

App. 1

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327,
LAKELAND, FL 33802-0327**

August 03, 2018

CASE NO.: 2D17-3082
L.T.No.: 2012-CA-2507-WH

DARIUSZ DOLACINSKI v. BANK OF AMERICA
AND MARIA DOLACINSKI

Appellant / Petitioner(s), Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellants' motions for rehearing, rehearing en banc, of the per curiam affirmance and request for a written opinion, certification and stay pending Florida Bar Investigation are denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Michael R. Esposito, Esq. Marinosci Law Group
Nicole R. Topper, Esq. Darius Dolacinski
Stacy Butterfield, Clerk

Mary J. Walter, Esq.
Maria Dolacinski

mep

/s/ Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

[SEAL]

App. 2

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT,
IN AND FOR POLK COUNTY, FLORIDA
CASE NO: 2012-CA-002507WH

BANK OF AMERICA, N.A.
Plaintiff,

vs.

DARIUSZ DOLACINSKI,
ET AL.
Defendant. _____ /

**ORDER ON DEFENDANTS' VERIFIED MOTION
TO VACATE FINAL JUDGMENT OF
FORECLOSURE AND CERTIFICATE OF TITLE**

(Filed Jun. 2, 2017)

THIS CAUSE, having come before me upon Defendants' Motion to Vacate Final Judgment of Foreclosure and Certificate of Title, and the same having been considered, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED AS FOLLOWS:

1. That Defendants' Motion to Vacate Final Judgment of Foreclosure and Certificate of Title, be and the same is hereby, **GRANTED / DENIED**. [/s/ [Illegible]

2. _____

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DONE AND ORDERED in Polk County, Florida.
This 20 day of June, 2017.

/s/ [Illegible]
CIRCUIT COURT JUDGE

Copies to parties on the attached service list:

App. 4

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR POLK COUNTY

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

CASE NO.

DARIUSZ DOLACINSKI,
ET AL.

2012-CA-002507WH

Defendant.

/

HEARING HELD ON JUNE 2, 2017

BEFORE THE HONORABLE STEVEN L. SELPH

DATE: June 2, 2017

TIME: 11:15 a.m. to 11:44 a.m.

PLACE: Polk County Courthouse
255 North Broadway Avenue
Hearing Room 7D-1
Bartow, Florida 33830

APPEARANCES: MICHAEL GELETY, ESQUIRE
Marinosci Law Group, P.C.
100 West Cypress Creek Road,
Suite 1045
Fort Lauderdale, Florida 33309
For the Plaintiff

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MICHAEL FUINO, ESQUIRE
Weidner Law
250 Mirror Lake Drive North
St. Petersburg, Florida 33701
For the Defendant

ALSO PRESENT: DARIUSZ DOLACINSKI, Defendant
BOGDAN BYZ, Tenant

REPORTER: DONNA RANONI, FPR

=====

I-N-D-E-X

June 2, 2017

HEARING3

REPORTER'S CERTIFICATE28

[3] Thereupon, the following proceedings were had
and taken:

THE COURT: This is – we're here on De-
fendant's Motion to Vacate the Final Judgment
and to Vacate the Foreclosure Sale. I note that
there had been a previous objection to the sale
that was overruled and denied –

MR. FUINO: Yes.

THE COURT: – a year or so ago by Judge
Wilhite, but it looks like we're here on a similar
motion today. And let's see – and defense counsel
is –

MR. GELETY: No, I'm for the plaintiff, Bank
of America.

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THE COURT: Who's the defendant's attorney?

MR. FUINO: Good morning, Your Honor. Michael Fuino on behalf of the defendants, Dariusz and Maria Dolacinski, my client.

THE COURT: Okay.

MR. GELETY: Yes, Your Honor. And just for the record, Michael Gelety for the plaintiff. That's G-E-L-E-T-Y.

And -- and also for the court's edification, there -- there were several objections and motions to vacate the sale and there was --

[4] THE COURT: Right.

MR. GELETY: -- also an appeal that was filed and that was dismissed as well, Your Honor.

THE COURT: Right. As untimely, I believe.

MR. GELETY: Yes, Your Honor.

MR. FUINO: And I agree with that, Your Honor. The motion that my client filed, and it was filed pro se, was almost a pre-sale motion to stop the sale, I guess, was the best way you could decide it because it was filed the day before the sale.

