DEATH OF PLAINTIFF

WALTER SAHM AND REFERRAL TO FLORIDA BAR OF COUNSEL SWEETAPPLE OR SHOW CAUSE

COMES NOW, Defendant Eliot Bernstein, who respectfully shows this Court as follows:

1. I am the Defendant Eliot Bernstein, an indispensable party with rights of beneficial ownership and possession of the real property that is the subject of this foreclosure action at 2753 NW 34th St, Boca Raton, FL 33434 located in Palm Beach County.
2. In addition to previously filed URLs of published articles from Plaintiff Walter Sahm's college alma mater Notre Dame stating the Fact of the Death of Walt Sahm occurring on Jan. 5, 2021 which was filed on the Record by myself April 4, 2022 by formal Suggestion of Death docketed in this case, 2 days ago on April 15, 2022 the Fact of Death of Plaintiff Walter Sahm **was further Confirmed and verified by Jennifer Stansfield, Chief Deputy Registrar of Sumter County Health Department 8015 E CR-466 The Villages, FL 32162 PH:352-689-4675\providing** Official State of Florida Death Certificate STATE FILE NUMBER 2021002655 which is to be Mailed on Monday and was confirmed as occurring *on Jan. 5, 2021,* ***over 15 months ago***.
3. With Florida having long established rules on abatement of actions upon Suggestion of Death until a proper appointed party is Substituted such as a

Personal Representative, Curator or Guardian ad litem with proper authority to act for a deceased person and discovering how this was Concealed by Plaintiff Counsel Sweetapple thereby acting illegally and without authority in this action for months using a Deceased Person to falsely file and take a Judgment in this action, in essence a Fraud Upon the Court itself, I thus am making this Emergency Motion for an immediate Order Directing the Clerk to Cancel the imminent illegal Foreclosure Sale of April 20, 2022 as there has never been any Proper Substitution of indispensable party Plaintiff Sahm under Rule 1.260.

4. Instead his Counsel Robert Sweetapple falsely filed Notices in the Court and appeared before the Court without legal authority to do so for a Deceased person as no PR or Curator or other Guardian ad litem had been appointed nor substituted into the case and the law in Florida is well established that Sweetapple essentially appeared before the Court in fraud and total lack of candor to the Court and parties furthering other frauds to gain an illegal sale of the property which is an Asset of BFR, LLC which must now be stopped.
5. I further seek an official Order of Abatement of the action pending proper Substitution of Deceased Plaintiff Walter Sahm, thus holding in abeyance the Emergency Motion by Counsel Ferderigos until at least a proper Substitution

occurs as despite operation of law upon Suggestion of Death Counsel Sweetapple needs an Order to comply.

6. I further move for Referring Counself Sweetapple to the Florida Bar or Ordering him to Show Cause why not.
7. I am a named party Defendant with standing and rights of equity and beneficial ownership in the subject property having lived and contributed to the upkeep and maintenance of the property for over 13 years and essentially having a Life Estate in the subject property as part of complex estate planning intended by my father Simon Bernstein having moved here to be close to him and my mother Shirley Bernstein at their request having further been in business with my father for many years.
8. The subject property was specifically selected and purchased so my parents Simon and Shirley could be close to my wife Candice, myself and our children, Joshua, Jacob and Daniel Bernstein.
9. I have lived at the subject property during these entire 13 plus years taking many actions to preserve and protect this Asset which was purchased through BFR, LLC owned solely by the Trusts of my 3 sons as part of Asset Protection plans by my father who was an original investor in my Technologies heralded by leading experts at Lockheed Martin, the Intel

Corp, SGI and others as the Holy Grail of the Internet valued in the hundreds of billions over the life of the IP at the time.

10. For those and other reasons there were complex arrangements and asset planning with my father Simon.

11. William Stansbury, a business friend and partner of my father Simon Bernstein, can testify to the Asset Protection Planning to protect the home and subject property of this foreclosure so my sons would always have a place to live and so would my wife Candice and I as long as we chose as also shown by the Sworn Affidavit of William Stansbury which is now filed in this Record as an Exhibit during the Motion for Rehearing process under 1.530. See Document No. 140 ECaseview.

12. Bill was also a good friend of now Deceased Plaintiff Walter Sahm who entered into a business deal with my father to close up his insurance business so he could retire which then involved the purchase of the subject property.

