

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.

**BERNSTEIN FAMILY REALTY, LLC and
ALL UNKNOWN TENANTS.**

Defendants

**VERIFIED EX PARTE EMERGENCY MOTION FOR TEMPORARY
INJUNCTION OF FORECLOSURE SALE**

COMES NOW, Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, by and through their undersigned Attorney, pursuant to, files this Verified Ex Parte Emergency Motion for Temporary Injunction of Foreclosure Sale pursuant to Rule 1.610, Florida Rules of Civil Procedure for an Emergency Temporary Injunction as follows:

FACTS

1. A hearing was held on November 11, 2021 on the Plaintiff's Motion for Summary Final Judgment of Foreclosure, Taxation of Costs, and Award of Attorney Fees that had been filed on (08/05/2021).
2. On 12-23-21, this Court entered a Final Judgment on Foreclosure relying on the misrepresentations to the Court by the Plaintiff's that this Final Judgment was consented to. However, there was never consent to this Final Judgment nor any attempts for the Plaintiffs Counsel to provide any copies of this Final Judgment to the Defendant's Counsel.
3. Motions for Rehearing were filed on (01-5-22) and (01-6-22). A Notice of Appeal was filed on (01-24-22). However, the appellate court is waiting for the lower court to rule on its motion for rehearing, prior to moving forward.
4. On (04-07-22), the Plaintiffs filed a Notice of Sale, listing that April 20, 2022 at 10:00am property described as

Lot 68, Block G, BOCA MADERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 and 60, of the Public Records of Palm Beach County, Florida

5. A ruling on the motion for rehearing has not been made to date.
6. The Motions for Rehearing alleged the following arguments:

A. At the date of the hearing held on November 11, 2021, service had not been properly effectuated for Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, who are considered indispensable parties to the above referenced case for the following reasons: (1) Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN were all eighteen (18) years old at the time the complaint was filed. (2) the home in foreclosure was paid for by the Defendants trust (3) the Defendants have a financial interest in this foreclosure actions. Thus, the Defendants would be necessary parties essential to this suit¹.

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

¹"Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder." *Citibank, N.A. v. Villanueva*, 174 So.3d 612, 613 (Fla. 4th DCA 2015) (quoting *Hertz Corp. v. Piccolo*, 453 So.2d 12, 14 n. 3 (Fla.1984)) *Parker v. Parker*, 185 So. 3d 616, 618 (Fla. Dist. Ct. App. 2016)

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

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

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

- C. **SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT INDISPENSIBLE PARTIES HAVING OPPORTUNITY TO CONTEST ALLEGATIONS:** A summary judgment should only be granted if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510. Furthermore, The court shall state on the record the reasons for granting or denying the motion. *Id.* The Defendants contest the allegations set forth in the Complaint. Thus, there is a genuine issue of material facts. However, they were never properly noticed or served.
- D. **SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED WITHOUT AN AFFIDAVIT SUBMITTED AT HEARING:** At the time of the hearing, the Plaintiffs never submitted an affidavit, as required to make a ruling on a summary judgment. Thus, it was not ripe for the Court to rule on a Summary Judgment absent an affidavit. Fla. R. Civ. P. 1.510(4) *Affidavits or Declarations*. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- E. During the hearing held on November 11, 2021, Counsel for the Plaintiffs, stated to the Court the relief being sought was a foreclosure on the original note and to get a money judgment against a dissolved entity. [Transcript pg. 5, line7-9] It was clear during this hearing, the Plaintiff were not seeking possession of the property. There was no affidavit presented to the Court that cited any money amount being sought. [Transcript: pg 7, line 9-10]. This Court stated there would be a hearing on fees [Transcripts: pg 13, line 24-25]
- F. Counsel for the Plaintiff's acknowledges, the Leslie Ferderigos, Esq. appeared on behalf of the children. Furthermore, Plaintiffs counsel stated he believed that Leslie Ferderigos, Esq. was representing the Entity, not just the children. [Transcripts: pg 17, line 9-12]. Thus, Counsel for the Plaintiff, should have supplied Ms. Ferderigos with any correspondence submitted to this Court, which they failed to do.
- G. **ATTORNEY FEES SHOULD HAVE BEEN DETERMINING AFTER A HEARING WAS HELD:** The Court specifically, stated they would not set a sale date until the Court received a finalized affidavit [Transcripts: pg

19, line 6-10]. However, Plaintiffs Counsel added attorney fees into the Final Judgment absent a hearing. Furthermore, Counsel for the Plaintiff submitted an Attorney Fee Affidavit, never setting it for hearing to determine the reasonableness of attorney fees.