What I filed was a motion to vacate the judgment based on a very limited area. The issue was that a lawyer appeared on behalf of my client. A lawyer --

THE COURT: A lawyer who also sent a letter to the plaintiff's attorney saying she was representing your client.

MR. FUINO: That's true, Your Honor. And she did represent them, but not as to this matter. And that's what the issue became. That's why Your Honor in July 3rd, I think it was, which was a week before the trial, there was a motion to withdraw that was signed. Because that's when my client found out that her – his – the lawyer was going in to this case and filing pleadings and motions.

[5] Now, I don't know the –

THE COURT: He just – he had never filed an answer and was just ignoring the lawsuit?

MR. FUINO: I don't know if he had ever seen it or not. He – he's pretty clear that he did not authorize her to file anything and I'm not even sure that he even knew.

The – the other issue was, Your Honor, is, you know, there was not actual service on him. And when you look at the plaintiff's own filings which is the affidavit of due service –

THE COURT: Let me make sure I understand you. You said there was not service of the initial service of process for the – on the foreclosure complaint itself?

MR. FUINO: That's – that's right, Your Honor. And what they actually did was they went and served that lawyer. And you see on April 11, 2012, the process server in the affidavit of due diligence states that the – the process server states non-service. This is a law firm. This attorney had represented this defendant in the past, but is no longer a client.

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Now, for whatever reason the lawyer about two months later files pleadings. But putting that [6] aside, Your Honor, there was a consent final judgment that was entered seven days after or three days after the lawyer had withdrew.

It's undisputed that she had withdrawn at that time. That – and my client wasn't at the trial so he couldn't have consented.

THE COURT: I'm sorry. You're saying your client was not at the trial?

MR. FUINO: He was not at the trial. Which – and so – and it's also disputed that there is no written consent filed in the court file so when I –

MR. GELETY: I'd like to –

THE COURT: You'll get a chance.

MR. GELETY: I'm sorry.

MR. FUINO: I'm sorry. When I – I do quite a few of these things, Your Honor. And whenever I have a consent from an opposing counsel, I make sure I get it in writing. I have my client review it. They sign it and we file it.

THE COURT: So you weren't the lawyer on this case at that time?

MR. FUINO: I was not.

THE COURT: So I'm not sure –

MR. FUINO: Nor was counsel. Which all I'm [7] saying is that there was no written consent filed. So the only thing that could have happened, and this also wasn't counsel's issue because – well,

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for fault, I suppose, because he wasn't -- they weren't the lawyer at the time. It was a different plaintiff's lawyer. That lawyer went into the court and represented --

THE COURT: Guess what. I wasn't the judge at the time either so we're all new to this right now. It was Judge Wilhite who conducted the trial. And Judge Wilhite entered the final judgment and somebody wrote consent next to -- in front of the title of the final judgment. It was -- it was -- it was entitled final judgment, but then some -- it was handwritten the word consent in front of that as I saw in the record here.

And she also entered a memorandum for the clerk of the court directing the clerk not to schedule the foreclosure any sooner than 120 days, which means somebody asked to have that sale put off. I don't know who it would have been, but somebody asked the judge to have the foreclosure sale delayed for that length of time. And sometimes the defendant does that and sometimes the plaintiff's attorney does that. I don't -- I don't [8] know. I wasn't there so I don't know either.

MR. FUINO: But if the lawyer -- my point is that the lawyer had withdraw -- withdrew before the judgment was entered and there's no actual consent filed, then that consent only occurred on the day the judgment was entered. At which time it's undisputed that the lawyer wasn't the lawyer and my clients weren't there to consent.

THE COURT: I don't know if that's undisputed -- if that's undisputed or not at this point whether your client was there or not. I noted that

what – what scheduled this case for trial at that time was a – was an order that came from a case management conference, I guess, due to lack of activity in this case because there – they – the parties had gone – it had been a couple years since the case was initially filed.

And I see where there was an order entered by Judge Wilhite who was conducting case management conferences directing – scheduling the trial to take place on July 10, 2014, I think it was. And copies would have been handed out to that – that lawyer as well as the plaintiff's attorney at that time. And at that time that lawyer was still apparently representing the defendants. And you're [9] saying the –

MR. FUINO: Yes.

THE COURT: – defendants did not authorize that lawyer to represent them apparently. Is that what you're saying?

