IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

Case No. 4D2025-0996 / 1033
L.T. Case No. 502018CA002317

ELIOT BERNSTEIN, CANDICE BERNSTEIN, BFR LLC ET AL

APPELLANTS,

v.

WALTER E. SAHM and PATRICIA SAHM,

APPELLEES.

INITIAL BRIEF OF APPELLANTS

On Appeal of a Non-Final Order in the 15th Judicial, Palm Beach County

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PREFACE

Appellants are Bernstein Family Realty, LLC and individual appellants, Eliot, Canidce, Joshua, Jacob and Daniel Bernstein, collectively referred to as the Appellants. By Order of this Court, the Bernstein Family Realty, LLC case under 4D2025-1033 is consolidated and heard under this case for the individual defendants 4D2025-0996. The related Appeal by Counsel Garcia in Case No. 4D2025-0994 was dismissed after Ms. Garcia failed to prosecute. A full Record on Appeal was produced in that case upon which the Appellants rely for this brief.

Appellee is Charles Revard as Guardian of Patricia Sahm, Sr.

This appeal is brought under Florida Rules of Appellate Procedure 9.130 as an Appeal of a Non Final Order issued March 6, 2025 that decided without notice or hearing a timely motion for relief from Final Judgment filed under Florida Rule Civ. P. 1.540 and struck said motion without hearing or due process opportunity to be heard as a sanction against the Appellants for conduct of the now former counsel Inger Garcia. The Trial Court without notice to the Appellants struck as sanctions all pending motions by the Appellants without notice or opportunity to be heard and threatened indirect

criminal contempt for any action that violated the Order and ordered the resetting of a foreclosure sale which also was not noticed to be heard and instructed the Appellee to submit an Order without notice to the Appellants thus determining in advance the resetting of the sale which was relief that was not requested in the motion being heard and not noticed to be heard. Because the non Final Order issued relief not noticed to be heard and not even requested by the Appellees and thus not in any pleading and because Appellants were wholly denied any due process notice and opportunity to be heard on sanctions, the non Final Order is void and must be reversed and vacated. Because the Trial Court wholly prejudged all motions by Appellants before hearing such motions and threatened indirect criminal sanctions the case should be reassigned to a new Judge upon remand consistent with this Court's Decision in NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024. The Non Final Order on Appeal March 6, 2025 is at ROA V. 1 Pages 003583-003584.

This Court has routinely held "If a judgment is void, a party is not required to demonstrate excusable neglect or a meritorious defense. Mullne v. Sea-Tech Constr., Inc., 84 So.3d 1247, 1249 (Fla. 4th DCA 2012)." See Hendrix v. DEPARTMENT STORES NAT. BANK, 177 So. 3d 288 - Fla: Dist.

Court of Appeals, 4th Dist. 2015. Appellants have nonetheless demonstrated in this initial brief that meritorious defenses were already available and plead and should not have been stricken without notice as a sanction for conduct of their former counsel.

STATEMENT OF THE CASE AND FACTS

This appeal is from a non final Order that struck as a sanction and determined without notice a timely filed Florida Rule Civ P. 1.540 to Vacate a Final Judgment of foreclosure and involves a hearing by former counsel for the Appellants, Inger Garcia, Esq. and counsel for the Appellee Robert Sweetapple, Esq. where both attorneys were accusing the other of fraud. The Appellates had made fraud claims both with counsel and pro se for several years in the case before these Hearings, whereas the Sweetapple claims to fraud came several years later after he was contacted by the Palm Beach Sheriff in 2023 for a criminal complaint filed by Eliot Bernstein listing Sweetapple as a main person of interest in the frauds and frauds on the courts. No conflicts determinations were ever made by the Trial Court yet the Appellants were unduly sanctioned without notice for the conduct of a hearing by these two attorneys. It is undisputed that the Trial Court issued sanctions and relief that was never filed in any pleading and was never

noticed to be heard and without due process opportunity to be heard to the Appellants.

MERITORIOUS DEFENSES NOT HEARD UNDER FLORIDA RULE CIV. P 1.530 AND 1.540

While case law of this Court has routinely held the void nature of the Non Final Order under review does not require the Appellants to assert meritorious defenses, such meritorious defenses do exist and were improperly stricken as a sanction that was not noticed.

The 1.530 Motions after Final Judgment never heard and now stricken as a sanction and the 1.540 motion had shown that Counsel Sweetapple first admitted Service on BFR, LLC was improper by serving Donald Tescher who resigned from Bernstein matters before Judge Colin in 2014; that Sweetapple told the Court he would reserve BFR, LLC and instead files a false Default Judgment trying to use the same improper Service on a Second Amended Complaint while traveling under a Third Amended Complaint; that Counsel Sweetapple then concealed the death of original Plaintiff Walter Sahm for over a year filing for Summary Judgment and Final Judgment in his name and appearing in open Court as if still alive; that Counsel Sweetapple failed to Notice counsel Ferderigos on the submission of the Final Judgment in the name of Walter Sahm as if still alive and falsely claimed Ferderigos consented to Judgment; that counsel

Sweetapple proceeded to publish the Notice of Sale and Public Notice of Foreclosure in Walter Sahm's name as if alive; that counsel Sweetapple had failed to seek any Substitution of parties under Florida Rule Civ P. 1.260; that Appellants had a dedicated income stream from Trusts and Estates that was supposed to pay off the Note and then were even blocked from Registry Funds that were theirs to pay off the Note by Alan Rose and Ted Bernstein who Sweetapple admitted on Nov. 22, 2021 on the Record he was collaborating with; that Counsel Sweetapple later admits he was working for Joanna Sahm who is the daughter of the original Plaintiffs under a Power of attorney that was concealed for almost 2 years; that Appellants had tried to settle with Walter Sahm for years where Walter Sahm was working with Appellants before his death but funds were continually blocked to the Appellants where instead unnecessary attorneys fees and interest were amassed making a friendly private Note for $100,000.00 balloon to now over $500,000.00 where there has never been a hearing on fees or the timely filed 1.540 motion now stricken as a sanction. See ROA V. 1 Pages 560-1502 and timely 1.540 motion Pages 1678-1696.

Instead, Joanna Sahm who also was concealed before the Court as the real party in interest Plaintiff acting under an undisclosed Power of Attorney

then later filed a Mental Health Petition and Guardianship against her mother Patricia A. Sahm to silence her as a Witness after fraud was exposed in a Bankruptcy proceeding by Eliot Bernstein in April of 2023. Joanna's Power of attorney and Mr. Sweetapple's authority had been revoked by this time and Pat Sahm, Sr. had other counsel. There has never been a fact finding hearing in the Guardianship case on the alleged incapacity of Pat Sahm, Sr. After Mr. Sweetapple was "rehired" after being terminated he later brought the Motion to Strike a Settlement that led to the Non Final Order on review after a written Settlement was reached and signed in May of 2023 which was for $225,000.00 which is $25,000.00 more than a Settlement reached in 2019 between Walter Sahm while alive and the Appellants. Instead Counsel Sweetapple sought to try the capacity of Pat Sahm, Sr. in the foreclosure case instead of the Guardian case without proper expert witnesses and with missing witnesses and Counsel making unfounded suggestions of misconduct not based on competent and substantial evidence. Despite these improper suggestions of misconduct by Sweetapple and now the Non Final Order in this foreclosure case, no such claims or charges or pleadings have even been filed in the Guardian case against the Appellants and also BFR Manager Kevin Hall who attempted to be heard in the Foreclosure case but was never called as a Witness.