13. This affidavit of Mr. Stansbury confirms the constructive Life Estate nature of my rights in the subject property and together with rights of equity and beneficial ownership I therefore have proper standing to bring this Emergency Motion for an Order Directing the Clerk to Cancel the Scheduled Foreclosure Sale currently Scheduled for April 20, 2022.

14. The 4th DCA recently quoted in January of this year 2022 as the Rehearing was starting the following, "[T]he general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a complete decree may be made binding upon all parties." Two Islands Dev. Corp. v. Clarke, 157 So.3d 1081, 1084 (Fla. 3d DCA 2015) (quoting Sheoah Highlands, Inc. v. Daugherty, 837 So.2d 579, 583 (Fla. 5th DCA 2003)) and further that , (**"For these reasons, no doubt, this court has repeatedly held that persons whose interests will necessarily be affected by any decree that can be rendered in a cause are necessary and indispensable parties and that the court will not proceed without them.").** See, Fla. Dep't of Transp. v. Lauderdale Boat Yard, LLC No. 4D20-1184 (Fla. Dist. Ct. App. Jan. 5, 2022.

15. The Stansbury affidavit shows he was not only named Successor Trustee for several of my father's Trusts but further that more than sufficient assets were or should have been available to Satisfy the Sahm Note upon his death in Sept. of 2012 which is also supported by the Walter Sahm handwritten letter to Ted Bernstein in June of 2013 referencing a Direct Income stream to have Satisfied the Sahms yet meanwhile for years Ted Bernstein and other

attorneys like Alan Rose and now Counsel Sweetapple conceal and hold material facts from Courts and parties using the Courts as a weapon.

16. So there are meritorious defenses and issues in these rights to be adjudicated in a proper case with proper jurisdiction if this action even survives.
17. Because these rights are now in imminent jeopardy of being lost to an improper Sale I have standing to bring this Emergency Motion.

NATURE OF EMERGENCY - IMMINIENT PENDING SALE APRIL 20, 2022 JUST 4 DAYS AWAY WHILE PLAINTIFF COUNSEL SWEETAPPLE CONTINUES TO ACT IN VIOLATION OF ABATEMENT AND SUGGESTION OF DEATH OF PLAINTIFF WALTER SAHM ACTING WITHOUT AUTHORITY TO FILE NOTICES AND CONDUCT A SALE ON BEHALF OF A DECEASED FORMER CLIENT MAKING THE SALE ILLEGAL WHICH MUST NOW BE STOPPED

18. On April 4, 2022 under ECASEVIEW Document No. 149 I filed a SUGGESTION OF DEATH of Indispensable Party Walter Sahm as a Fact on the Record **which was SERVED by the E-Florida CAD system on Plaintiff's Counsel Robert Sweetapple.**
19. This Suggestion of Death contained 2 URL Links to articles including the College Alma Mater of Plaintiff Walter Sahm at Notre Dame Honoring and

Respecting the Passing of this basketball star for the Fighting Irish and listed the Date of Death as Jan. 5, 2021.

20. Two days later on April 6, 2022 my wife Candice also filed a Suggestion of Death for Plaintiff Walter Sahm under ECASEVIEW Document No. 156 and in Document No. 157 attached as an Exhibit the full print outs of the articles stating the Fact of Plaintiff Walter Sahm's Death on the Record.

21. **Plaintiff's Counsel Robert Sweetapple was again Served Electronically with the Suggestion of Death of his Client Walter Sahm in my filing April 6, 2022** by the CAD E Service system.

22. Both my Suggestion of Death and my Wife Candice's Suggestion of Death cited very clear English language in Caselaw from the 4th DCA and other DCAs making it very clear that once the Fact of the Death is Suggested on the Record the Case Abates, the Lawyer's authority to represent the Deceased person Terminates and any proceedings that continued without the indispensable party being properly substituted are nullites and void.

23. The filings also raised the question of when Counsel Sweetapple first knew of the Death of his Indispensable Plaintiff Party client Walt Sahm but that **at the very least Counsel Sweetapple had to know of the Death by the time he filed for the Notice of Summary Judgment in August of 2021 nearly 8 months ago now.** Logic and reason would say Counsel Sweetapple knew of

the death of his Client Walt Sahm months before but surely by the time he was preparing for Summary Judgment he would have been in touch with his clients and found out. So far he doesn't want to answer questions which is contrary to Suggestion of Death procedure and laws in Florida.