MR. FUINO: Well, again, my clients did not authorize her to file in this lawsuit, but my point is –

THE COURT: Well, at the time that order setting trial was issued by the court there in a courtroom at – at case manage – or in a hearing room at a case management conference and copies were – were handed out at that point in time, ostensibly that lawyer was representing the defendants and was on notice that that's when their trial date was scheduled. And it would be up to that lawyer to let her clients know they have a trial.

Particularly if she's going to withdraw and not represent them at trial.

MR. FUINO: When the -- when the -- okay. At which -- but that's just when the order scheduling the trial was entered.

THE COURT: Well, that's what puts people on notice of when their trial is scheduled.

MR. FUINO: Which I understand.

[10] THE COURT: And if they choose not to show up, it's not my problem.

MR. FUINO: But he didn't -- because -- well, but then he withdrew and he didn't know about the trial for whatever reason.

THE COURT: Well, wouldn't that be his lawyer's obligation to let him know he's got a trial scheduled?

MR. FUINO: I -- yes, I absolutely agree with that, Your Honor.

THE COURT: Okay. And so these same issues raised by Judge -- before Judge Wilhite in that objection to the sale which goes on for about 16 or 18 pages or so. It's a very lengthy objection.

MR. FUINO: They -- they were, Your Honor, but I --

THE COURT: And she -- and she -- and she actually scheduled a hearing and conducted a hearing on that, did she not?

MR. FUINO: I don't believe -- I don't know. I'm not sure. I don't know if there was a hearing.

THE COURT: Well, according to the court file –

MR. FUINO: If there was a hearing –

THE COURT: – there was a hearing and –

[11] MR. FUINO: I don't know. I wasn't there for that one.

THE COURT: Well, I wasn't either but they have – we have a court file to look at and in that file it indicates there was – it was noticed for hearing, a hearing was conducted, and Judge Wilhite denied the objection.

MR. FUINO: There was an objection to the sale, Your Honor. Well, my motion is different because mine –

THE COURT: Well, it's based on the same issues that he did not appear for trial, et cetera, et cetera, just like you just talked about, was it not?

MR. FUINO: Well, the issue before the court in that motion was whether or not to either cancel the sale or to – or to vacate the sale. I'm saying that they should vacate the judgment. And I understand it's a fine needle –

THE COURT: Okay.

MR. FUINO: – but there's a distinct difference.

THE COURT: And she also put in that order that – to prohibit – to announce that the court would not entertain any further hearing or motions [12] by the defendant.

MR. FUINO: I agree with that, Your Honor, except that I don't think that the court can unilaterally foreclose out a --

THE COURT: Well, I agree if there is a legitimate motion to be heard. So your motion is to vacate the judgment itself at this point?

MR. FUINO: Yes. Which is different than what my client in preposed capacity asked for which was basically a canceled sale, which is why I filed -- that's why I thought that there was good faith grounds to file a motion to vacate the judgment. Because before he -- he wasn't moving to vacate the judgment. He was moving to stop the sale.

And essentially I think what he was arguing was that he filed an appeal as counsel said which was dismissed as untimely filed at a final judgment. And what he said in the motion was that this is what I'm going to argue in the appeal.

Now, pro se pleadings and motions are entitled to liberal construction. And I think the liberal construction of that motion and what my client, who again, Your Honor, is not a native English speaker. He's from Poland.

THE COURT: Well, it was a very thorough [13] motion. I read it, you know --

MR. FUINO: It was.

THE COURT: -- this morning. And --

MR. FUINO: And nowhere in there --

THE COURT: -- it went on for many pages. It was a brief basically.

MR. FUINO: – I thought it was very good too. And basically it brings out the same set of points that I'm saying right now, so it's been very distorted and very consistent –

THE COURT: And it's the details that are in the pending motion right now.

MR. FUINO: Except that it didn't ask to vacate the judgment. It asked to stop the sale, which is my – which is the difference I see. And then, Your Honor – so those are the facts, Your Honor. And I –

THE COURT: Okay.

MR. FUINO: – think that the remedy – it's a pretty quick fix. Is we vacate the judgment and we set a new trial.

THE COURT: And your reason – let me make sure I understand the reason that you're saying this judgment should be –

MR. FUINO: Yes, sir.

[14] THE COURT: – vacated. If I understand you, you're saying it's because the lawyer that was representing the defendants at the time that the case was scheduled for trial and at the time the pleadings had been filed, an answer, and everything else, and it was also negotiated on behalf of the defendants to try to get them a loan modification which was ultimately denied. And then they proceeded on with the foreclosure. That – that they're not saying that lawyer was not authorized to represent them and was – and

furthermore that they did not know about – did not receive notice of the trial.