Despite knowing the existence of specific witnesses never called in the Foreclosure hearing including counsel Morgan Weinstein who was hired by Pat Sahm, Sr. to represent her and also Amber Patwell who was hired to represent Pat Sahm, Sr. and counsel John Raymond who worked on the Estate of Walter Sahm and issued an email the month before the MH Petition that Pat Sahm, Sr. was not incapacitated and did not need a Guardian, Sr. BFR Manager Kevin Hall, Eliot Bernstein, Dr. Sam Sugar, Willliam Stansbury, Notaires, UPS Workers, friends and relatives of Pat Sahm Sr and a CBS I Team Reporter, the Trial Court improperly utilized a 'beyond a reasonable doubt" standard in the Non Final Order which could not be possible based on the absence of multiple material witnesses and critical evidence in the Court record but not in the Trial record. The Trial Court relied on the self-interested testimony of Joanna Sahm who had been implicated in the misconduct around the Final Judgment and other matters and the testimony of an out of state Urologist Dr. Bloom from NY who was not licensed in Florida but who had been part of the Guardian Committee against Pat Sahm, Sr. Dr. Bloom could not recall if he actually examined Pat Sahm, Sr. in person and for how long. Only interested witness Joanna Sahm testified in support of the Appellee strike motion on the signed Settlement of May 2023. Guardian Charles Revard did not

testify in support of his motion. While Ms. Garcia had noticed many witnesses in writing to the Court, only Ms. Garcia as attorney testified in support of the Settlement and in opposition to the Strike motion. Appellants have no knowledge of why this occurred and were not in control of the litigation choices made by Ms. Garcia. It is without question and crystal clear that the Appellee strike motion only sought sanctions against Ms. Garcia and Pat Sahm, Sr. counsel Amber Patwell and thus no pleading or notice to Appellants on the sanctions Ordered which were never pleaded or noticed. See Motion to Strike ROA V. 1 Pages 1983-1845.

The Non Final Order on review made a specific finding as follows: “Ms. Garcia’s acts are willful and not the result of neglect or inexperience.”

The Non Final Order also issued the following sanctions not ever pled in the Strike Motion and not noticed to the Appellants:

“For all of the foregoing reasons, it is HEREBY ORDERED AND ADJUDGED:

1. The Plaintiff’s Motion to Set Aside Settlement Agreement (DE #226) is GRANTED.

2. As a sanction for their conduct in this case, all of the Defendants’ Pending Motions attacking the final judgment are hereby STRICKEN WITH PREJUDICE.

3. As a further sanction for their conduct in this case, the Court GRANTS the Plaintiff's Motion to Assess Attorneys' Fees against Inger Garcia, Esq., Defendant Eliot Bernstein, and Defendant Bernstein Family Realty, LLC, jointly and severally, for all reasonable and necessary costs and Attorney's fees expended litigating this matter from March 27, 2024 until the date of this order.

4. No Motions for Rehearing of this Order will be entertained.

5. The Plaintiff is directed to forthwith provide this Court with a proposed order resetting the foreclosure sale date. The Court will edit and enter the appropriate order and thus the proposed order does not have to be approved by Counsel for the Defendants before submission.

6. The Court retains jurisdiction to enter all further orders as necessary and appropriate to enforce this order.

7. The Defendants are further placed on notice that failure to abide by this Order shall result in this Court issuing a Rule to Show Cause pursuant to Fla. R. Crim. P. 3.840." See ROA V. 1 Pages 3534-3545.

In addition to the identified missing material witnesses, the Trial Court appears to have relied on Counsel Sweetapple's suggestions, assumptions and conclusions of conduct and actions that were not supported by any competent or substantial evidence, based on hearsay and critical missing

evidence known in the record. The day after the signed settlement was made with Pat Sahm, Sr she appeared by Zoom before Guardian Judge Burton providing remarkably clear, coherent and focused responses indicating competency.

Walter and Pat Sahm as Original Plaintiffs knew there was a Dedicated Income Stream to Pay the Private Note in 2013 yet Appellants were blocked from these funds for over 10 years:

As additional grounds of meritorious defenses for the Appellants, the original Plaintiffs knew there were dedicated income streams from Simon and Shirley Bernstein to pay off the original Note as shown by handwritten letters to sent by the Sahms to Ted Bernstein and then Eliot and Candice Bernstein as early as 2013. Walt Sahm specifically wrote that he was 'holding off" and working with Elioit to secure release of funds from the Trusts and Estates of Simon and Shirley Bernstein under control of Ted Bernstein. See, ROA V. 1 Pages 003879-003882.

HISTORY OF THE FRIENDY BUSINESS PRIVATE NOTE BETWEEN SIMON BERNSTEIN AND WALTER SAHM MEETING THROUGH MUTUAL FRIEND IN INSURANCE WILLIAM STANSBURY

This appeal brings up a tortured history after a Private Note to secure real property in Boca Raton, Florida went into foreclosure. The private Note was made between Simon Bernstein as part of a friendly business deal with Walter Sahm and Patricia Sahm as both Simon and Walter were in the

insurance industry and Walter was looking to retire and Simon bought out his lifelong insurance business. Simon Bernstein and Walter Sahm were introduced by a mutual friend William Stansbury who has a long and successful career in high net worth planning and insurance even being the President of a Palm Beach County association and was friends with both Simon Bernstein and Walter Sahm and introduced them. See, Stansbury Affidavit ROA V. 1 Pages 1149-1158.

The proceedings giving rise to the Non Final Order involve a motion by Robert Sweetapple to strike a Settlement Agreement made in writing between BFR, LLC and the Eliot Bernstein family and Patricia Sahm in May of 2024. Nowhere in this motion which was filed over 6 months after the written Settlement was there any pleading or notice that sanctions to strike all pleadings of the Appellants and a timely Florida Rule Civ P 1.540 would be sought or granted at hearings that had been scheduled. **The Sweetapple motion only sought sanctions against attorneys Inger Garcia, Esq. and Amber Patwell, Esq. and no notice to the Appellants that they would be sanctioned and lose their other motions ever occurred.** See Motion to Strike 2024 ROA V 1. Pages 1783-1845.

Mr. Sweetapple had previously filed a Motion to Reset the Foreclosure sale but this motion was never Noticed for any hearing. ROA V 1. Pages 1743-1772.

The former attorney for the Appellants Inger Garcia had become involved on or around May of 2022 first in an Involuntary Ch. 11 Bankruptcy against the company that held the deed to the Boca property BFR, LLC that had been owned by the Trusts of Joshua, Jacob and Daniel Bernstein. Ms. Garcia, who worked in 1989 under Judge Kastrenakes' prosecutor's office for Janet Reno in an internship and for chief judges had indicated in Bankruptcy court she would be taking the case back to Judge Kastranakes who was her mentor to resolve the frauds she put on the record in the first bankruptcy.