24. Despite the clear notice of Death and English language showing Counsel Sweetapple's right to represent Walt Sahm terminated upon Death until some proper Substitution, ***the very next day on April 7, 2022 Counsel Sweetapplle without Responding or Filing ANY PROPER SUBSTITUTION f***or **Deceased Walter Sahm and Without authority to Act for Deceased Walter Sahm filed a Notice of Sale in his Name** under ECASEVIEW Document No. 158 **which is VOID and a NULLITY as a DECEASED PERSON CAN NOT FILE A LEGAL NOTICE FOR SALE IN COURT for a Sale in their name since they are Deceased.**

25. Even more egregious, just 4 days ago on April 12, 2022, in an effort to minimize attorneys fees and unnecessary litigation, I emailed a Request to Counsel Sweetapple to Stipulate to Cancel the Sale and Vacate the Final Judgment or alternatively Stay the Judgment which is Suspended during 1.530 but further on Appeal if necessary. See Attached Exhibit.

26. This email again noticed Counsel Sweetapple of the Suggestion of Death of Plaintiff Walt Sahm and the clear case law showing no authority to act and

abatement occurs until proper Substitution of proper party such as a Personal Representative, Curator or Guardian ad Litem and that all proceedings until Substitution occurred are a nullity.

27. The email also asked Counsel Sweetapple the following Questions to get Discovery on the Deceased Party and efforts to Substitute with a proper party as follows: "1. When did you find out about the Death of Wallt Sahm? 2. Is there an Estate case opened? If so has a PR been appointed and who is it? 3. What is the status of that process?" See Exhibit.

28. Yet, clearly showing no sign of following process or procedure, 2 days later on April 14, 2022 Counsel Sweetapple filed the Notice of Publication of the Sale showing he has no intention of following the Suggestion of Death law and simply plans to steamroll forward with an illegal sale **making this Motion a proper motion filed as an EMERGENCY** See Filing #: 147731040; Filing Time: 04/14/2022 03:40:31 PM ET; Filer: Robert A Sweetapple 561-392-1230 2022.4.14. Proof of Publication WPB 7153971.pdf.

29. The publication of Sale names an improper party, a Deceased party Walter Sahm creating an additional reason to grant this Emergency motion to Direct the Clerk to Cancel the Sale scheduled for April 20, 2022 just 3 days from now.

3 RECENT 4TH DCA CASES UPHOLDING SUGGESTION OF DEATH RULES MANDATING CANCELLATION OF SALE BECAUSE OF LACK OF AUTHORITY, LACK OF PROPER PARTY AND UPON ABATEMENT OF ACTION BY OPERATION OF LAW

30. There are at least 3 recent 4th DCA cases that uphold the Suggestion of Death rules making the actions of Counsel Sweetapple void and without effect and having no authority to have filed a Notice of Summary Judgment, Summary Judgment, and Final Judgment in Walter Sahm's name much less stood in front of this Court representing Walter Sahm as if he was alive but actually being Deceased appearing before the Court as a deceased man.

31. In a similar case from just 3 months ago January of 2022, the 4th DCA noted, "Although counsel also represented the wife at the time of the hearing, **that would not equate to counsel being able to represent his deceased client or any future executor yet appointed.** See Rogers v. Concrete Scis, Inc., 394 So.2d 212, 213 (Fla. 1st DCA 1981) (**recognizing that death terminates the attorney-client relationship); Sullivan v. Sessions, 80 So.2d 706, 707 (Fla. 1955) (**recognizing that a personal representative stands in the decedent's shoes)." See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022) 4th, DCA.

32. And further, "Thus, the Schnurrs' counsel was without power on September 12 to accept the remittitur at that hearing. See Rogers, 394 So.2d at 213 (finding that plaintiff's attorney could not accept a pending settlement offer after plaintiff's death **because "[t]he death of a client terminates the relationship between the attorney and client and the attorney's authority to act by virtue thereof is extinguished**")." See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022) 4th, DCA.