MR. FUINO: I think that the authorization represented is somewhat secondary. Although it's an important part. It's just that –

THE COURT: So what's the –

MR. FUINO: – I think more important is the fact that a consent judge – or something that deemed to be a consent was entered without a lawyer, because at the time the judgment was entered –

THE COURT: Well, let's assume there was nobody who consented to the judgment. If the case is scheduled for trial and the defendant does not [15] show up and the plaintiff goes ahead and presents the evidence and can conduct the trial without the defendant which is done very routinely when defendants fail to show up, the court could have entered the judgment based on the evidence presented. And I don't know why it was called consent, but somebody must have mentioned that somehow in the context of that trial. But even – even if there was not consent, are you saying the judgment could not be entered simply because the defendant wasn't present?

MR. FUINO: If there was no notice, I think that's a big issue which is my notice.

THE COURT: Well – but I just referred to the fact that there was an order issued by the court at a case management conference that scheduled the trial on that date and time and was

given to the person that appeared to be the attorney of record for the defendants –

MR. FUINO: And that might be, like you said –

THE COURT: – prior to her withdrawal.

MR. FUINO: Yeah. And that's true. And it's in there and I'm not disputing that.

THE COURT: Okay.

[16] MR. FUINO: It's just my client has been clear that he didn't –

THE COURT: So you're saying your client didn't – did not know about the trial date?

MR. FUINO: That's what it says, Your Honor.

THE COURT: Okay. Did you want to respond on behalf of the plaintiff?

MR. GELETY: Yeah, briefly, Your Honor. I believe counsel said earlier that these are the facts. They're not the facts because unsworn argument by counsel is not evidence and they're not facts and they shouldn't be taken as facts.

THE COURT: Uh-huh.

MR. GELETY: And there's a case that came out of the Second DCA very recently. It's Bank of New York Mellon versus the Estate of Peterson saying just that same reason. That he can't – he can't just say, yeah, I didn't know about it and nobody – and absolutely nobody showed up at the

trial. There's nothing indicating that nobody showed up at the trial.

THE COURT: And I don't know whether anybody did or not myself.

MR. GELETY: Correct. And we can't take it as a fact just through unsworn argument that that's – [17] that's what happened.

So really what we're – what we have right now is, I believe, and it's vague, but I believe they're bringing a motion to vacate under Rule 1.540. And if you do it under – under 1.540(b)(1), (2), and (3), this court doesn't even have – this court has – absolutely doesn't have any jurisdiction.

It's my contention that it has no jurisdiction to begin with because this is filed way more than a year later. A final judgment was entered – let's see here –

THE COURT: July 10, 2014.

MR. GELETY: – it was July 10, 2014. So we're – we're coming on three years later.

THE COURT: And it was appealed.

MR. GELETY: And it was appealed and several other –

THE COURT: There's some appeal at least.

MR. GELETY: – and several other motions were filed contesting the final judgment.

THE COURT: And a bankruptcy was filed as well, was it not?

MR. GELETY: It was, Your Honor. So – [18]
I believe –

MR. GELETY: Yes, it was. And –

THE COURT: – according to the court file
here.

MR. GELETY: Correct. And so if – under
Rule 1.540(b)(1), (2), (3), this court – there's even a
case out there that says we can't even – that the
courts can't even rule on it. It should just dismiss
the action or dismiss the – the motion as – because
there's no –

THE COURT: Because it's a –

MR. GELETY: – there's no – it's a nullity.
There's no – there's no – what do you call it – ju-
risdiction at all. If he were to bring it under – so
that leaves us under Section 5 that the judgment
or decree has been satisfied by release or dis-
charge and that's just not –

THE COURT: That doesn't apply.

MR. GELETY: That doesn't apply here. Other
than maybe if it's equitable. All right. If you're to
go under, travel under that – an equitable stand-
point, that absolutely can't be coming in either be-
cause on that same case, that Bank of New York
Mellon versus Estate of Peterson, and then the –
it's 208 So.3d 1218. It says if [19] you're going to
be traveling under an equitable way to vacate,
there must be, of course, some new post-judgment
fact or occurrence that requires the trial court in
equity to recede from its prior order or judgment.
There's nothing here that happened post-judgment

that would require this court to use its equity jurisdiction to vacate the judgment.