TIMELY FLORIDA RULE CIV P 1.540 MAY of 2023 AND OTHER MOTIONS

For reasons unknown to the Appellants, no motions were filed by Ms. Garcia in the foreclosure case while her mentor Judge Kastranakes remained on the Bench but a motion was filed in January of 2023 before Judge Bell to oppose a resetting of the foreclosure Sale but this motion was never called up for a hearing. See, ROA V. 1 pages 1636-1649.

After Judge Kasternakes was off the case, Ms. Garcid did file a timely motion under Florida Rule of Civ P 1.540 in May of 2023 that is the subject of this appeal under Florida Rules of Appellate Procedure 9.130.. See ROA V 1 Pages 1678-1696. This motion was filed around the same time a written Settlement was entered into the Record in May 2023 but neither were called up for a hearing until later in 2024 after Appellee counsel Sweetapple filed new motions in the case.

The Trial Court Judge Parnofelio is the 5th Judge on the case and somehow hearings were held on the Sweetapple motion to Strike a Settlement of May 2023 and the Settlement itself that was filed with the Court but no other hearings were noticed or heard or scheduled for other motions in the case.

PRIOR MOTIONS UNDER FLA. RULE CIV P 1.530 TO VACATE FINAL JUDGMENT NEVER HEARD BEFORE JUDGE KASTRANAKES; CONCEALMENT OF THE DEATH OF WALTER SAHM BY SWEETAPPLE AND OTHER MERITORIOUS DEFENSES NOT HEARD

According to an official Death Certificate, original Plaintiff Walter Sahm passed away in January of 2021 but this fact was concealed from the parties for nearly a year before . See Death Certificate ROA V. 1 Pages 004055-004058.

Counsel Sweetapple proceeded to file for Summary Judgment in Walter Sahm's name as if alive without any Notice of Death and without any

Substitution of party. Counsel Sweetapple appeared in open Court before Judge Kastranakes in November of 2021 as if still alive and submitted a Final Judgment of Foreclosure in December of 2021 in Walter Sahm's name again as if alive. See ROA V. 1 Pages 548-555.

SUGGESTION OF ORIGINAL PLAINTIFF WALTER SAHM FILED BY APPELLANTS WHILE CONCEALED BY ATTORNEY SWEETAPPLE FOR THE ORIGINAL PLAINTIFFS WHO CONTINUED TO ACT FOR WALTER SAHM AFTER HIS PASSING WITHOUT PROPER AUTHORITY OR SUBSTITUTION

After the Final Judgment in the name of deceased Walter Sahm as if still alive, Appellant Candice Bernstein had filed the Suggestion of Death of original Plaintiff Walter Sahm by filing under Florida Rule Civ P. 1.530 in April of 2022 prior to the first scheduled Sale in Foreclosure and showed in part as follows: "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." See, ROA V. 1 Page 001521. See 001521. This motion showed

despite Mr. Sweetapple having notice of the Suggestion of Death of his own client the next day after Service he proceeded to continue to file a Notice of Sale and Publication of Sale in the name of his deceased client as if still alive. See ROA V. 1 page 001526.

Appellants had been prejudiced by the concealment of death at the very least in determining who was the proper party to Settle with and satisfy the Note even though William Stansbury would testify that a separate dedicated income stream was set up to satisfy the Note. Yet Appellants were being blocked in the Trust and Estate cases by Ted Bernstein and attorney Alan Rose who was working with Mr. Sweetapple so Appellants opted and tried to use Registry funds in trust for the sons to satisfy the Note even if this was not what was intended by Simon Bernstein before death and Appellants were blocked there again by Alan Rose and Ted Bernstein who were working with Robert Sweetapple.

The motion further showed 4th DCA caselaw on the Death of a client as follows: “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 Seis, Inc., 394 So.2d 212, 213 (Fla. 1st DCA 1981) (r**ecognizing**

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.” See ROA V. 1 Page 001528. See full motion ROA V. 1 Pages 1520-1547.

MOTION TO VACATE BY ATTORNEY ARTHUR MORBURGER FOR JOSHUA AND JACOB BERNSTEIN CHALLENGING SERVICE AND JURISDICTION STILL NEVER HEARD

A motion to Vacate an alleged Default had previously been filed by attorney Arthur Morburger, Esq. for defendants Joshua and Jacob Bernstein for lack of jurisdiction and improper Service but said motion was never heard and still has never been heard and was struck as sanctions in the non final Order now on Appeal. See ROA V. 1 Pages 544.

By the time of the Summary Judgment hearing, counsel Leslier Ferderigos, Esq. was appearing for defendants Joshua, Jacob and Daniel Bernstein. Previously, after serving a Third Amended Complaint for foreclosure, Counsel Sweetapple had admitted on the Record before Judge Kastranakes that Service on Defendant BFR, LLC was improper and that he would re-serve this Defendant. See ROA V 1 Page 00915. See Responsive motion by former Counsel Ferderigos ROA V.1 Pages 906 and Exhibits through Page 1468.

This full Transcript of March 5, 2020 not only shows Counsel Sweetapple admitted that Service on BFR, LLC was improper and would be redone but Eliot Bernstein stated on the Record that a Settlement with Walter Sahm while still alive had been reached a year before in 2019. Ultimately, Ted Bernstein who was allegedly Trustee over Trust funds for Joshua, Jacob and Daniel Bernstein would not only block the funds to Settle with the Sahms but later Counsel Sweetapple admitted he was collaborating with Alan Rose as Counsel for Ted Bernstein to work out the numbers for fees with Robert Sweetapple, Ted acting adverse to Joshua, Jacob and Daniel Bernstein as Beneficiaries where Ted Bernstein is acting as Trustee with fiduciary duties to the boys. See November 22, 2021 full Transcript at Summary Judgment Hearing ROA V. 1 Pages 000583-000610.

This Transcript at Summary Judgment also shows Counsel Sweetapple pushing the prior filed “Default Judgment” before Judge Kastranakes against BFR, LLC which was filed with known and admitted improper Service on BFR to resigned agent Donald Tescher which had been admitted in a March 5, 2020 Transcript.

ELIOT BERNSTEIN TELLS THE COURT IN MARCH OF 2020 OF A PRIOR SETTLEMENT FOR $200,000.00 WITH WALTER SAHM WHILE ALIVE IN 2019 YET FUNDS BLOCKED BY TED BERNSTEIN ALAN ROSE

Eliot Bernstein tells the Court in March of 2020 "we've got a settlement sitting on the table with him, that's in the filing I filed." See ROA V. 1 Page 001228. For the full Transcript of March 2020 See ROA V. 1 Page 1218-1250. The Settlement in 2019 referenced on the Record on March 5, 2020 was for $200,000.00. It is noted that Mr. Bernstein stated this Settlement agreement was filed in the Record but it does not presently appear in the Record on Appeal produced and has since been refiled in the case but not for this Appeal.

