Application No.

IN THE
SUPREME COURT OF THE UNITED STATES

MILES CHRISTIAN-HART,

Petitioner,

v.

WELLS FARGO BANK, N.A.,

Respondent.

On Petition for a Writ of Certiorari to the
District Court of Appeal, Second District, State of Florida

UNOPPOSED APPLICATION FOR STAY OF PROCEEDINGS

Steven A. Fox
Counsel of Record
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
stalanfox@msn.com

APPLICATION FOR UNOPPOSED STAY OF PROCEEDINGS

Petitioner, Miles Christian-Hart, by and through the undersigned counsel, makes this his application for an unopposed stay of the proceedings pending in the 12th Judicial Circuit Court, in and for Sarasota County, Florida, Case No. 2010 CA 012116 NC, for which a foreclosure sale is presently scheduled for June 21, 2019, App. 26, as follows:

1. On September 12, 2018, the Second District Court of Appeal, State of Florida, entered a per curiam affirmance of a judgment of foreclosure against the Petitioner, Miles Christian-Hart. App. 1. The undersigned timely filed a motion for rehearing and for rehearing en banc thereon attaching thereto an email received from the Respondent, Wells Fargo Bank's, counsel, advising that she had contacted her client and the same had agreed to a stay pending resolution of all appeals. App. 1a. On December 18, 2018, the motions for rehearing and for rehearing en banc were denied, App. 2, and an amended denial of the same was entered by the Second DCA on January 8, 2019. App. 3. On December 27, 2018, the undersigned filed an unopposed motion for stay of mandate pending the filing and resolution of a Petition for Writ of Certiorari, App. 4, which was denied by the Second DCA on January 4, 2019, App. 5. On January 11, 2019, the undersigned filed an amended unopposed motion for stay of mandate pending the filing and resolution of a petition for

writ of certiorari, App. 6, which was stricken as unauthorized on January 14, 2019. App. 7. The district court's denial of a stay is not an appealable order to the Florida Supreme Court. However, the parties were aware that the setting of a date for a foreclosure sale is not self executing, and, overwhelmingly, requires the action by a party, typically the Plaintiff bank, to schedule or to reschedule a sale. Accordingly, on January 19, 2019, the parties filed a stipulation with the trial court stating,

> "...neither side will proceed to schedule or reschedule a foreclosure sale herein, pending the filing and resolution of said Petition for Writ of Certiorari before the Supreme Court of the United States and the resolution of all appeals." App. 8.

Mandate was issued by the Second DCA on February 6, 2019. App. 9. The trial court then entered an order directing the parties to explain why the foreclosure sale should not be reset immediately and expediting all further proceedings. The trial court denied the stay motions but agreed to reschedule the foreclosure sale to June 21, 2019. App. 10-11. On April 14, 2019, a renewed unopposed motion to reschedule the sale was filed, noting that, under F.S. 45.031, "a sale may be held more than 35 days after the date of Final Judgment if the Plaintiff or Plaintiff's Attorney consents to such time." In this case, the Plaintiff and the Plaintiff's Attorney *consented* to the same. The undersigned also made a further ore tenus motion for stay. A hearing was held on April 22,

2019, completed on May 21, 2019, where the trial court entered a denial asserting it did not possess the legal authority to grant a stay as it is not the lower tribunal, the lower tribunal in this instance being the Second DCA itself. App. 12.

In this instance, as explained at the hearing, not only does Hart have a meritorious due process case, but the parties have been in active settlement negotiations to resolve the case, and a foreclosure sale at this time would pose an immense hardship on Hart, his wife, and his mother in law, the last of whom resides in a room at the residence specially outfitted to care for her. The mother in law received extensive open heart surgery at Tampa General Hospital where she was provided a left ventricular assistive device (LVAD), and the mother in law resides with her daughter and son-in-law at this residence now set for foreclosure sale as no other place would take her with her LVAD.

Not only was this residence specially outfitted to care for the mother in law, but her daughter has been specially trained as her caregiver thereat. At the May 21, 2019, hearing denying the motion, the trial court conceded on this score that,

> "He has raised issues that we talked about today and talked about the last time we were in this hearing on April 21, 2019, about the alleged violation of due process, and this issue has been presented—to multiple judges of the Twelfth Judicial Circuit and to the Second District and presumably will be presented to the U.S. Supreme Court. The U.S. Supreme Court hears a hundred cases a year, nationwide. And so I—realistically, you know, Mr. Christian-Hart has the right to request that the Supreme Court of the United States review his case. I cannot conclude there's any likelihood of success. This takes us to the second

> prong, the likelihood of harm should a stay not be granted. Here, the Court would find as an alternative, and certainly—the Court would find that there are very unusual circumstances in Mr. Christian-Hart's case not having to do with the claim of due process violation, but the likelihood of harm. Here, Mr. Christian-Hart has demonstrated that he has made his home available to his mother-in-law and has undergone a significant financial outlay to create a sterile room. Certainly that sterile room can be replicated other places, but it would cost a significant amount of money to do that and you almost would have to be in a home that you own as opposed to a rental because of the construction that would have to be undertaken."