And I think the only other thing we could do here, and really if the judgment is void because they're saying they didn't get notice, and this is when things start to get serious, they're saying that they didn't get notice. Well, they were hired by an attorney or they hired an attorney. There's even – there's even a letter with their signature on there saying that we're hiring this attorney. And there's signature on there, on another motion saying that they're withdrawing. So our – is this attorney –

THE COURT: I'm sorry. What – what was that again?

MR. GELETY: There's – they filed a letter saying that we're being represented by an attorney with their signature on it.

THE COURT: Yeah.

[20] MR. GELETY: They later signed the motion to withdraw.

THE COURT: Well, when the attorney filed her motion to withdraw, they –

MR. GELETY: They filed that signature too.

THE COURT: – they consented to that, yeah.

MR. GELETY: And that's in this motion right here offered in the court file.

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THE COURT: So they – they were on notice from that that she sought to withdraw.

MR. GELETY: They were on notice. So there was a case management conference in April of 2014 setting it for trial in July.

THE COURT: Right.

MR. GELETY: And they're saying that they didn't have notice of this.

THE COURT: And at that time – at that time their lawyer still represented them.

MR. GELETY: Correct, Your Honor.

THE COURT: Yeah.

MR. GELETY: And so – I mean, if they're saying that this is – this is some rogue lawyer out there, I mean, that – those are serious allegations right now.

THE COURT: I have to conclude that lawyer was [21] their attorney of record. She appeared on their behalf. She filed an answer on their – on their behalf. They sent correspondence to the plaintiff indicating she was their lawyer. She – that lawyer received the order setting trial at the case conference in April of 2014 that set the trial for July 10, 2014.

She then a few days before the trial withdrew with their – with the defendant's apparent consent and knowledge and if they didn't know when their trial date was set, shame on them or their lawyer. It's not the court's problem. The court provided

adequate notice in the order that was entered in April.

And I don't know whether they appeared at the trial and consented to something provided, you know, or the sale, we're – we're not going to fight this. Can we get a sale put off for 120 days which is oftentimes what happens in these situations. And that may be why the word consent was written on the judgment and why 120 days was noted as the delayed, you know, as to how far out to set the sale date or it may have been for some other reason.

And it may be for the sake of discussion [22] maybe – maybe the defendants did not appear at trial. I don't – none of us sitting here today, other than the defendant himself, knows that. And there's been no evidence presented to establish that.

And even if – even if the defendant did not show up for trial and even if his lawyer didn't tell him, the lawyer was on notice and the lawyer was the attorney of record and that's between him and his lawyer.

And I think the judgment was properly entered. Evidence was presented that supported the judgment. There was evidence presented, the note and mortgage, the default, all the necessary evidence was presented to support a final judgment of foreclosure. A judgment was entered. And I don't see any reason for – for vacating at this point. And I'm not sure I even have jurisdiction to entertain the motion.

But if this motion seems to be based on some lack of knowledge on the part of the defendant that they were having a trial and that's why they didn't attend the trial, I don't know if they had attended whether it would change the outcome or not. But – but it's not – I don't think it's the problem of [23] the court or the plaintiff that they didn't attend if they – their lawyer was on notice and failed to tell them when to show up for their trial. And I don't know if that's what happened or not. But – but there's no evidence to support this motion to vacate the judgment so I'm denying it.

MR. GELETY: Okay. And, Your Honor, if – I see that a tenant showed up and – and –

THE COURT: Is that the other gentleman that's here today?

MR. GELETY: I believe they said he's a tenant. And if – if the court were to exercise its equitable jurisdiction, we've owned the property for several years now. We would like the rent for this tenant – from this tenant.

THE COURT: Well, that's something y'all can address in a separate motion or something. Has there – has there ever been a writ of possession issued yet, sir?

MR. GELETY: Not yet, Your Honor.

MR. FUINO: I'm pretty sure there is.

THE COURT: I guess –

MR. FUINO: I can help –

THE COURT: – I guess that's –

MR. FUINO: – with that. That's something we [24] can work out because there are people living in the property so that they can orderly leave.

THE COURT: Well, that's – that will be something that can be addressed from here on out, but because there is – there is a certificate that was part of this motion to set aside the certificate of title also that was issued to the plaintiff. And, of course, that would be denied as well because that was all pursuant to the judgment.