33. In a 2019 4th DCA case the well established law on Suggestion of Death was noted, "**Obviously, upon the former wife's death, she ceased to be present before the court. Additionally, absent a valid order substituting the estate, the estate was not before the court** on June 19, 2017, either. **It is error to enter judgment against a non-present party.** Floyd v. Wallace , 339 So. 2d 653, 654 (Fla. 1976) (**finding cause of action abated upon death of indispensable party and court erred in "adjudicating the rights of the parties without having all of them actually or constructively before it" before properly substituting party in deceased respondent's case)**. See, See In re Marriage of Kirby 280 So. 3d 98, 100 (Fla. Dist. Ct. App. 2019) 4th DCA.

34. Still,”**Because neither the former wife nor the estate was properly before the court** at the time the fee order was entered, that order **was void ab initio.** In such circumstances, t**he trial court should have abated proceedings until the substitution of the estate or personal representative.** See Mattick v. Lisch , 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018) (stating that upon suggestion of death, correct course is to abate action until "the estate or a proper legal representative" is substituted).” **See In re Marriage of Kirby 280 So. 3d 98, 100 (Fla. Dist. Ct. App. 2019) 4th DCA.**

35. In 2020 the 4th DCA again applied the same rules on Suggestion of Death which goes back in Florida history over 50 years, **"If an indispens[a]ble party to an action dies, ‘the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).’** " Schaeffler , 38 So. 3d at 799 (quoting Cope v. Waugh , 627 So. 2d 136, 136 (Fla. 1st DCA 1993)). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent proceedings."** Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) (**finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings).”** See, De La Riva v. Chavez 303 So. 3d 955, 958 (Fla. Dist. Ct. App. 2020).

36. Still, "**[I]t is well-settled that 'an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.'** " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129 S.W.3d 701, 704 n.1 (Tex. App. 2004)" and "**Error occurred, however, when Plaintiff elected to actively continue the litigation,** pursuant to his complaint filed against the fictitious "John Doe," commenced when no estate had been opened and no personal representative appointed. See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019) ; Adeland, 881 So. 2d at 710 ("**If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substitute**d."); see also Mattick v. Lisch , —— So.3d ——, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party defendant and served** with the complaint. See In re Marriage of Kirby , 280 So. 3d at 100." SEE 4TH DCA De La Riva v. Chavez 303 So. 3d 955, 959 (Fla. Dist. Ct. App. 2020)

37. Because Walter Sahm is a Party Plaintiff, was part of the transactions negotiated with Simon Bernsteiin, part of the Note and Mortgage, issued

Handwritten letters to Ted Bernstein to Collect the Note balance due and Handwritten letters to my wife Candice Bernstein and I admitting our interests in the home in 2013 years before this lawsuit and emailing my me about our oldest son Joshua being OVER 18 BEFORE the 3rd Amended Complaint filed and knowing our identities for years before 2013, Walter Sahm is an Indispensable party and now his Estate must be Substituted with a Proper Representative and all actions since his death Nullified as Void ab initio leaving NO Authority for Counsel Sweetapple to have filed for Summary Judgment or Final Judgment and no authority to have Filed for a Notice of Sale or conduct sale in Walt Sahm's name or even file Publication of the Sale which also is void and also in the name of the wrong party due to the fact of death. The action must now be Ordered abated since Counsel Sweetapple is disregarding due process and the process of law. .

38. **Because there is no Proper Substitution for Deceased Plaintiff Walter Sahm, there is no proper party for Defendants to even Negotiate a Total Settlement with at this time.**

THE PENDING REHEARING UNDER 1.530 IS ADDITIONAL GROUNDS TO CANCEL SALE AS JUDGMENT IS SUSPENDED AND CAN NOT BE ENFORCED WHILE PENDING

39. It is undisputed that no Decision or Determination on the pending motions for Rehearing have been made by the Court yet and thus by operation of law the Judgment is Suspended and the acts by Counsel Sweetapple improperly attempting to Enforce the Judgment by filing a Notice of Sale and Publication of Sale are further void for that very reason, the Judgment is Suspended and no acts of enforcement permitted while the Rehearing is pending.