The Court ended that,

> "So in recap, I do not have the legal authority to grant the stay, so I'm going to deny the stay and deny the renewed amended motion to reschedule the sale, which is nothing more than a request for that stay."

Absent a granting of this unopposed application for stay, the sale is scheduled to go forward on June 21, 2019. App. 13. Again, neither party wants the sale to go forward but the trial court states he lacks the authority to stay it and the Second DCA has denied the motions for stay, even though unopposed. In this case, as will be seen below, a judgment of foreclosure has been entered for a loan that never closed, for which Hart signed a note and mortgage in advance of the closing that were recorded in error by the closing agent, and for which there was not a scintilla of proof at this trial on Florida's rocket docket that Hart benefited from the loan to the extent of one penny. Instead, Wells Fargo offered up a release from one bank which it knew had been rescinded as issued

in error and a release from another bank unrelated to this case. Instead, Wells Fargo did not introduce, much less have admitted at this trial, any evidence, much less competent, substantial evidence, of the note and mortgage he did sign in advance of the closing, all violative of the due process requirement that judicial findings be based on evidence in the record. This is a travesty of justice and all people want to focus on is how few cases the Supreme Court takes as a basis for minimizing the likelihood of success. The Supreme Court has taken cases like this in the past as in *Thompson v. City of Louisville,* 362 U.S. 199 (1960), and this case is a perfect candidate for either summary reversal or for a full briefing on the merits.

In sum, Petitioner Hart has satisfied the requirements of Supreme Court Rule 23 for seeking a stay from a Circuit Justice, having sought a stay from the Second DCA, and, in an abundance of caution from the trial court itself, and there h
is no basis for seeking stay relief in the Florida Supreme Court either.

Petitioner Hart has also satisfied the standards for obtaining a stay of proceedings pending this Court's disposition of the petition for certiorari. See, *Barnes v. E-Systems, Inc.,* 501 U.S. 1301 (1991), *Stroup v. Wilcox*, 127 S. Ct. 851 (2006). That standard is applicable to requests for a stay of district court proceedings pending certiorari and would apply here as well. Petitioner is required to show under the standard that there is a

reasonable probability that certiorari will be granted, that there is a significant possibility of reversal, and that irreparable harm would otherwise result.

The third prong is self evident here to both Hart and to Wells Fargo as to uproot Hart and his family at this juncture would be catastrophic for his family, especially his mother in law. Moreover, Wells Fargo has made a business decision not to pursue a sale of the home at this time, and all that is being requested is to defer the sale until all appeals have been exhausted herein.

On February 13, 2019, the undersigned filed a motion to recall mandate with the Second DCA, as the mandate was defectively served, but this motion was denied on February 20, 2019. The undersigned thus filed a petition for a writ of mandamus on March 22, 2019, with the Florida Supreme Court to direct the Second DCA to recall the mandate, for which the Florida Supreme Court has not yet ruled. In any event, the Second DCA presently has no jurisdiction as jurisdiction is proper only for such period as the appellate court retains its mandate. Again, mandate was issued herein on February 6, 2019. Thus, the only option to stay the proceedings—and the foreclosure sale—below is for this Court to issue a stay. Again, the issue comes down to whether there is a reasonable probability that this Court will grant certiorari and a significant possibility of reversal. While due deference ordinarily would be owed to the Second DCA's decision declining to issue a stay, in this case, no such deference is

warranted as the Second DCA's orders have failed to address the fundamental due process errors extant throughout. That is, due process errors have occurred throughout the proceedings violative of Section 1 of the Fourteenth Amendment to the U.S. Constitution providing,

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

DUE PROCESS CLAIMS

In order to understand the significant due process claims made herein in the context of Florida's foreclosure proceedings, a brief review of Florida law is in order. Simply put, making a prima facie case of foreclosure is one of the easiest in the entire court system. Under Florida law, a trial court's decision to enter a Final Judgment of Foreclosure is reviewed by a reviewing court under the "substantial, competent evidence standard. *Tibbs v. State,* 397 So.2d 1120 (Fla. 1981), affirmed by this Court at 457 U.S. 31, holding that there must be substantial competent evidence to support a verdict and judgment. The Florida approved form for a foreclosure action is the Uniform Judgment of Mortgage Foreclosure which begins as follows:

> "THIS action was tried before the Court. On the evidence presented..."