And the sale, the previous objection to the sale was overruled by the court. And the sale took place. There's nothing – there's nothing that renders that sale and the ultimate issuance of the certificate of title to the plaintiff as – as invalid. It was a valid sale. And the certificate of title was valid – was issued as a valid certificate so the plaintiff owns the property at this point. And what they – y'all choose to do about the fact that there's a tenant living there will be something y'all can address later on.

MR. GELETY: Okay.

THE COURT: The court would have jurisdiction to address those things if need be. But anyhow, Mr. Gelety, if you would want to prepare an order for me to sign.

[25] MR. GELETY: Yes, Your Honor. I have –

THE COURT: You have a form with you there?

MR. GELETY: Yeah. It's just a simple order here. I don't know –

THE COURT: It might suffice. Let me just see what – how it's worded here. It's one of the forms y'all are to bring with you. Yeah.

MR. FUINO: Yeah.

THE COURT: It says defendant's motion – it reads, the Defendant's Motion to Vacate Final Judgment of Foreclosure and Certificate of Title is the same as hereby, I can just mark it denied and should be sufficient. And we have a record today of the arguments and all, so.

MR. GELETY: Okay. Could we maybe add something just no further motions will be heard and – because, I mean, I came up from Ft. Lauderdale again on this case to – for – you know.

MR. FUINO: I'm sorry. What are you saying, sir?

MR. GELETY: I just want – I was asking maybe to put some extra language in the order that nothing further will be considered because, you know, this is my way, you know, second or third [26] go-round in coming up here from Ft. Lauderdale for pretty much the same issue is what I –

MR. FUINO: Well, first off, I don't file frivolous motions.

Second off, if the court wants to enter that, I still stand on the same argument that I made before.

THE COURT: I mean, let me not do that at this point but, obviously, if frivolous motions are being filed, if that should happen –

MR. GELETY: Okay.

THE COURT: – certainly sanctions can be –
can be considered at that point in time.

MR. GELETY: Okay.

THE COURT: Let me do this. Let me go
ahead – I started to write that in but I decided I –
I'm not going to do that. Let me do this. Let me just
– just do this in just a minute. Mark, go have her
– I'll just step in there. Y'all just keep your seat.

(The court leaves the hearing room for a brief
time and then returns to the hearing room.)

THE COURT: Let me get the copies all
sorted out here. Let me see. Okay. This is going to
be the original.

[27] MR. GELETY: Thank you.

THE COURT: I'll give a conformed copy to
you. Here you go.

MR. FUINO: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. GELETY: Thank you, Your Honor.

(Hearing concluded at 11:44 a.m.)

[Reporter's Certificate Omitted]

App. 26

**IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT IN
AND FOR POLK COUNTY, FLORIDA**

Case No.: 53-2012-CA-002507WH

Section:

BANK OF AMERICA, N.A.

Plaintiff,

v.

DARIUSZ DOLACINSKI; MARIA
DOLACINSKI; ANY AND ALL
UNKNOWN PARTIES CLAIMING
BY, THROUGH, UNDER, AND
AGAINST THE HEREIN NAMED
INDIVIDUAL DEFENDANT(S)
WHO ARE NOT KNOWN TO BE
DEAD OR ALIVE, WHETHER
SAID UNKNOWN PARTIES MAY
CLAIM AN INTEREST AS
SPOUSES, HEIRS, DEVISEES,
GRANTEES, OR OTHER
CLAIMANTS; TENANT NKA
TAMMY DOE; TENANT NKA
JIM DOE,

Defendant(s).

/

CONSENT FINAL JUDGMENT
OF FORECLOSURE

Form 1.996(a)

(Filed Jul. 14, 2014)

THIS ACTION was tried before the court on July 10, 2014. On the evidence presented,

IT IS ADJUDGED that:

1. Plaintiff, Bank of America, N.A., c/o 7105 Corporate Drive, Plano, TX 75024 is due:

Principal: \$ 645,283.61

Interest to date of this judgment: \$ 152,598.11

Title search expenses: \$ 75.00

Taxes \$ 16,039.93

Attorneys' Fees:

Finding as to reasonable number
of hours: 0

Finding as to reasonable hourly
rate: \$0.00

Other*: \$2,375.00

(*The requested attorney's fee is a flat rate that the firm's client has agreed to pay in this matter. Given the amount of the fee requested and the labor expended, the Court finds that a lodestar analysis is not necessary and that the flat fee is reasonable.)