ALAN ROSE ATTORNEY FOR TED BERNSTEIN 2017 EMAIL AND DONALD TESCHER LETTER SHOWING TESCHER CAN NOT ACCEPT SERVICE FOR BFR, LLC PRIOR TO FORECLOSURE ACTION BEING INITIATED: SWEETAPPLE LATER ADMITS COLLUSION WITH ALAN ROSE ON THE CASE AND 'FEES" ON FINAL JUDGMENT WHEN BOTH KNOW SERVICE ON BFR, LLC THROUGH TESCHER WAS IMPROPER

Prior Service of BFR LLC had been made on a Resigned counsel Donald Tescher in the Trust and Estate cases where Tescher and Spallina had resigned in 2014 from all Bernstein matters due to their law firm having committed fraud by altering Bernstein Estate and Trust documents and fraud on the court through submission to the court, which forced the Shirley Bernstein estate to be re-opened and leading to an ongoing 13 year lawfare against the Eliot Bernstein family by attorneys involved and others in the Bernstein Estate and Trust cases before the court. Alan Rose not only knew of the 2014 Resignation before Judge Colin of Tescher and

Spallina but received other Resignation documents at the Florida Secretary of State by Tescher in 2017 before the foreclosure was commenced. Yet Rose and Ted Bernstein and Counsel Sweetapple proceeded on Judgment against BFR, LLC knowing all Service was improper. See ROA 000650-000653. This raised a jurisdictional defense for BFR, LLC.

FORMER COUNSEL FOR THE APPELLANTS INGER GARCIA HAD REPORTED TO THE TRIAL COURT THREATS AGAINST HER PRACTICE AND SOUGHT A PROTECTIVE ORDER FROM THE COURT AND ACTION BY THE FBI AND EMAILS LOOKING LIKE THEY CAME FROM BFR MANAGER KEVIN HALL BUT WERE NOT FROM HIM

Ms. Garcia had filed protective motions that were denied and informed the Court of actions she took with the FBI because of actions with her mail, harassment, false emails and told the Court:

- And I also have here proof, just, Your Honor,
19 so you know, that at one point I'm working with the
20 FBI and with investigators and private investigators
21 to determine the source of the people who keep
22 showing up to my house and the source of the
23 hacking. At one point I received an e-mail that's
24 described as Kevin Hall, but when you look at the
25 real address, it says, johnraymond@nelsonmullins.com

See, ROA V 1 Page 003415 Inger Testimony

The Trial Court thus had record info that something was amiss in the case and even issues with BFR Manager Kevin Hall where items under his name

were used falsely and fraudulently. BFR Manager, Kevin Hall was not represented by Ms. Garcia despite the Trial Court falsely suggesting the same in the Non Final Order under review. Mr. Hall had attempted to be heard as an Intervenor and was Served as an intervenor under Judge Nutt but never called as a Witness in the hearings giving rise to the Non Final Order. See ROA V. 1 Pages Mr. Hall has no knowledge why he wasn't called as a Witness and was prepared to Testify and present at the last hearing date by Zoom.

Ms. Garcia also informed the Court in written motion: "Further, there are investigations ongoing by the undersigned and complaints filed with the FBI related to someone impersonating the undersigned at her UPS mailing address, to get her private home address, and it seems related to this matter as a process server came to the undersigned's home to serve the subpoena for this deposition. Further, extreme monitoring, hacking of computers, erasure of important e-mails, erasing the calendar constantly, hacking into private phones, and outright fraud and harassment is being investigated and will be fully pursued under the law. This is the most ridiculous action the undersigned has ever seen in a legal matter.

Further, for Patricia Sahm, Jr., she has a bogus order entered based on fraud and that is also being investigated and will be fully pursued to the extent of the law." See, ROA V 1 Page 2085.

Before the Bankruptcy in 2022, Attorney Leslie Ferderigos representing Joshua, Jacob and Daniel Bernstein had filed timely motions for rehearing of the Final Judgment under Florida Rule Civ P. 1.530 and other pro se motions were filed with Exhibits such as the Stansbury Affidavit all before the first Foreclosure Sale date but no hearing was granted before the Sale date by Judge Kastranakes. See ROA V. 1 Pages 571-811.

WILLIAM STANSBURY AS MISSING WITNESS AND EXHIBITS IN THE RECORD NOT INTRODUCED AT THE HEARING LEAVING LACK OF SUBSTANTIAL AND COMPETENT EVIDENCE.

The Private Note had been done by Simon as part of Asset Protection for his son Eliot Bernstein and wife Candice and sons Joshua, Jacob, and Daniel Bernstein after a bomb went off in their vehicle in Florida. See, Stansbury Affidavit ROA V. 1 1149-1158. It was known to William Stansbury that Simon Bernstein had more than adequate assets to pay off the home at the time of purchase but the Private Note with Walter Sahm in the friendly business deal was a layer of protection for the Eliot Bernstein family as part of the Asset Protection. See, Stansbury Affidavit ROA V. 1 1149-1158. Stansbury not only knew Walter Sahm for years but also had

become Trustee for Simon Bernstein's Trust and Trust Protector over financial accounts before Simon's passing in 2012. See, Stansbury Affidavit ROA V. 1 1149-1158. The Stansbury Affidavit was filed in the case Record in March of 2022 before the first Foreclosure Sale date. See, Stansbury Affidavit ROA V. 1 1149-1158.

After the passing of Simon Bernstein who had millions in assets at the time of his death, the Sahm private Note and foreclosure on the Boca Raton property was being used in the Trust and Estate cases against the Eliot Bernstein family who was being threatened with foreclosure then as a means to extract settlement with full releases of Ted Bernstein and his counsel for all wrongdoings, of the larger Simon and Shirley Trust and Estates cases. Eliot Bernstein noticed the Court of Judge Martin Colin on this and later filed these documents in the Foreclosure case. See ROA V. 1 Pages 002345-002412. After the Final Judgment of Foreclosure Eliot Bernstein had filed as an Exhibit on a Florida Rule Civ P 1.530 a list of just some of the "missing millions" in Trust and Estate assets where Stansbury already knew there was a dedicated income stream from Simon and Shirley to pay off the friendly business deal Private Note to the Sahms. See ROA V. 1 1450-1458.

HANDWRITTEN NOTES FROM THE SAHMS IN THE RECORD BUT NOT INTRODUCED AT THE HEARING

As early as 2013 after the passing of Simon and Shirley Bernstein, Walter and Pat Sahm were writing handwritten letters to Ted Bernstein who had taken over the Trust and Estate cases of Simon and Shirley Bernstein and were asking for payment on the note and who was in charge of BFR, LLC. See, ROA V. 1 Pages 1468-1488.

Walter and Pat Sahm also wrote handwritten letters to Eliot and Candice Bernstein acknowledging the property was their home and that Simon and Shirley Bernstein had a dedicated income stream to pay off the note that was now under control of Ted Bernstein. See ROA V 1. Pages 1468-1488. This handwritten Note clearly showed Walter Sahm was working together with Eliot Bernstein to get the Note settled and specifically holding off in litigation to be able to work with Eliot Bernstein who was trying to unlock funds being held in the Trust Estate cases.