Over the decades, Florida courts have dealt extensively with what evidence must be presented and admitted in a foreclosure trial to establish a prima facie case of foreclosure. In *Figueredo v. Bank Esperito Santo,* 537 So.2d 1113 (Fla. 3d DCA 1989), the Third DDA held that as the Plaintiff had failed to produce for admission into evidence the original copy of a promissory note, the final judgment of foreclosure had to be vacated. In the leading case of *Fair v. Kaufman,* 647 So.2d 167 (Fla. 2d DCA 1994), the Second DCA considered a case where, as here, the original note and mortgage were already in the court file holding that,

> "In order to prevail in a suit on a note and mortgage, the original note and mortgage must be introduced into evidence or a satisfactory reason given for failure to do so…The record in this case does not indicate the original documents were offered and/or received into evidence. The appellees argue the original note and mortgage were filed and placed into evidence at the summary judgment hearing. This is not sufficient. The introduction of such documents at a summary judgment proceeding does not obviate the necessity for proper introduction at trial…The failure to introduce those original documents precludes the entry of a final judgment."

In *Beaumont v. Bank of New York Mellon,* 83 So.3d 553 (Fla. 5th DCA 2012), a document that was contained in the record, but not offered into evidence at the trial, was not "competent" evidence and could not be considered. In *Figueroa v. Federal Nat'l Mortg. Ass'n,* 180 So.3d 914 (Fla. 5th DCA 2015), the Fifth DCA held that, "A document that was identified but never admitted into evidence as an exhibit is not competent evidence to support a judgment." In the instant

case, the note and mortgage documents were never admitted into evidence by the trial court. As noted in *Kelsey v. Suntrust Mortgage,* 131 So.3d 825 (Fla. 3d DCA 2014), even a default judgment requires the introduction of the proper documents.

THE LOAN THAT NEVER WAS

In this case, Hart entered into a proposed loan with World Savings Bank, which was acquired by Wachovia Bank, which was itself acquired by Wells Fargo Bank. Under the terms of the proposed HUD-1, $85,721.28 was to be paid to Wells Fargo Bank, $53,753.73 was to be paid to Regions Bank, and $21,262.29 was to be paid to Hart directly. The loan did not close, but Hart had signed a note and mortgage in advance of the scheduled closing in anticipation the loan would close. The note and mortgage were recorded by the closing agent in error and forwarded on to World Savings Bank. Advised that he should continue to make payments and the matter would be straightened out, Hart paid for a while, but the matter was never straightened out and subsequently Wells Fargo filed for foreclosure. Hart asserted lack of consideration as a defense and demanded proof by the Plaintiff that the required payments under the HUD-1 had been made which never came. Prior to the trial, the trial court granted Wells Fargo 30 days to provide further discovery to Hart, but as the trial court had set the trial for 29 days thereafter, on the day before the trial, Wells Fargo filed a motion

for a continuance, which Hart agreed to, but the court denied. Although Florida Rules of Civil Procedure Rule 1.440 also requires a minimum of 30 days elapse between the date of the order, and the trial date, the court did not comply with that procedural rule, a due process violation. This requirement of due process is well established. See, *Bennett v. Cont'l Chems., Inc.*, 492 So.2d 724 (Fla. 1st DCA 1986) and *Rivera v. Rivera,* 562 So.2d 833 (Fla. 1st DCA 1990). See, also, *Wells Fargo Bank v. Sawh, N.A.,* 194 So.3d 475 (Fla. 3d DCA 2016), where Wells Fargo Bank asserted its own due process rights had been violated when Rule 1.440 was not satisfied. Also, prior to the trial, Hart had been contacted by Wells Fargo directly, although represented by counsel, and thus filed a motion for the entry of an order prohibiting the Plaintiff (Wells Fargo) from contacting Hart directly. This was denied by the trial court. Also, prior to the trial, Wells Fargo filed an amended witness and exhibit list which listed the promissory note and the mortgage as exhibits it intended to introduce at the upcoming trial but listed no releases whatsoever. At the trial, Wells Fargo offered up two releases which had not been listed. The first release was from Regions Bank, App. 14, a release Wells Fargo knew to have been rescinded as issued in error, App. 15. Wells Fargo only offered up the original release however without the rescinding document, intending to deceive the court into finding the loan had been funded. The second release was from General Mortgage

Corporation, App. 16, but this release had been returned to Hart directly, and not to the closing agent, and did not relate to this case. Wells Fargo knew that *it* had not been paid by the closing agent although listed under this proposed HUD-1. Wells Fargo tried to confuse the trial court with a release from another entity. As the trial date includes 50-60 contested and uncontested cases set for trial, Florida's rocket docket system was not consistent with fundamental fairness and due process.

Thus, in terms of the note and mortgage, Wells Fargo did not offer, introduce, or have admitted the correct note and mortgage at the trial, and the proceeding was so sloppy that the clerk admitted a note and mortgage from another case involving a loan between a Ms. Phyllis Savage and Bank of America. App. 17.