40. Further, the case law also seems very clear in all District Courts of Appeal that: **While a motion for rehearing is pending, the trial court retains "complete control of its decree with the power to alter or change it .... " State ex rel. Owens v. Pearson , 156 So.2d 4, 7 (Fla. 1963). For this reason, it is well settled that "enforcement of a final judgment is suspended" by the filing of a timely motion for rehearing . 944 CWELT–2007 LLC v. Bank of Am., N.A. , 194 So.3d 470, 471 (Fla. 3d DCA 2016).**

41. **Here, the foreclosure sale must be set aside because it was conducted while the defendant's timely motion for rehearing directed at the foreclosure judgment was pending. See , e.g. , Diaz v. U.S. Bank, N.A. , 239 So.3d 151, 152 (Fla. 3d DCA 2018).**

See 4th DCA Francois v. Library Square Ass'n, Inc. 250 So. 3d 728 (Fla. Dist. Ct. App. 2018.

42. Because the Motions for Rehearing are Pending and have not been Decided the Judgment is Suspended by operation of law and can not be Enforced while Pending thus the Notice of Sale and Notice of Publication are further Void as acts attempting to Enforce the Judgment while Suspended and the Sale must now be canceled and the Clerk instructed to Cancel the Sale immediately.

BECAUSE THE ACTION IS ABATED BY SUGGESTION OF DEATH WALTER SAHM, ALL HEARINGS SUCH AS COUNSEL FERDERIGOS MOTION ON 1.530 MUST BE ABATED AND HELD IN ABEYANCE AS PROCEDURALLY OUT OF ORDER PENDING PROPER SUBSTITUTION FOR DECEASED PLAINTIFF WALTER SAHM

43. Because the action is abated and must be Ordered as abated pending proper substitution of indispensable party Plaintiff Walter Sahm, the Emergency Hearing requested by Counsel Ferderigos must also be abated and held in abeyance pending proper substitution of Deceased Plaintiff Walter Sahm.

REFERRAL OF PLAINTIFF COUNSEL SWEETAPPLE TO FLORIDA BAR Or to Show Cause - DUTY OF CANDOR TO COURT AND PARTIES

VIOLATED BY COUNSEL SWEETAPPLE 4TH DCA J.L. Prop. Owners Ass'n v. Schnurr

4D19-3474 (Fla. Dist. Ct. App. Jan. 5, 2022)

"Deceased Plaintiff Walter Sahm" "Appearing' in Action Deceased for over 15 Months, Filing Notices of Hearings, Arguing Summary Judgments, Submitting Final Judgments, Submitting Notices of Sales and Publication

44. When it comes to Suggestion of Death, "As we have previously held, "[t]he rule does not spell out any specific requirements for the content of the suggestion of death , and we decline to add requirements that are not stated in the rule." Vera v. Adeland, 881 So.2d 707, 709 (Fla. 3d DCA 2004). All that is required is that the notice contain sufficient information necessary for any other party to move for substitution. Id. at 709–10 ; see also Martin v. Hacsi, 909 So.2d 935, 936 (Fla. 5th DCA 2005) (holding that the suggestion of death need not contain anything other than the fact of death). See, 3rd DCA Feller v. R.J. Reynolds Tobacco Co., 240 So. 3d 61 (Fla. Dist. Ct. App. 2018).

45. Counsel Sweetapple has had OFFICIAL Notice in this action of the Statement of Fact of the Death and Suggestion of death of his Client Walter Sahm since at least my Suggestion of Death on April 4th, 2022, See

ECASEVIEW Doc 149 and again my wife Candicei's filing 2 days later at Doc 156 on April 6, 2022.

46. The 4th DCA cases and others cite cases going back to 1981 and earlier and Florida Bar articles are published on Suggestion of Death and what to do when a Client dies so Counsel Sweetapple can not claim ignorance of any of the rules and certainly not after being formally noticed. "**The death of a client terminates the relationship between the attorney and client and the attorney's authority to act by virtue thereof is extinguished. Bec Construction Corp. v. Gonzalez, 383 So.2d 1093 (Fla. 1st DCA 1980). See also Brickell v. McCaskell, 106 So. 470, 90 Fla. 441 (1925). Thus, the attorney here had no authority to accept the offer under the circumstances**." See, 1st DCA Rogers v. Concrete Sciences, Inc. 394 So. 2d 212, 213 (Fla. Dist. Ct. App. 1981)

