

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

CASE NO.: 50-2018-CA-002317

WALTER E. SAHM and
PATRICIA SAHM,

Plaintiffs,

V.

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

BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS.

Defendants

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 Counsel 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 like 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 - IMMINENT 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 Sweetapple without Responding or Filing ANY PROPER SUBSTITUTION for 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 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, the 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 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." 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

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/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, Ivanegas@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 indispensible party to an action dies, 'the action abates until the deceased party's estate, or other appropriate legal representative, has been substituted pursuant to [Rule 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).

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 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 Walt 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.

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