In sum, the Uniform Judgment of Mortgage Foreclosure signed herein was supported by zero competent, substantial evidence that the loan had been funded and zero competent, substantial evidence of the correct note and mortgage. This is the case although due process requires that a judgment be based on record evidence. See, *Goldberg v. Kelly,* 397 U.S. 254 (1970), holding a recipient entitled to notice of a hearing before an impartial decision maker, the opportunity to be heard at the hearing, the right to confront and cross-examine witnesses, and the right to a statement setting out the evidence relied upon and the legal basis for the decision. See, also,

Fuentes v. Shevin, 407 U.S. 67 (1972), holding that procedural due process guarantees the right to be heard in a meaningful manner and *Hinton v. Gold,* 813 So.2d 1057 (Fla. 4th DCA 2002), holding, "Due process demands that the defendant be given fair notice and a reasonable opportunity to be heard before judgment is rendered" and "fundamental to the concept of due process is the right to be heard which assures a fair hearing, the right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence. *Brinkley v. County of Flagler,* 769 So.2d 468, 472 (Fla. 5th DCA 2000)." After the trial, Hart filed a pro se motion for a new trial and the undersigned filed a motion to vacate the sale date thereat as Hart's motion for new trial had never been heard. The first successor judge read that motion at the hearing on the motion to vacate and agreed to a hearing date to hear the motion. The undersigned then filed an amended motion for new trial on the basis the loan was unfunded and no prima facie case had been made as well as a motion for leave to file omitted counterclaim which noted that the proposed mortgage loan had never been consummated and that Wells Fargo had led Hart to believe that if he made the payments on the unconsummated loan, the matter would be straightened out and the payments returned to Hart, but Wells Fargo had wrongfully retained the payments and wrongfully pursued the foreclosure action. The undersigned added the two

additional motions and noticed those two motions along with the original motion for new trial for hearing. The hearing was on a date specially agreed to by the Court and Wells Fargo. No response was received from Wells Fargo as to any of the pending motions. However, the day before the hearing, the first successor judge denied the motions and cancelled the hearing denying Hart an opportunity to be heard. The first order denied the amended motion on the basis a notice of appearance had "never" been filed. App. 18. This was untrue as the undersigned had entered his appearance as "Attorney for Defendant HART" previously when filing his motion to vacate, and on the hearing notice therefor, and, at the hearing itself, had expressly identified himself as the attorney for Hart. In any case, on June 1, 2019, the undersigned also filed a formal notice of appearance at the beginning of his motion for leave to file omitted counterclaim which was efiled on 6:54 pm on June 1, 2019. In an amended order, App. 19, the first successor judge asserted that as the notice of appearance was not filed prior to or contemporaneous with the pleading, which had been efiled at 6:49 pm, that supposedly made the pleading a nullity! As the undersigned has noted repeatedly, his intent was to file the motion for leave to file omitted counter-claim first followed by the amended motion for new trial, with the notice of appearance contained in the motion for leave to file omitted counterclaim to apply to both pleadings, but, inadvertently, the amended motion for new trial went

first by five minutes. According to the successor judge, the fact that the notice of appearance was delayed by five minutes, which prejudiced nobody, nullified both the amended motion for new trial and the motion for leave. App. 20. In doing so, Judge Iten cited the Second DCA case of *Pasco County v. Quail Hollow Properties, Inc.*, 693 So.3d 82 (Fla. 2d DCA 1997), which dealt with a notice of appearance filed on an entirely different date, not five minutes later on the same date, and that case has not been followed by other courts in any event. It was particularly alarming that Judge Iten took this position considering that no attorney for Albertelli Law has ever filed a notice of appearance in this case and that Albertelli Law, having received the motions, did not claim it had been prejudiced from this five minute delay. Equally alarming is that in his amended order, Judge Iten added an additional basis for nullifying the pleading—oddly not included in his original order—claiming that the belated filing would be highly prejudicial to Wells Fargo. However, Wells Fargo received the motions and did not assert they had been prejudiced and this was only raised sua sponte by the court on Wells Fargo's behalf, probative of partiality. All of this was concerning because this was supposed to be a court of equity. Judge Iten granted the motion to disqualify himself and a motion for reconsideration was timely filed. In the motion for reconsideration, the undersigned noted that, in a motion for reconsideration, the successor judge can reconsider any prior orders

and is not limited to new matters, and "so a motion for reconsideration is not analogous to a motion for rehearing." The undersigned listed each order and noted that,

> "In each and every instance, the trial court failed to provide an opportunity to be heard and violated fundamental due process. As to the Motion for New Trial, this motion was based on the trial court's failure to provide discovery necessary for a fair trial. As to the Amended Motion for New Trial, this added two additional grounds for a new trial, that the purported mortgage was not funded and that the Plaintiff had failed to make a prima facie case. In fact, the evidentiary record is clear that the trial court had admitted evidence herein from another borrower (Savage) at an entirely different bank (Bank of America). As to the motion for leave to file omitted counterclaim, this motion was simply intended to allow the Defendant to recover the amounts justly owed."

Wells Fargo issued its response to the motion for reconsideration asserting that one does not have a right to a new hearing, not even responding to the dubious notice of appearance and prejudice issues, missing the point that the issue is whether the proffered reasons by the court for denying the opportunity to be heard violated fundamental fairness and due process. Regardless, the second successor judge denied the motion for reconsideration, saying he agreed with each Iten order. On appeal, there was extensive briefing on the issues.