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Attorneys' fees total	\$ 2,375.00
Court Costs, now taxed	
Filing Fee	\$ 1,944.00
Service of Process at \$0.00 per defendant	\$ 467.60
Other:	
Hazard Insurance	\$ 36,597.00
Property Inspections	\$ 430.25
SUBTOTAL	\$ 855,810.50
LESS: Undefined	(\$ 1,047.50)
TOTAL	\$ <u>854,763.00</u>

that shall bear interest at the rate of 4.75% a year.

2. Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property in Polk County, Florida:

LOT 4, NORTH GROVE, ACCORDING TO
THE PLAT THEREOF, RECORDED IN
PLAT BOOK 105, PAGE 40, OF THE PUBLIC
RECORDS OF POLK COUNTY, FLORIDA.

Property address: 7925 Mable Loop Road,
Lake Wales, FL 33898

3. If the total sum due with interest at the rate described in Paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on November 10, 2014, to the highest bidder for cash, except as prescribed in Paragraph 4, in accordance

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with section 45.031, Florida Statutes, using the following method:

[] At the courthouse beginning at 10:00 AM on the prescribed date.

[X] By electronic sale beginning bidding will begin at 10:00 a.m. online via the Internet at www.polk.realforeclose.com.

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiffs bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.
5. On filing the certificate of title, the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiffs costs; second, documentary stamps affixed to the certificate; third, plaintiffs attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.
6. On filing of the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property,

except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property.

7. Jurisdiction of this action is retained to enter further Orders that are proper including, without limitation, writs of possession, deficiency judgments and re-foreclosures to eliminate the interests of omitted parties or to correct legal descriptions or reform instruments.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the following provision applies:

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR

ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, RICHARD WEISS, AT 863-534-4557, WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY YOU MAY CONTACT FLORIDA RURAL LEGAL SERVICES (POLK) FOR POLK COUNTY AT 863-688-7376 TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT FLORIDA RURAL LEGAL SERVICES (POLK) FOR POLK COUNTY AT 863-688-7376

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**FOR ASSISTANCE, YOU SHOULD DO SO AS
SOON AS POSSIBLE AFTER RECEIPT OF THIS
NOTICE.**

ORDERED at Bartow, Florida, on JUL 10 2014, 2014.

/s/ [Illegible]
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of _____,
2014, a copy of the foregoing was furnished to the fol-
lowing parties by first class U.S. mail.

MORRIS HARDWICK SCHNEIDER LLC, ATTOR-
NEYS FOR PLAINTIFF, 9409 PHILADELPHIA
ROAD, BALTIMORE, MD 21237

DARIUSZ DOLACINSKI, C/O CAMILLE SEBRETH,
ESQ., 31 SOUTH MAIN STREET, SUITE 1, WINTER
GARDEN, FL 34787

MARIA DOLACINSKI, C/O CAMILLE SEBRETH,
ESQ., 31 SOUTH MAIN STREET, SUITE 1, WINTER
GARDEN, FL 34787

TENANT NKA TAMMY DOE, 7925 MABLE LOOP
ROAD, LAKE WALES, FL 33898

TENANT NKA JIM DOE, 7925 MABLE LOOP ROAD,
LAKE WALES, FL 33898

Deputy Clerk/Judicial Assistant

12/28/18

No. 18-872

In The
Supreme Court of the United States

DARIUSZ DOLACINSKI and
MARIA DOLACINSKI,

Petitioners,

v.

BANK OF AMERICA,

Respondent.

**On Petition For Writ Of Certiorari
To The District Court of Appeal Of Florida**

SUPPLEMENTAL APPENDIX

DARIUSZ DOLACINSKI
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Lake Wales, FL 33898
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*Counsel of Record for Petitioners
Pro Se*

SUPPLEMENTAL APPENDIX
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Case No. 2D17-3082.

Case

DARIUSZ DOLACINSKI and MARIA DOLACINSKI,
Appellant, v. BANK OF AMERICA, Appellee.

District Court of Appeal of Florida, Second District.

Opinion filed April 27, 2018.

Attorney(s) appearing for the Case

Dariusz and Maria Dolacinski, pro se.

Mary J. Walter of *Liebler Gonzalez & Portuondo, Miami,*
for Appellee.

PER CURIAM.

Affirmed.

KELLY, SLEET, and BADALAMENTI, JJ., Concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE RE-
HEARING MOTION AND, IF FILED, DETERMINED.