47. Just a few months ago on Jan. 5, 2022 the 4th DCA noted the following in a case where the Counsel ONLY knew about the Death for 5 days but still Waited until the END of a Hearing to Notify the Court and other parties saying, "Finally, it must be noted, that "**[a]n attorney is first an officer of the court, bound to serve the ends of justice with openness, candor, and fairness to all."** Ramey v. Thomas, 382 So.2d 78, 81 (Fla. 5th DCA 1980); see also R. Regulating Fla. Bar 4-3.3. "**[T]he duty of candor imposes an**

obligation on counsel to notify the court of any development that may conceivably affect the outcome of the litigation . . . ." Merkle v. Guardianship of Jacoby, 912 So.2d 595, 600 (Fla. 2d DCA 2005). **The passing of Mr. Schnurr would clearly fall under the category of such an event. Candor to the court ought to be timely, never belated. See id. (noting that the duty of candor compels "prompt disclosure"**). It is regrettable that counsel did not immediately, at the beginning of the September 12 hearing, disclose the information to opposing counsel and the trial court, if not earlier upon being notified of Mr. Schnurr's death." See, J.L. Prop. Owners Ass'n v. Schnurr 4D19-3474, at *10 (Fla. Dist. Ct. App. Jan. 5, 2022)

48. **Here it is over 15 MONTHS with NO NOTICE in the Action from Counsel Sweetapple on the Death of his Client** who Not only Refuses to Stipulate and Answer Questions on the Death but Continues to File as a Deceased Person Notices of Sale and Publication after illegally filing Notices of Summary Judgment Hearings and arguing Summary Judgment and filing Final Judgments for a Deceased person with no authority.
49. This is a Fraud on the Court, wasting of Judicial resources, imposition of parties time where no real party present to Settle or at least incomplete parties to settle.

50. Either way certainly a fraud upon the parties and Court and when added to taking False Default against BFR under 2nd Amendment Complaint knowing it was replaced by 3rd Complaint and Service not proper, and not properly naming or Serving parties and colluding with Alan Rose who has withheld Trusts and Documents and Accountings of BFR records and other Estate and Trust monies that could have Satisfied the Sahms and taking an Illegal GAL against our son Joshua knowing he is 18 yet he “colludes” and “confers” with Sweetapple, this egregious conduct must cease and Counsel Sweetapple Referred to the Florida Bar or Ordered to Show Cause why not.

51. Concealment of material facts not only can be a fraud on the Court but lead to Dismissal with Prejudice: **The trial court's decision to dismiss this case with prejudice is supported by "the need to maintain [the] institutional integrity [of the judicial system] and the desirability of deterring future misconduct."** Ramey , 993 So.2d at 1020 (quoting Aoude v. Mobil Oil Corp. , 892 F.2d 1115, 1118 (1st Cir. 1989)) (alteration supplied). It is immaterial that Appellant does not appear to have had (or concealed) any prior neck injury because "**where a party lies about matters pertinent to his own claim, or a portion of it , and perpetrates a fraud that permeates the entire proceeding, dismissal of the whole case is proper." Cox , 706 So.2d at 47 (citing Savino v. Fla. Drive In Theatre Mgmt., Inc. , 697 So.2d 1011 (Fla.**

4th DCA 1997)) (emphasis added). Accordingly, the trial court did not abuse its discretion in dismissing Appellant's suit. See, Wallace v. Keldie 52.249 So. 3d 747, 754 (Fla. Dist. Ct. App. 2018).

WHEREFORE it is respectfully prayed for an EMERGENCY ORDER Directing the Clerk of the Court to Cancel the Foreclosure Sale scheduled for April 20, 2022 and further ABATING the Action until Proper Substitution of Deceased Walter Sahm and Abating all Hearings until such time and Referring Counsel Sweetapple to Florida Bar or Ordering to Show Cause why not and for such other relief as is just and proper.

April 17, 2022

/s/Eliot Bernstein
Eliot Bernstein
2753 NW 34th St
Boca Raton, FL 33434
561-245-8588
iviewit@iviewit.tv

CERTIFICATE 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 17th day of April, 2022.