At oral argument, the merits panel focused on the paucity of evidence in the trial record, and, to eliminate any confusion, the parties did enter into a post oral

argument stipulation filed on September 5, 2018, stating that the parties stipulated, per App. 21, that neither the correct original note and mortgage nor a copy thereof were attached to or appear in the trial court's evidence record in this matter. After the Second DCA issued its PCA on September 12, 2018, however, the undersigned filed a motion for rehearing and for rehearing en banc emphasizing again that the correct documents had not been offered at trial. In response, on page 5, footnote 2, Wells Fargo claimed that Wells Fargo had never stated that it never introduced a *copy* of the note and mortgage at trial, App. 22, which was misleading as Wells Fargo's Trial Counsel had expressly stated to the lower court that no physical note or mortgage had been offered at the trial. Indeed, trial counsel claimed it had only verbally requested the court to take judicial notice of the note and mortgage already in the court file which is unlawful since under *Bull v. Jacksonville Fed. Sav. & Loan Ass'n,* 576 So.2d 755 (Fla. 1st DCA 1991), one cannot take judicial notice of a mortgage, and, even if one could, the proper procedures to do so must be followed, including the due process requirement that a request for judicial notice be in writing. See, *Sandefur v. RVS Capital, LLC,* 183 So.3d 1258 (Fla. 4th DCA 2016), holding one cannot take judicial notice of a mortgage, and, even if one could, the Florida Evidence Code, F.S. 90.203-04 sets forth the procedures that must be followed. See, also, *Holt v. Calchas,* 155 So.3d 499 (Fla. 4th DCA 2015), dealing with documents already contained in a court

file, holding that the rules of evidence still apply to the information contained within a court file. Thus, one cannot circumvent the requirement one can not take judicial notice of a mortgage by simply filing the mortgage and then taking judicial notice of it. See, also, *DiGiovanni v. Deutsche Bank National Trust Company,* 226 So.3d 984 (Fla. 2d DCA 2017) holding that judicial notice may only be taken pursuant to the procedures set forth in state statute and judicially noticed documents must be otherwise admissible. The undersigned thus filed a detailed unopposed motion for leave to file reply to Wells Fargo's response which dealt with Wells Fargo's failure of proof and other issues raised in the response, noting in the reply that Wells Fargo "reverses the position that it has held during the entire case, suddenly claiming" it had introduced a copy of the note and mortgage at trial although Wells Fargo trial counsel had earlier stated that, "The original documents have previously been filed with the Court. And during the trial, there was no admission of a note and mortgage—a physical admission, other than asking--telling the Court that the original documents were previously filed and asking the court to take judicial notice of them and admit them into evidence." As the undersigned put it therein, the full membership of the Second DCA must be made aware of what is at stake here. However, the three member merits panel struck the reply, App. 23-24, so the reply was never seen by the full Second DCA in considering the motion for rehearing en banc, despite this surprise development

mandating a response. It was all the more important since the facing sheet accompanying the affirmance indicated the merits panel had ruled immediately after oral argument without even considering the stipulation between the parties. To repeat, at the trial, the correct note and mortgage were never introduced nor admitted in evidence at the trial, but a note and mortgage from another loan—with Bank of America—were admitted in evidence. After oral argument, the parties stipulated that neither the correct original note and mortgage nor copies thereof appear in the evidence record, but the merits panel had already issued its per curiam affirmance. As a matter of procedural due process, the undersigned asked the merits panel to confirm if it had considered the stipulation which it refused to do. What happened is that after the PCA was entered, the undersigned filed a motion for rehearing and a motion for rehearing en banc, stating that the stipulation confirmed the note and mortgage had never been introduced. Wells Fargo responded with a statement suggesting copies of the correct note and mortgage had been introduced which the undersigned explained in his reply was new and untrue as Wells Fargo's trial counsel had stated no such physical documents were offered at trial. The merits panel saw this and struck the reply so the full court never knew what had transpired denying Hart a meaningful opportunity to be heard. Wells Fargo did then issue a withdrawal of the misleading statement but simply withdrew it without

explaining the significance of the withdrawal. App. 25.

CONCLUSION

It is undisputed that, as a matter of Florida law, there must be competent, substantial evidence in the trial record to support a judgment of mortgage foreclosure. However, there is zero competent, substantial evidence in this trial record that the loan had actually closed and any payments were made thereunder in that the two releases offered at the trial by Wells Fargo were misleading—the first was from Regions Bank but that release was rescinded and the second is from General Mortgage Corporation and has nothing to do with this case. There is also zero competent, substantial evidence in the trial record of the correct note and mortgage being introduced or presented, much less being admitted in evidence at the trial, the only evidence so admitted relating to another loan. This not only violated the requirement that there be competent, substantial evidence to support a judgment, but also violated the procedural due process requirement that judicial findings be based on the evidence presented at the hearing or trial. Next, it is undisputed that the trial was set for the 29th day after the order, rather than the minimum of 30 days, also a due process violation. Third, following the trial, both the initial successor judge and the second successor judge denied Hart an opportunity to be heard on his post judgment motions for a reason