KNOWN MISSING WITNESSES NOT CALLED AT THE HEARING THAT RENDER THE FINDINGS LACKING IN SUBSTANTIAL AND COMPETENT EVIDENCE

Ms. Garcia had notified the Court in writing prior to the first hearing date of multiple witnesses to be called yet none of these witnesses were called and Appellants have no knowledge as to why this happened.

From attorney Inger Garcia filing to continue the hearing in August of 2024: "Witness No. 4 – Leslie Ferderigos, Esq. was the former counsel for the Bernsteins at the time of the summary judgment at issue, and the non-disclosure of Walter Sahm's death. She is a key witness to this matter and the 1.540 matters, which should not have been unilaterally set last week in an amended notice of hearing. The order this should properly take place is the August 19, 2024 status, setting the protective order for hearing, setting this matter for hearing when the witnesses and counsel are available, then if the settlement is set aside, we argue the 1.540 and also the prior incorporated 1.540 and 1.530 motions (all three) not just one as improperly noticed)." See, Record on Appeal Page 002076 "Witnesses Defendants 5-11, BFR, and The Eliot Bernstein family. All of the Bernstein family are necessary witnesses and cannot be in court on Monday due to numerous family or work-related issues. Further, Kevin Hall may be a witness depending on the allegations raised and he is out of town and cannot be present." See, ROA V 1 Page 002076.

To this day Mr. Stansbury was never called as a Witness but was present at the Hearing giving rise to the Non Final Order but still was not called as a Witness even though Ms. Garcia indicated he would be a witness. **The Appellants have no knowledge why Mr. Stansbury and other**

witnesses were not called in support of the hearing and have no knowledge why evidence like the handwritten letters of Walter and Patricia Sahm of 2013 were not introduced into evidence as these choices were made solely by Ms. Garcia.

The Appellants have no knowledge why Robert Sweetapple was not called as a witness and why other witnesses were not called by Ms. Garcia such as Eliot Bernstein, Candice Bernstein, Daniel Bernstein, Kevin Hall, the Weppeners that are related to Pat Sahm, Sr. Patty Sahm, Jr., the Notary for Pat Sahm, Sr's statements, the UPS Worker where Statements were printed, Dr. Sam Sugar who examined Pat Sahm, Sr., the CBS News I Team Reporter who interviewed Pat Sahm, Sr., Amber Patwell who was her counsel, Morgan Weinstein who was her Counsel and others. All of these witnesses had relevant testimony regarding the condition of Pat Sahm, Sr. and the circumstances of the settlement and its validity and would have been relevant to that determination upon proper competent and substantial evidence and also relevant to any sanctions. Specifically Mr. Hall had relevant testimony based upon a 40 minute call with Examining doctor Cheshire who stated to him that Pat Sahm, Sr.'s memory conditions could be adequately handled by a proper Power of Attorney document and not a Guardianship.

Mr. Sweetapple as Missing Necessary Witness

The Appellants do not know why Deposition of Mr. Sweetapple did not occur as ordered by Judge Parnofellio after Patty Jr.'s deposition but his filings showed he should have been a Witness as Mr. Sweetapple had conflicting position as he claimed Pat Sr. was incapacitated yet in Closing argument asserted "his April 17, 2023 filing, wherein Mr. Sweetapple confirmed that he had spoken to Pat and that Pat still wished for him to represent her (Pat)." See ROA V. 1 Page 003531

In one breath Mr. Sweetapple convinced the Court that Pat Sahm, Sr. was wholly incapacitated for years yet it was ok for him to take her word over the phone to be rehired with no documented record submitted to the court of such conversation or follow-up. This missing witness also renders the findings in the Non Final Order of March 6, 2025 not based on substantial and competent evidence.

THE "GUARDIAN" CHARLES REVARD NEVER TESTIFIED TO SUPPORT APPELLEE'S MOTION BY SWEETAPPLE WHILE HANDWRITTEN LETTER BY PATRICIA SAHM, SR. JUNE 2023 SHOWS HER COMPETENCE

Appellee "Guardian" Charles Revard never testified in any hearing to support the Appellee motion to strike and never testified about the competence of Patricia Sahm, Sr.

Yet, meanwhile in June of 2023 a month after the signed Settlement Patricia Sahm, Sr. the real party in interest and real Secured Creditor issued her own handwritten letter on her own initiative that shows knowledge of her finances and her express desires as to her living and this was entered into the Record in September of 2024 while the case was before Judge Nutt. **See ROA V. 1 page 2258 Handwritten letter.**

THE REAL PARTY IN INTEREST SECURED CREDITOR PAT SAHM APPEARS ON ZOOM FOR THE GUARDIAN COURT THE DAY AFTER THE 2023 SETTLEMENT SIGNED GIVING CLEAR, LUCID. COMPETENT ANSWERS

Guardian Transcripts

THE COURT: All right. So who represents the
AIP, Ms. Sahm?
MS. PATWELL: I do, Your Honor, Amber Patwell
here on behalf of Ms. Pat Sahm.
THE COURT: Okay. Hi, Amber. And are you
stipulating to the admission of these reports?

MS. PATWELL: No, Your Honor, we did file an
objection to the reports.
like to be heard today.
there is any incapacity.
And we, Ms. Sahm would
She does not agree that
I know that's up to The
Court to determine that but we would like that
petition dismissed

THE COURT: Okay. So I've got, you know, we've sent out an examining committee, they all believe you have some limited incapacity, you dispute that?

MS. SAHM: I do, yes.
THE COURT: Okay. And why do you dispute that, ma'am?
MS. SAHM: Because I feel that I am in good shape for my age.
THE COURT: Okay. How old are you?
MS. SAHM: Eighty one.
THE COURT: Good for you.
MS. SAHM: No, I'm still here. But, for instance, yesterday when I went out and walked with my nephew Sunday and then the other nephew, they're brothers, I played tennis with him in the afternoon on Sundays usually when he's off work.
THE COURT: Yeah.
MS. SAHM: So I walk around this, up to the guard gate and back here in my neighborhood. I'm in good physical condition and I think that this should be accepted that I'm not in some wheelchair and I'm not in --
FAITH BELL, OFFICIAL TRANSCRIPTIONIST
Page 14

See ROA V. 1 Page 004345

MS. O' MALLEY: Your Honor, may I -- we would agree with you on that. I have spoken to her myself, she seemed very sharp, very with it. (unintelliqible) some memory problems. The root of this all is a lot of family drama, unfortunately

MS. SAHM: **She can if she wants to but I don't need any help. Right now, anyhow, I don't. It's difficult because I love both girls, they don't get along with each other too well but, you know, right now I've been very, very fortunate because I'm in really good shape and I don't know whether that's because I was a phys ed teacher, I don't know. But I really, you know, I'm not a hundred percent but I'm**

sure not whacko, you know, running around –
See ROA V. 1 Page 004356

MS. SAHM: Yes. Well, you know, doctors say what they are supposed to say by who pays them.