/s/Eliot Bernstein

Eliot Bernstein
2753 NW 34th St
Boca Raton, FL 33434
561-245-8588
iviewit@iviewit.tv

EXHIBIT TO EMERGENCY MOTION TO DIRECT CLERK TO CANCEL SALE AND ABATEMENT OF ACTION ON SUGGESTION OF DEATH

CASE NO.: 50-2018-CA-002317

FILED BY ELIOT BERNSTEIN - **EMAIL SHOWING APRIL 12, 2022 REQUEST TO PLAINTIFF COUNSEL SWEETAPPLE TO STIPULATE TO CANCEL SALE, VACATE FINAL JUDGMENT,, MINIMIZE ATTORNEYS FEES, REQUEST FOR SUGGESTION OF DEATH INFORMATION**

SEE EMAIL REQUEST FOR STIPULATION BELOW

From: Eliot Bernstein <iviewit@gmail.com>

Date: April 12, 2022 at 4:41:37 PM EDT

To: amorburger@bellsouth.net, tourcandy@gmail.com, iviewit@iviewit.tv, LKJESQ@lkjesq.com, CSABOL@sabollaw.com, Sara@sabollaw.com, clara.c.ciadella@gmail.com, cmiller@sweetapplelaw.com, pleadings@sweetapplelaw.com, paralegal@sweetapplelaw.com, iviewit@iviewit.tv, iviewit@gmail.com, tourcandy@gmail.com, ARose@mrachek-law.com, mchandler@mrachek-law.com, blewter@mrachek-law.com, ARose@mrachek-law.com, mchandler@mrachek-law.com, blewter@mrachek-law.com, Dtescher@tescherlaw.com, agehle@tescherlaw.com, rspallina@tescherlaw.com, kmoran@tescherlaw.com, aciklin@ciklinlubitz.com, service@ocalawyers.com, tdodson@ocalawyers.com, slessne@gunster.com, lvanegas@gunster.com, eservice@gunster.com, dzlewis@aol.com, ARose@mrachek-law.com, aciklin@ciklinlubitz.com, boconnell@ocalawyers.com, Janet.Craig@opco.com, Hunt.Worth@opco.com, ted@lifeinsuranceconcepts.com, slessne@gunster.com, mayanne.downs@gray-robinson.com, dzlewis@aol.com, leslie@leslieannlaw.com, leslie@fightingfirm.com, TeleNetJosh@gmail.com, telenetjake@gmail.com, dannymojo1@gmail.com, pleadings@sweetapplelaw.com, paralegal@sweetapplelaw.com, rsweetapple@sweetapplelaw.com, bsweetapple@sweetapplelaw.com, Nalzate@sweetapplelaw.com, pleadings@sweetapplelaw.com, legalassistant@sweetapplelaw.com, mandelappeals@gmail.com, roberta@mandellawgroup.com, paralegal@mandellawgroup.com

Subject: Counsel Sweetapple, April 12, 2022 Request to Stipulate to Cancel Notice of Sale, Cancel Sale, Vacate Judgment, or Stay and Request for Suggestion of Death Information

Mr. Sweetapple,

I am requesting in the interest of minimizing attorney's fees, unnecessary litigation and interest of justice that you and your client (s) Voluntarily Stipulate as follows:

1. Cancel the Notice of Sale and Cancel Sale by formal Motion on Record; AND

2. Stipulate to Vacate the Final Judgment OR Stipulate to Stay the Final Judgment Cancelling any Sale while 1.530 Rehearing Pending and further on Appeal if an Appeal is necessary.

As you are or should be aware, I filed a Suggestion of Death stating the Fact of the Death on the Record under ECaseview Document NO. 149 and my wife Candice Bernstein also filed a Suggestion of Death suggesting the Fact of the Death of Plaintiff Walter Sahm, your client, on the Record under ECaseview Document No 156.

Without regard to law or process or due process with knowledge that these Suggestions of Death were formally made on the Record, you proceeded to file the Notice of Sale under your name as a Licensed attorney on April 7, 2022. under ECaseview Document No. 158. The Notice of Sale was improperly filed in the name of Plaintiff Walter Sahm who has been deceased since Jan of 2021 according to the Suggestion of Death made on the record as shown above.