- H. **FINAL JUDGMENT WAS NOT CONSENTED TO:** On December 21, 2021, this Court entered a Final Judgment, based on the representation that the parties consented to this Final Judgment. However, counsel for the defendants was not given a copy nor had any discussions that led to the consent of a Final Judgment. Furthermore, a money value of \$110,000.00 was indicated in the Final Judgment, as well as, other costs, including Attorney Fees in the amount of \$52,005.50, Real Property Taxes paid by Lender of \$38,596.62, Default Interest at 18% for \$149,122.56, and Interest on the note for \$3,850.00. The total money due according to the Final Judgment was \$353,574.68. At no time did the Defendants counsel have any contact nor was given any proposed Final Judgment to review prior to it being submitted to the Court and signed by the Judge. The Final Judgment gives Right of Possession to the person named on the certificate of title, having not reviewed any potential lease/rental agreements. Further, the Defendants did not consent to the entry of this Final Judgment, as falsely represented in the signed Final Judgment.
- I. **FAILURE TO NOTICE OR PROVIDE PROPOSED JUDGMENT TO DEFENDANTS COUNSEL:** Counsel for the Plaintiff, falsely states in his letter to this Court that counsel of record had been provided copies. However, Counsel for the Defendants, LESLIE FERDERIGOS, ESQ. had never spoken to ROBERT SWEETAPPLE, ESQ. or any representative from his firm since the hearing. ROBERT SWEETAPPLE, ESQ. never submitted anything for review prior to submitted it to this Court.
- J. **COUNSEL FOR THE PLAINTIFF SHOULD BE SANCTIONED FOR EX-PARTE COMMUNICATIONS WITH THIS COURT:** LESLIE FERDERIGOS, ESQ. requests this Court to Order ROBERT SWEETAPPLE, ESQ. all written proof of his attempts to allow Ms. Ferderigos, to review anything submitted to this Court.

LEGAL ARGUMENT

Defendant's Entitlement to Injunctive Relief

1. An order granting injunctive relief lies within the sound discretion of the trial court. *Weinstein v. Aisenberg*, 758 So.2d 705, 706 (Fla. 4th DCA 2000); *Precision Tune Auto Care, Inc v. Radcliff*, 731 So.2d 744, 745 (Fla. 4th DCA 1999); *Browning-Ferris Industries of Florida, Inc v. Manzella*, 694 So.2d 110, 112 (Fla. 4th DCA 1997). The Florida Supreme Court has held that a temporary mandatory injunction is properly issued where a plaintiff demonstrates that: (1) he will suffer irreparable harm; (2) he has a clear legal right or interest in the subject matter of the suit; (3) he has no adequate remedy at law, and, in some instances, (4) that the public interest will not be disserved. *Wilson v. Sandstrom*, 317 So.2d 732, 736(Fla. 1975); *See also, Reform Party of Florida v. Black*, 885 So.2d 303, 305 (Fla.2000) (citing *Dania Jai Alai International, Inc v. Murua*, 375 So.2d 57, 58 (Fla 4th DCA 1979)); *Weinstein v. Aisenberg*, 758 So.2d 705, (Fla. 4th DCA 2000); *Singletary v. Costello*, 665 So.2d 1099 (Fla 4th DCA 1996) *Cordis Corporation v. Prooslin*, 482 So.2d 486, 491 (Fla. 3rd DCA 1986). Further, temporary injunctive relief may be used to preserve the status quo during the penance of ongoing litigation. *Precision Tune Auto Care, Inc v. Radcliff*, 731 So.2d 744, 746 (Fla. 4th DCA 1999) (Enforcing temporary injunction in order to preserve the status quo until court determines whether there has been a breach of franchise agreement); *Florida Power Corp. v. Town of Belleaire*, 830 So.2d 852, 854 (Fla. 2nd DCA 2002).⁴⁵
2. Rule 1.610, Florida Rules of Civil Procedure states in pertinent part:
 - a) *Temporary Injunction*.
 - (1) A temporary injunction may be granted **without written or oral notice** to the adverse party only if:
 - (A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
 - (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.
 - (2) No evidence other than the affidavit or verified pleading shall be used to support the application for a temporary injunction unless the adverse party appears at the hearing or has received reasonable notice of the hearing. Every temporary injunction granted without notice shall be endorsed with the date and hour of entry and shall be filed forthwith in the clerk's office and shall define the injury, state findings by the court why the injury may be irreparable, and give the