Eliot Bernstein informs the Guardian Court of Judge Burton that the Settlement funds are available in the Court Registry for $225,000.00.

MALE VOICE: From whoever wants to take the
8 money. It's (unintelligible) money sitting in the
9 court registry.

See, ROA V. 1 Page 002356.

THE COURT: I mean, the problem is, if it's
5 $225,000.00 and the judgement was 350 or something,
6 give or take, you know, we're gonna spend that in
7 legal fees trying to chase after the difference. I'm
8 not, it just -- you know, I remember once how I
9 needed a court monitor on the case. And the clerk's
10 inspector, you know, you should get a court monitor
11 so I get a court monitor. And by the court monitor,
12 he did great, the court monitor saved the ward about
13 $25,000.00, unfortunately his bill was $250,000.00
14 so, you know, it was a big dog and pony show for
15 nothing.

002363

THE COURT: I mean, Ms. Patwell was retained to
5 represent her in that foreclosure suit, correct?
6 MS. GARCIA: Yes.
7 MS. LEWIS: Yes.
8 THE COURT: Right, Amber?
9 MS. PATWELL: Yes, she called me regarding the
10 guardianship and then asked for assistance for

11 (unintelligible) –

THE COURT: Yeah, you took over from Sweetapple.
13 MS. PATWELL: Yes, I tried to, he never signed a
14 joint stipulation. I did file a Notice of Appearance
15 **and I tried to file a substitution of counsel.**
16 THE COURT: Okay. So that was May, if I can, May
17 of '23 or something?
18 MS. PATWELL: Yeah, May 1st is when she hired me.

THE COURT: All right. So, what was the date of
20 these reports, does anybody recall offhand?
21 MS. GARCIA: May 5th, I think.
22 **THE COURT: May 5th, where they found incapacity.**
23 But she's not adjudicated incapac --
24 MS. LEWIS: No.

See ROA V. 1 Page 002364

MS. GARCIA: And, Your Honor, the incapacity, by
3 the way, was an agreement between Mrs. Patwell and
4 the -- when Mrs. O'Malley who is also a partner in
5 the same law firm that represents the estate which I
6 was negotiating the settlement with prior. I have a
7 whole history of this case.

See ROA V. 1 Page 002365

MS. GARCIA: Right. What happened is there was a
20 mortgage for $110,000.00. And back on 11-11 of 2019,
21 they resolved it for $200,000.00. There was issues
22 with the lawyers and the families fighting to release
23 the funds. So it was originally settled in 2019.

See ROA V. 1 Page 002367

STANDARD OF REVIEW

The standard of review is de novo and this case should be guided by this Court's Decision in NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

"Whether a judgment is void is a question of law reviewed de novo." Vercosa v. Fields, 174 So. 3d 550, 552 (Fla. 4th DCA 2015) (citing Infante v. Vantage Plus Corp., 27 So. 3d 678, 680 (Fla. 3d DCA 2009)). A judgment is void if it is "so defective that it is deemed never to have had legal force and effect." Id. (quoting Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)). For example, a judgment is void if the trial court violates the due process guarantee of notice and an opportunity to be heard in the proceedings leading up to the judgment. Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014) (quoting Shiver v. Wharton, 9 So. 3d 687, 690 (Fla. 4th DCA 2009)). Granting relief that was neither requested by the appropriate pleadings nor tried by consent violates due process. Wachovia Mortg. Corp. v. Posti, 166 So. 3d 944, 945-46 (Fla. 4th DCA 2015). As a result, a judgment is void if it

grants relief outside the pleadings. See id. at 945. See NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

A trial court's imposition of sanctions for bad faith conduct is reviewed for abuse of discretion. Goldman v. Est. of Goldman, 166 So. 3d 927, 929 (Fla. 3d DCA 2015) (citing Boca Burger, Inc. v. Forum, 912 So. 2d 561, 573 (Fla. 2005)). Discretion is abused where no reasonable man would take the view adopted by the trial court. Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980) (quoting Delno v. Mkt. St. Ry. Co., 124 F.2d 965, 967 (9th Cir. 1942)). To the extent the trial court's ruling was based on its interpretation of the law, the Court reviews the issue de novo. Diaz v. Kasinsky, 306 So. 3d 1065, 1067 (Fla. 3d DCA 2020).

SUMMARY OF THE ARGUMENT

I. The Final Judgment is void because it issued sanctions and relief outside of the pleadings that was not Noticed to be heard and where Appellants were wholly denied due process by having no notice or opportunity to be heard that their rights to relief under Florida Rule 1.540 to vacate the Final Judgment would be stricken as a sanction for conduct of their attorney Inger Garcia. It is without question that the Appellees never noticed nor moved in their motion to strike a Settlement that was heard by the Trial

Court to also be granted relief by way of having all pending motions of the Appellants stricken as a sanction including a timely motion under Rule 1.540 to vacate the Final Judgment of Foreclosure. It is undisputed that the Trial Court did not notice the Appellants that such a sanction and additional relief could be granted by the hearing of the motion by Appellees to strike a Settlement. It is without question that the Trial Court did not grant the Appellants a due process opportunity to be heard on any sanctions which were issued primarily for alleged conduct of their attorney Inger Garcia. Accordingly, because a trial court cannot grant relief not pled or tried by consent, the non-final Order of March 6, 2025 must be rendered void. As part of these sanctions without notice, the Trial Court's Non Final also issued additional relief also not noticed to be heard as follows, "The Plaintiff is directed to forthwith provide this Court with a proposed order resetting the foreclosure sale date. The Court will edit and enter the appropriate order and thus the proposed order does not have to be approved by Counsel for the Defendants before submission." Because this was part and parcel of the Order striking the timely Rule 1.540 relief and because such relief could vacate the Final Judgment upon proper hearing, the Non Final Order should be reversed and vacated in its entirety.

ARGUMENT

1. **THE TRIAL COURT'S MARCH 6, 2025 ORDER ISSUING SANCTIONS IS VOID AS A MATTER OF LAW BY GRANTING RELIEF NOT NOTICED, NOT REQUESTED IN THE PLEADINGS AND WITHOUT AFFORDING ANY DUE PROCESS NOTICE AND OPPORTUNITY TO BE HEARD TO THE APPELLANTS**

Appellants assert this case is controlled and should be decided directly by established precedent from this 4th District Court of Appeals primarily a case decided last year in NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

It is undisputed that the Trial Court's March 6, 2025 Order issued sanctions and relief not pleaded in any motion, not set for a hearing and without providing any due process notice and opportunity to be heard. It is also undisputed that the conduct of the applicable Hearing and litigation filings were controlled solely by former Counsel Garcia and the Appellants had no notice that all their prior motions including under Florida Rule Civ P. 1.540 would be struck because of conduct of Ms. Garcia. For these reasons and as shown here the Non Final Order under review of March 6, 2025 is void and must be reversed.

As this Court stated and found in the National Loan case from last year 2024, "Whether a judgment is void is a question of law reviewed de novo."