facially violative of fundamental fairness and due process, on account of a five minute delay in the filing of a notice of appearance, a delay which prejudiced nobody, but was merely an excuse to cancel the hearing and to deny Hart his opportunity to be heard. There is such a thing as rough justice but, in this case, justice was so rough that Hart could lose his home over a loan that never was, with false evidence to show the loan occurred, and no evidence at all introduced, much less admitted, of the correct note and mortgage, as well as due process violations based on the court's failure to let the required time elapse for Hart to prepare for trial and also to receive his promised discovery, and to be heard on his post judgment motions, all deeply offensive to fundamental fairness and due process. This problem of the trial courts abiding "dubious proof" is well known and widespread in the Second District. As former Second DCA Chief Judge Villanti recently put it in *Shaffer v. Deutsche Bank National Trust,* 235 So.3d 943 (Fla. 2d DCA 2017),

> "I also take this opportunity to make two recommendations based on my observations from the flood of foreclosure litigation that this court has reviewed in the past few years…It appears that many foreclosure judgments are entered based on dubious proof based on an understandable lack of sympathy for defendants who are years behind on payments and who are raising what appear to be spurious delaying defense tactics…Using chapter 83 as a template, the legislature could address the foreclosure backlog and ensure that foreclosure cases would be expedited without sacrificing due process."

Whether the embrace of dubious proof is actually the result of such lack of sympathy or is due to other reasons (including a large docket of contested and uncontested cases in which judges are unable to prepare adequately for trial and to conduct trials as they would prefer), it is clear that due process has been sacrificed by accepting dubious proof, or, as here, even no proof at all, to support a judgment. Even though this Court takes a limited number of cases, this case is a perfect candidate for summary reversal, or a full merits briefing on the issues in which reversal is highly likely, and all Hart is requesting herein is for the Court to please grant this unopposed application for stay of the proceedings in the 12th Judicial Circuit in and for Sarasota County, Florida, in which case the scheduled foreclosure sale presently set for June 21, 2019, of Hart's residence, App. 26, will be cancelled, pending the resolution of his appeals.

Respectfully submitted,

Steven Fox
Counsel of Record
Steven Fox
Attorney at Law
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
stalanfox@msn.com

June 3, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I, Steven Fox, a member of the Bar of this Court, on June 3, 2019, served a copy of this Unopposed Application for Stay with attachments, via First Class U.S. Mail, postage prepaid, and, also, as indicated below, sent via electronic mail, copies of the same, and further that, pursuant to Rule 29.5, all parties required to be served have been served:

VIA U.S. MAIL AND ELECTRONIC MAIL

Sara F. Holladay-Tobias, Esquire
Emily Rottmann, Esquire
C.H. Houston, III, Esquire
McGuireWoods, LLP
50 N. Laura Street, Suite 3300
Jacksonville, Florida 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com
Attorneys for Respondent Wells Fargo Bank, N.A.

Albertelli Law
P.O. Box 23028
Tampa, Florida 33623
servealaw@albertellilaw.com
Attorneys for Respondent Wells Fargo Bank, N.A.

Bora S. Kayan, Esquire
1660 Ringling Blvd.
Second Floor
Sarasota, Florida 34236
bkayan@scgov.net
Attorney for Sarasota County

VIA U.S. MAIL

Unknown Spouse of Miles Christian-Hart
n/k/a Barbara Hart
3439 Belmont Blvd.
Sarasota, Florida 34232

David M. Demarest, President
Sarasota Springs Community Association, Inc.
4210 Ruth Way
Sarasota, Florida 34232

Steven Fox, Esquire
Attorney for Petitioner Miles Christian-Hart
Florida Bar Number 246654
4634 Higel Avenue
Sarasota, Florida 34242
Phone: (941) 225-3676
Email: stalanfox@msn.com

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

MILES CHRISTIAN-HART,

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

Case No. 2D16-2875
2D17-1110

CONSOLIDATED

Opinion filed September 12, 2018.

Appeal from the Circuit Court for Sarasota County; Nancy K. Donnellan, Senior Judge and Brian A. Iten, Judge.

Steven Fox, Sarasota, for Appellant.

Sara F. Holladay-Tobias and Emily Rottmann of McGuireWoods LLP, Jacksonville, for Appellee.

PER CURIAM.

Affirmed.

KHOUZAM, SLEET, and BADALAMENTI, JJ., Concur.

Hart - Stay approved

Holladay-Tobias, Sara F. <stobias@mcguirewoods.com>
Thu 10/18/2018, 9:15 AM

To: steven fox <stalanfox@msn.com>

Steven – Good news – I heard last night from my client that they approve a stay of the foreclosure sale pending resolution of all appeals.