reasons why the order was granted without notice if notice was not given. The temporary injunction shall remain in effect until the further order of the court.

3. A trial court is afforded broad discretion in granting, denying, dissolving or modifying injunctions, and unless clear abuse of discretion is demonstrated, an appellate court must not disturb the trial court's decision. *Carricarte v. Carricarte*, 961 So.2d 1019 (3d DCA, 2007).
4. A temporary injunction should be granted to enjoin the Plaintiff from taking any action in placing the home for sale at the auction for foreclosure until the litigation is finalized.
5. The purpose of a temporary injunction is to preserve the last peaceable non-contested status quo until the parties' rights can be determined at a trial on the merits. *Bailey v. Christo*, 453 So. 2d 1134, 1136-37 (Fla. 1st DCA 1984). Moreover, temporary injunctive relief is the appropriate remedy to preserve the status quo in order to prevent irreparable harm to the Defendant. *Id.* Accordingly, all procedural requirements to support this motion is evidenced and supported through affidavit. Fla. R. Civ. P. 1.610 (a) (2). The status quo sought to be protected here is Defendant's ability to preserve their rights to the home.

1. Procedural Requirements

Florida Rule of Civil Procedure 1.610.4 (2) (a-c) sets forth the requirements for obtaining a temporary injunction. The general procedural requirements are provided in Florida Rule of Civil Procedure 1.610.4 (2) (a), which states:

For injunctive relief to be granted, whether or not notice is given, the party seeking relief must: (1) specifically request, whether by motion, or as part of the party's affirmative pleading, or both, setting forth with specificity the grounds upon which such relief is sought; and (2) submit supporting facts in verified form, whether by affidavit or verified pleading.

2. Standards for Granting a Temporary Injunction.

Pursuant to Florida's Rule of Civil Procedure 1.610.4 (3) (a-e), a temporary injunction is appropriate when the court, in its discretion, finds the standards for granting injunctive relief are based on the following: (a) Substantial Likelihood of Irreparable Harm, (b) No Adequate Remedy at Law, (c) Substantial Likelihood of Success on the merits (Clear Legal Right to Relief), (d) Threatened Injury Outweighs any Possible Harm, (e) Granting the Injunction Will Not Disserve the Public interest. The subsequent arguments below set out the reasons Plaintiff meets the requirements for the issuance of this motion.

a. Substantial Likelihood of Irreparable Harm

A denial of this Petition would cause Defendant's irreparable harm to their ownerships rights in their home due to Plaintiff's course of conduct including submitting a Final Judgment and misleading the Court by claiming this Final Judgment was consented to by the parties.