Vercosa v. Fields, 174 So. 3d 550, 552 (Fla. 4th DCA 2015) (citing Infante v. Vantage Plus Corp., 27 So. 3d 678, 680 (Fla. 3d DCA 2009)). A judgment is void if it is "so defective that it is deemed never to have had legal force and effect." Id. (quoting Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)). **For example, a judgment is void if the trial court violates the due process guarantee of notice and an opportunity to be heard in the proceedings leading up to the judgment.** Tannenbaum v. Shea, 133 So. 3d 1056, 1061 (Fla. 4th DCA 2014) (quoting Shiver v. Wharton, 9 So. 3d 687, 690 (Fla. 4th DCA 2009)). **Granting relief that was neither requested by the appropriate pleadings nor tried by consent violates due process.** Wachovia Mortg. Corp. v. Posti, 166 So. 3d 944, 945-46 (Fla. 4th DCA 2015). **As a result, a judgment is void if it grants relief outside the pleadings.** See id. at 945." See, NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

This Court went on further to say, "**This due process requirement also applies to motions.** See Eadie v. Gillis, 363 So. 3d 1115, 1117 (Fla. 5th DCA 2023); Nationstar Mortg., LLC v. Weiler, 227 So. 3d 181, 183-84 (Fla. 2d DCA 2017). Florida Rule of Civil Procedure 1.100(b) provides that "[a]n

application to the court for an order must be by motion which must be made in writing unless made during a hearing or trial, must state with particularity the grounds for it, and must set forth the relief or order sought." Although rule 1.100(b) permits a party to make an oral motion during a hearing or trial, **"a trial court may violate a party's 'due process rights by hearing and determining matters that were not the subject of appropriate notice.'** " Weiler, 227 So. 3d at 183." See, NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

☐ **THE TRIAL COURT DID NOT HAVE ANY HEARING ON SANCTIONS OR AFFORD ANY DUE PROCESS NOTICE OR OPPORTUNITY TO BE HEARD TO THE APPELLANTS AND THE NON FINAL ORDER IS VOID**

☐

Here the Trial Court did not hold a Hearing or provide any notice or opportunity to be heard to the Appellants. The Appellants were unduly sanctioned for the Hearing conduct of their Counsel.

Just like this Court said last year in 2024, "Because NLAC did not have adequate notice of the defendants' argument that NLAC had violated the covenant of good faith and fair dealing during settlement negotiations, the trial court violated NLAC's procedural due process rights by admitting evidence on these issues, making findings on these issues, and awarding relief based on those findings in its final judgment and order granting

sanctions. See Weiler, 227 So. 3d at 183; Eadie, 363 So. 3d at 1117. **This violation of due process in the proceedings leading to the trial court's entry of the final judgment renders the final judgment void.** See Tannenbaum, 133 So. 3d at 1061." See, NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

THE SANCTIONS IMPOSED WERE UNDULY HARSH AND WHOLESALE TOOK AWAY ALL RIGHTS OF THE APPELLANTS TO PRESENT DEFENSES AND BE HEARD EVEN BEING THREATENED WITH CRIMINAL CONTEMPT SANCTIONS BY ASSERTING CIVIL RIGHTS OF RELIEF AND FINDINGS OF THE TRIAL COURT LACKED SUBSTANTIAL AND COMPETENT EVIDENCE

As this Court said in the National Loan case, " A trial court's order imposing sanctions is reviewed for an abuse of discretion. Cousins v. Duprey, 325 So. 3d 61, 71 (Fla. 4th DCA 2021) (quoting Bennett v. Berges, 50 So. 3d 1154, 1159 (Fla. 4th DCA 2010)). An appellate court will uphold a trial court's ruling under the abuse of discretion standard unless it is found to be "arbitrary, fanciful, or unreasonable," such that no reasonable person would take the view adopted by the trial court. Glob. Lab Partners, LLC v. Patroni Enters., LLC, 327 So. 3d 453, 456 (Fla. 1st DCA 2021) (quoting Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980)). **The record must contain competent, substantial evidence supporting the trial court's**

findings regarding the imposition of sanctions. See Bath Club Entm't, LLC v. Residences at the Bath Club Maint. Ass'n, Inc., 348 So. 3d 16, 20 (Fla. 3d DCA 2022); Dawn To Dusk, Inc. v. Hillsboro-Lyons Invs., Ltd., 801 So. 2d 283, 284 (Fla. 4th DCA 2001).

NO RECORD EVIDENCE TO SUPPORT THE FINDINGS AGAINT BFR, MANAGER KEVIN HALL WHO WAS PRESENT TO TESTIFY, HAD TRIED TO BE HEARD PRIOR AS AN INTERVENOR AND WHO HAS NO KNOWLEDGE WHY HE WAS NOT CALLED AS A WITNESS AND WAS PREVIOUSLY SERVED AS AN INTERVENOR UNDER JUDGE NUTT BEFORE THE PRESENT TRIAL COURT

Here, while certain findings have some support in the Record the overwhelming missing witnesses and missing evidence renders a lack of substantial and competent evidence. The Order claims BFR Manager Kevin Hall called Patty Sahm Jr. as part of a scheme and the purpose was to influence Pat Sahm, Sr. yet no testimony and no record evidence supports this. To the contrary, Mr. Hall would testify he had no idea or knowledge that Pat Sahm, Sr. was “listening in” to calls he made to Patty Sahm, Jr. and the purpose of his call to Patty, Jr. was because of a prior Settlement Ms. Garcia was doing with the Estate of Walter Sahm, Sr. through attorney John Raymond that Manager Hall felt was improper and not in the best interests of BFR, LLC and specifically because Patty, Jr. had never been served in the Estate case. Mr. Hall would testify he had nearly 3

or 4 calls with Patty Jr. before being informed that Pat Sahm, Sr. was listening in. Mr. Hall would testify he did not initiate anything with Pat Sahm, Sr. and it was the opposite and Mr. Hall informed her he had adverse interests and his primary concern that she have competent unconflicted counsel. The findings against Mr. Hall and ultimately the Appellants based on this are not supported by the Record and are simply "conclusions" made by Counsel Sweetapple who assumed matters not in evidence which somehow got adopted wholesale by the Trial Court where no record evidence is present. The fact that Mr. Hall was listed as a witness did not lead the Trial Court to inquire why he and other witnesses were never called by Ms. Garcia. The Trial Court's Non Final Order falsely suggests that Mr. Hall was a client of Ms. Garcia but this is false and there is no record support for this.

THE GARCIA TEXT MESSAGE TO AMBER PATWELL CITED BY THE TIRAL COURT SHOWS MS. GARCIA AND MR. HALL WERE NOT SPEAKING AS MS. GARCIA ACTED TO EXCLUDE MR. HALL

Ironically, the primary Record evidence cited by the Trial Court specifically shows Ms. Garcia excluding Mr. Hall and acting to avoid him which completely contradicts the finding that these parties were fully acting together.

The Order shows: "At the January 28, 2025 hearing, Ms. Garcia

produced Defense Exhibit MM, which were text exchanges between her and Ms. Patwell. Inter alia, Ms. Garcia texts to Ms. Patwell:

> Thank you for your time today. Without sharing I requested client and kevin to back off and not communicate with you or your client or her daughter so you can let me know on Monday or whenever what you need from us. **If you get any calls or texts from Kevin ignore him.** I can tell Patty jr that we are stepping back and not communicating with them for now so you guys can decide what to do and we are here to help but not to respond to anyone but you[.]