Sara F. Holladay-Tobias
Partner
McGuireWoods LLP
Bank of America Tower
50 North Laura Street
Suite 3300
Jacksonville, FL 32202-3661
T: +1 904 798 2662
M: +1 904 382 8639
F: +1 904 360 6317
stobias@mcguirewoods.com
Bio | VCard | www.mcguirewoods.com

McGUIREWOODS

App 1a

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

December 18, 2018

CASE NO.: 2D16-2875
L.T. No.: 2010-CA-012116 NC

MILES CHRISTIAN - HART	v.	WELLS FARGO BANK, N. A.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and rehearing en banc is denied.

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

Served:

Milan Brkich, Esq.
Emily Y. Rottmann, Esq.
Albertelli Law
C. H. Houston, I I I, Esq.
Sara F. Holladay - Tobias, Esq.
Steven Fox, Esq.
Karen E. Rushing, Clerk

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

App 2

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

January 08, 2019

AMENDED ORDER

CASE NO.: 2D16-2875
2D17-1110
L.T. No.: 2010-CA-012116 NC,
2010-CA-012116-NC

MILES CHRISTIAN - HART	v.	WELLS FARGO BANK, N. A.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and rehearing en banc is denied.

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

Served:

Milan Brkich, Esq.
Emily Y. Rottmann, Esq.
Barbara Hart
Albertelli Law
C. H. Houston, I I I, Esq.
Sara F. Holladay - Tobias, Esq.
Steven Fox, Esq.
Karen E. Rushing, Clerk

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

App - 3

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART,

Appellant,

CASE NO. 2D16-2875
L.T. CASE NO. 2010-CA-012116 NC

vs.

WELLS FARGO BANK, N.A.,

Appellee.
_____/

APPELLANT'S UNOPPOSED MOTION FOR STAY OF MANDATE PENDING FILING AND RESOLUTION OF A PETITION FOR WRIT OF CERTIORARI

COMES NOW, the undersigned counsel, on behalf of the Appellant herein, who files this his unopposed motion for stay of mandate pending the filing and resolution of a Petition for Writ of Certiorari before the Supreme Court of the United States, as follows:

I. Pursuant to Rule 9.310 of the Florida Rules of Appellate Procedure and 28 U.S.C. Section 2101(f), the Appellant files this his unopposed and agreed motion to stay the effect of the court's *per curiam affirmance* herein and denial of motion for rehearing and motion for rehearing en banc thereon. In support, Appellant states that on September 12, 2018, this court issued

its *per curiam affirmance* of the judgment below, and, on December 18, 2018, this court issued its order denying the timely filed motion for rehearing and motion for rehearing en banc thereon. As to appealing the same, Florida's Constitution sets forth the circumstances under which the Florida Supreme Court may and must take jurisdiction. Fla. Const. Art. V., section 3(b)(3) states that the Florida Supreme Court "may review any decision of a district court of appeal that...expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." The Florida Supreme Court has held that the term "expressly requires that there be a written opinion by the district court of appeal demonstrating the required conflict in law." *Jenkins v. State,* 385 So.2d 1356 (Fla. 1980). Where the Second District Court of Appeal did not issue a written opinion as to the underlying appeal, the Appellant's remedy is to directly appeal to the United States Supreme Court. See, *Hobbie v Unemployment Appeals Commission of Florida,* 480 U.S. 136 (1987);

Palmore v. Sidoti, 466 U.S. 429 (1984). As this court issued its decision denying the motion for rehearing and for rehearing en banc on December 18, 2018, then, absent an extension of time, the Petition for Writ of Certiorari would be due on March 18, 2019, and Supreme Court Rule 13.5 provides that one may make application for an extension of time for sixty (60) days, in which case the Petition for Writ of Certiorari would be due by May 17, 2019. Appellee does not oppose the request for such extension of time. In *State ex rel. Gibbs v. Couch,* 139 Fla. 353 (Fla. 1939), the Florida Supreme Court held that "if the case was one that would likely be reviewed by the Federal Court on certiorari or one in which the balance of convenience requires suspension of this Court's decree and a withholding of its mandate, the stay order should be granted." As to the former, the central issue is whether the mortgagor's due process rights herein have been violated which is a cert-worthy issue. As to the latter balance of the convenience, the Appellee will not be prejudiced by a stay herein and does not oppose the present motion. Thus, a stay herein is appropriate and necessary

to preserve the status quo. The foregoing motion is separate and distinct from any remedies that may be required to perfect the instant appeal and the undersigned is simultaneously exploring the necessity of the same.

WHEREFORE, the Appellant moves the court to stay the effect of its 9/12/18, *per curiam affirmance*, and the effect of its 12/18/18, denial of the motion for rehearing and motion for rehearing en banc thereon, until the time for filing a petition for writ of certiorari with the Supreme Court of the United States expires, or, if a petition for writ of certiorari is filed, until the Supreme Court of the United States resolves that petition and any and all appeals herein are fully resolved.