"Irreparable" in the context of a petition for temporary injunction means injury, great or small, which is not "reparable" that is, one that is not able to be adequately repaired or redressed in a court of law by an award of money damages. *Air Ambulance Network, Inc. v. Floribus*, 511 So. 2d 702 (Fla. 3d DCA 1987). It is impossible to take back the home once it is sold off at the auction to a buyer.

b. No Adequate Remedy at Law

A remedy at law would not be an adequate remedy in this case. Simply put, Defendants have no additional remedy at law, other than to seek this court's assistance via this petition, as Defendants will be unable to stop Plaintiff's course of conduct and continuing to move forward on the foreclosure sale of the home when the judgement of foreclosure is currently being contested. An adequate remedy at law has been described as a remedy, which is plain, certain, prompt, speedy, sufficient, complete, practical, and efficient in attaining the ends of justice. *Citizens and Southern Nat. Bank v. Taylor*, 191 So. 2d 866, 867 (Fla. 1st DCA 1966). The urgency and magnitude of this matter requires a drastic and expeditious remedy that can solely be accomplished by granting this emergency Petition.

c. Substantial Likelihood of Success on the merits (Clear Legal Right to Relief)

Under applicable Florida law, plaintiff need only show a "reasonable likelihood of success on the merits." See *Korn v. Ambassador Homes, Inc.*, 546 So.2d 756, 757 (Fla. 3d DCA 1989). There is substantial likelihood that Defendants will succeed on the merits of its claim against Plaintiff as the Plaintiffs made material misrepresentations to this Court regarding a consented final judgment when in fact this judgment was not consented to.

d. Threatened Injury Outweighs any Possible Harm

There is considerable probability of unequivocal undue hardship and immediate irreparable harm to the Defendants that outweighs any possible harm to Plaintiff, as home owned by the Defendants were intended to remain the home of the Defendants and they have money in trust to resolve the issue to continue to keep the home.

e. Granting the Injunction Will Not Disserve the Public interest.

In consideration of the fifth and final factor, an injunction will not be granted where it is readily apparent that the injunction will result in confusion and disorder and produce an injury to the public that outweighs the movant's right to the relief sought. *Stanberry v. Escambia County*, 813 So. 2d 278, 280-81 (Fla. 1st DCA 2002) (citing *Fla. Land Co. v. Orange County*, 418 So. 2d 370 (Fla. 5th DCA 1982)). This is clearly not the case here. The public interest supports the issuance of the injunctive relief sought. The public interest will be served by enjoining the Plaintiffs from being able to sell the home to a 3rd party who is unaware that the final judgment of foreclosure is being contested and actively litigated.

f. Notice to Plaintiffs of the instant action is not required in this case.

Defendants have met their burden in view of the attached documents and the urgency of enjoining the Plaintiffs as set forth above.

g. Bond

Rule 1.610(b) states that No temporary injunction shall be entered unless a bond is given by the movant in an amount the court deems proper, conditions for the payment of costs and damages sustained by the adverse party if the adverse party is wrongfully enjoyed.

Defendants contends that it is seeking only equitable relief in this Temporary Injunction and declaratory relief and the imposition of a bond should not be required and would cause a severe hardship upon the Defendants who is seeking to preserve its rights to receive the requested relief. At a minimum, if a bond is required, nothing more than a nominal amount should be required.

WHEREFORE, Defendants, JOSHUA ENNIO ZANDER BERNSTEIN, JACOB NOAH ARCHIE BERNSTEIN, and DANIEL ELIJSHA ABE OTTOMO BERNSTEIN, respectfully requests that its Emergency Petition for a Temporary Injunction and for the above reasons, the court is respectfully urged to grant Defendant 's Petition for temporary injunctive and declaratory relief, and to issue an order that declares that the Plaintiffs from taking action in selling the home at issue and for such further relief that this Honorable Court deems just and proper.

SWORN STATEMENT

We declare under the penalty of perjury that the above statements pled in this petition for temporary injunction are true and correct

JOSHUA ENNIO ZANDER BERNSTEIN



04 / 18 / 2022

JACOB NOAH ARCHIE BERNSTEIN

DANIEL ELIJSHA ABE OTTOMO BERNSTEIN

CERTIFICATE OF SERVICE

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

FIGHTING FIRM, P.A.
Counsel for DEFENDANTS
941 N Orange Ave
Winter Park, FL 32789
Tel (855) 383-8808 Fax (866) 249-8833

By: /s/ Leslie Ferderigos
Leslie Ferderigos, Esq.
Fla. Bar No.:0127526
leslie@fightingfirm.com

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IP: 108.189.57.129



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