The law of Suggestion of Death appears very clear in all the District Courts of Appeal and I specifically cited the recent 2020 4th DCA case of De La Riva v. Chavez

303 So. 3d 955 (Fla. Dist. Ct. App. 2020) which states in part as follows:

"**If an indispens[a]ble party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [R]ule 1.260(a)(1).' " Schaeffler , 38 So. 3d at 799** (quoting Cope v. Waugh , 627 So. 2d 136, 136 (Fla. 1st DCA 1993)). **Moreover, the "[f]ailure to substitute the proper representative or guardian nullifies subsequent proceedings."** Id. at 800 ; see also Ballard v. Wood , 863 So. 2d 1246, 1249 (Fla. 5th DCA 2004) **(finding that a failure to substitute pursuant to Rule 1.260(a)(1) nullified the subsequent proceedings).**

[I]t is well-settled that 'an "[e]state" is not an entity that can be a party to litigation. It is the personal representative of the estate, in a representative capacity, that is the proper party.' " Spradley v. Spradley , 213 So. 3d 1042, 1045 (Fla. 2d DCA 2017) (quoting Ganske v. Spence , 129 S.W.3d 701, 704 n.1 (Tex. App. 2004)). "[O]nly when the proper party is in existence may it then be properly served and substituted ...." Stern v. Horwitz , 249 So. 3d 688, 691 (Fla. 2d DCA 2018) (citations omitted) (emphasis added).

E**rror occurred, however, when Plaintiff elected to actively continue the litigation, pursuant to his complaint** filed against the fictitious "John Doe," commenced **when no estate had been opened and no personal representative appointed. See In re Marriage of Kirby , 280 So. 3d 98, 100 (Fla. 4th DCA 2019)** ; Adeland, 881 So. 2d at 710 ("If no estate has been opened, then another appropriate representative, such as a guardian ad litem, will need to be substituted."); see also Mattick v. Lisch , ––– So.3d ––––, 43 Fla. L. Weekly D2467 (Fla. 2d DCA Nov. 2, 2018). **Proper procedure required the abatement of the**

> **proceedings until such time as a personal representative of the estate could be (and actually had been) substituted as party defendant and served with the complaint.** See In re Marriage of Kirby , 280 So. 3d at 100.
>
> **Thus, the first amended complaint violated Rule 1.260(a)(1) and the subsequent proceedings prior to the filing of the second amended complaint were a nullity**. See Schaeffler , 38 So. 3d at 799-800. (Emphasis added see De La Riva 4th DCA as cited above.

Schaeffler which is cited by De La Riva in 2020 is also a 4th DCA case.

The formal motions further cited well established case law showing that the authority to act on behalf of the deceased person terminated upon death until a proper party substituted thus the entire Summary Judgment and Final Judgment and Notice of Sale are a nullity under law.

Further, the case law also seems very clear in all District Courts of Appeal that:

> **While a motion for rehearing is pending, the trial court retains "complete control of its decree with the power to alter or change it .... " State ex rel. Owens v. Pearson , 156 So.2d 4, 7 (Fla. 1963). For this reason, it is well settled that "enforcement of a final judgment is suspended" by the filing of a timely motion for rehearing . 944 CWELT–2007 LLC v. Bank of Am., N.A. , 194 So.3d 470, 471 (Fla. 3d DCA 2016).**

Here, the foreclosure sale must be set aside because it was conducted while the defendant's timely motion for rehearing directed at the foreclosure judgment was pending. See , e.g. , Diaz v. U.S. Bank, N.A. , 239 So.3d 151, 152 (Fla. 3d DCA 2018). See 4th DCA Francois v. Library Square Ass'n, Inc. 250 So. 3d 728 (Fla. Dist. Ct. App. 2018.

Thus, your Notice of Sale is invalid as violating the Rule on Suggestion of Death and because the Judgment is Suspended as the Rehearing is still pending.

We can Stipulate to Hearing dates on the 1.530 as well.

A formal motion for Cancellation of the Notice of Sale and Sale and Abatement and Stay will be filed if you do not agree to Stipulate within 48 hours.

Also;, since you should have known about the Death of Walt Sahm in Jan. of 2021, please provide:

1. When did you find out about the Death of Wallt Sahm?

2. Is there an Estate case opened? If so has a PR been appointed and who is it?

3. What is the status of that process?

I await your reply.

Eliot I. Bernstein

Youtube Inventor Destituted by All the Courts

Now Helped by NY Attorney Lalit K Jain Esq.

For Court-ordered Mandatory Relief and Restitution

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