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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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