See, ROA V. 1 page 003733, pages 003726-003727.

The Trial Court provided no notice to BFR Manager Hall or the Appellants of the adverse inferences that would be drawn against them by the conduct of Ms. Garcia which is a due process problem and more egregious when Mr Hall tried to be heard multiple times before the Trial Court. Mr. Hall had testimony of admissions by Dr Cheshire from the Committee that a Lesser alternative to Guardianship could be proper for Ms. Sahm. Mr. Hall has no knowledge why Ms. Garcia nor anyone brought his testimony forward.

MULTIPLE KNOWN MISSING WITNESSES LEAD TO LACK OF COMPETENT AND SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS WHERE APPELLANTS HAVE NO KNOWLEDGE ABOUT WHY THE WITNESSES WERE NOT CALLED AN OTHER EVIDENCE NOT SUBMITTED BY THEIR FORMER COUNSEL

Party Eliot Bernstein was on the witness list but has no idea why he was not called at the Hearing and only his Deposition used. Parties Candice Bernstein and Joshua, Jacob and Daniel Bernstein have no knowledge why they were not called as witnesses. Nor do the Appellants know why Mr. Sweetapple was not called, Dr. Sugar, William Stansbury whose affidavit shows BFR and the Eliot Bernstein family was not even supposed to pay the Note as a dedicated income stream from the Simon and Shirley Trusts and Estates was available, the CBS Reporter who interviewed Pat Sahm, Sr,. the Notary from documents with Pat Sahm, Sr and UPS worker where documents were printed, the family members the Weppeners, attorney Morgan Weinstein who started to represent Ms. Sahm, Sr, John Raymond attorney of the Estate of Walter Sahm, who knew of Ms. Sahm Sr from the weeks before the MH petition, Charles Revard, and others. Critical evidence in the record of the case but not admitted at the hearing such as the Handwritten letters of the Sahms from 2013 showing the dedicated income that was to pay off the friendly private Note and also show the efforts by Eliot Bernstein and the Appellants to settle with Pat Sahm were reasonable.

Based on all this missing evidence and witnesses, a substantial competent evidence finding can not be supported.

As this Court has said, “A sanction award may amount to an abuse of discretion if a lesser sanction would have adequately addressed the prejudice caused by the alleged misconduct. See Cousins, 325 So. 3d at 75 (citing Perez v. SafePoint Ins. Co., 299 So. 3d 1087, 1090–91 (Fla. 3d DCA 2019)). In Cousins, we reversed a sanctions order entered against two defense attorneys during a medical malpractice trial, which had awarded the plaintiff $271,487 in attorney's fees. Id. at 64-65, 70. The trial court entered the sanctions order against the attorneys because the attorneys had failed to notify the plaintiff's attorney that their client had falsely testified during his deposition to gain an unfair advantage at trial. Id. at 70. We held in relevant part that the less severe sanction of limiting testimony at trial would have remedied any perceived prejudice to the plaintiff, and explained that **“[f]actual inconsistencies, even false statements [,] are well managed through the use of impeachment and traditional discovery sanctions.”** Id. at 75 (quoting Gilbert v. Eckerd Corp. of Fla., Inc., 34 So. 3d 773, 776 (Fla. 4th DCA 2010)). See, NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

Thus, the Trial Court could have made inquiry of Trial Counsel about the missing witnesses noticed in writing before the hearing and other means instead of unduly harsh sanctions.

BECAUSE THE NON FINAL ORDER IS VOID THE APPELLANTS WERE NOT REQUIRED TO SHOW A MERITORIOUS DEFENSE BUT HAVE SHOWN THESE DEFENSES

Again, as this Court has stated, “"A judgment is void if, in the proceedings leading up to the judgment, there is [a] violation of the due process guarantee of notice and an opportunity to be heard." Tannenbaum v. Shea, 133 So.3d 1056, 1061 (Fla. 4th DCA 2014) (internal quotations and citations omitted); see also Viets v. Am. Recruiters Enterprises, Inc., 922 So.2d 1090, 1096 (Fla. 4th DCA 2006) (a denial of due process "voids the default, and derivatively the default judgment."). **If a judgment is void, a party is not required to demonstrate excusable neglect or a meritorious defense.** Mullne v. Sea-Tech Constr., Inc., 84 So.3d 1247, 1249 (Fla. 4th DCA 2012). SEE Hendrix v. DEPARTMENT STORES NAT. BANK, 177 So. 3d 288 - Fla: Dist. Court of Appeals, 4th DCA.

Appellants have meritorious defenses that were raised in the timely 1.540 motion now stricken and other motions now stricken.

LIKE IN THE NATIONAL LOAN CASE, A DIFFERENT JUDGE SHOULD BE ASSIGNED ON REMAND

Again, as this Court found in the National Loan case, “We vacate both the final judgment and the order on the motion for sanctions upon which the final judgment was based. In an abundance of caution, and because the trial court initially made rulings that could be seen as prejudicial to NLAC, with actions or remarks suggesting an appearance of impropriety on their part, we also order that a different judge shall be assigned to the case on remand. See Osteen v. State, 12 So. 3d 927, 929 (Fla. 2d DCA 2009) (“Because [the trial judge] has already ruled that Osteen's claim is without merit and a reasonable person in Osteen's position might well fear that [the trial judge] would not fairly and impartially determine this claim, a different judge shall be assigned to the case on remand.”).” See, NATIONAL LOAN ACQUISITIONS COMPANY v. TABERNACLE CHRISTIAN CENTER MINISTRIES, INC., Fla: Dist. Court of Appeals, 4th Dist. 2024.

Here, the Trial Court wholly prejudged any filing the Appellants may make by issuing a threat of Indirect Criminal Contempt for any actions in violation of the Non Final Order which comes after direct due process violations against the Appellants. The case should be reassigned to a new Judge upon reversal and remand.

The Trial Court awarded additional relief in the Non Final Order not noticed for hearing doing so upon the improper findings and sanctions with such

relief being directing the Appellee to submit an Order to reset the foreclosure sale without any notice to the Appellants. This relief was not noticed to be heard. The entire Non Final Order should be reversed upon remand.

CONCLUSION

For the reasons set forth herein, Appellants seek an Order reversing the Non Final Order entirely as void and remanding to a new assigned Judge and other relief as just and proper.

Respectfully submitted,

October 31, 2025

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CERTIFICATE OF SERVICE

I CERTIFY that, on this 31st day of October 2025, a true and correct copy hereof was electronically filed via the Florida Courts E

Filing Portal and furnished to Fla. R. Jud. Admin. 2.516 via e-mail at the following e-mail addresses:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Rule 9.045(e), that this brief complies with the font and word-count limit requirements of Rule 9.045(b) and 9.210. This brief uses Arial style, 14-point typeface. As determined by the word-processing system used to prepare the document, the word count subject to the rule's limitations is 10623 and 49 pages.