Respectfully submitted on December 27, 2018

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-36676
Email: stalanfox@msn.com

CERTIFICATE OF CONFERENCE WITH COUNSEL

I HEREBY CERTIFY that the undersigned has conferred with

opposing counsel as to the above motion who advises that Wells

Fargo has no objection to the same.

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been

furnished by email or by U.S. Mail on December 27, 2018, to the following:

VIA EMAIL

Sara F. Holladay-Tobias
Emily Rottmann
Hal Houston
McGuireWoods LLP
50 N. Laura Street
Jacksonville, Florida 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com

Albertelli Law
P.O. Box 23028
Tampa, Florida 33623
Attorney for Appellee
servealaw@albertellilaw.com

Milan Brkich, Esquire
1660 Ringling Blvd.
Second Floor
Sarasota, Florida 34236
mbrkich@scgov.net

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmont Road
Sarasota, Florida 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, Florida 34232

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

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

January 04, 2019

CONSOLIDATED CASES
CASE NO.: 2D16-2875
2D17-1110
L.T. No.: 2010-CA-012116 NC,
2010-CA-012116-NC

MILES CHRISTIAN - HART	v.	WELLS FARGO BANK, N. A.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's unopposed motion for stay of mandate pending filing and resolution of a petition for writ of certiorari is denied.

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

Served:

Albertelli Law	Sara F. Holladay - Tobias, Esq.	Steven Fox, Esq.
Barbara Hart	Unknown Spouse Of Miles Christian N/k/a Barbara Ha	Karen E. Rushing, Clerk

mep

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART,

Appellant,

CASE NO. 2D16-2875
L.T. CASE NO. 2010-CA-012116 NC

vs.

WELLS FARGO BANK, N.A.,

Appellee.
_____/

APPELLANT'S AMENDED UNOPPOSED MOTION FOR STAY OF MANDATE PENDING FILING AND RESOLUTION OF A PETITION FOR WRIT OF CERTIORARI

COMES NOW, the undersigned counsel, on behalf of the Appellant herein, who files this his amended *unopposed* motion for stay of mandate pending the filing and resolution of a Petition for Writ of Certiorari before the Supreme Court of the United States, as follows:

I. Pursuant to Rule 9.310 of the Florida Rules of Appellate Procedure and 28 U.S.C. Section 2101(f), the Appellant files this his *unopposed* and *agreed* motion to stay the effect of the court's *per curiam affirmance* herein and denial of motion for rehearing and motion for rehearing en banc thereon. In support, Appellant states that on September 12, 2018, this court issued its

per curiam affirmance of the judgment and post judgment orders below, and, on January 8, 2019, this court issued its amended order denying the timely filed motion for rehearing and motion for rehearing en banc thereon. As to appealing the same, Florida's Constitution sets forth the circumstances under which the Florida Supreme Court may and must take jurisdiction. Fla. Const. Art. V., section 3(b)(3) states that the Florida Supreme Court "may review any decision of a district court of appeal that...expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." The Florida Supreme Court has held that the term "expressly requires that there be a written opinion by the district court of appeal demonstrating the required conflict in law." *Jenkins v. State,* 385 So.2d 1356 (Fla. 1980). Where the Second District Court of Appeal did not issue a written opinion as to the underlying appeal, the Appellant's remedy is to directly appeal to the United States Supreme Court. See, *Hobbie v Unemployment Appeals Commission of Florida,* 480 U.S. 136 (1987);

Palmore v. Sidoti, 466 U.S. 429 (1984). As this court issued its amended order denying the motion for rehearing and rehearing en banc on January 8, 2019, then, absent an extension of time, the Petition for Writ of Certiorari would be due by April 8, 2019, and Supreme Court Rule 13.5 provides that one may make application for an extension of time for sixty (60) days, in which case the Petition for Writ of Certiorari would be due by June 7, 2019. Appellee does not oppose such request for extension of time. In *State ex rel. Gibbs v. Couch,* 139 Fla. 353 (Fla. 1939), the Florida Supreme Court held that "if the case was one that would likely be reviewed by the Federal Court on certiorari or one in which the balance of convenience requires suspension of this Court's decree and a withholding of its mandate, the stay order should be granted." As to the former, the central issue is whether the Appellant's due process rights herein have been violated, which is a cert-worthy issue. As noted previously, *Fuentes v. Shevin,* 407 U.S. 67 (1972), holds that procedural due process guarantees the right to be heard in a meaningful manner. As the Fourth DCA put it in *Hinton v. Gold,*

813 So.2d 1057 (Fla. 4th DCA 2002), "due process demands that the defendant be given fair notice and a reasonable opportunity to be heard before judgment is rendered" and "fundamental to the concept of due process is the right to be heard which assures a full hearing, the right to introduce evidence at a meaningful time and in a meaningful manner, and judicial findings based upon that evidence."

As the undersigned has alleged previously, numerous due process errors have been committed in the course of the lower tribunal proceedings, and subsequent thereto, and that although the instant Uniform Final Judgment of Mortgage Foreclosure stated that, "THIS action was tried before the Court. On the evidence presented..." the trial court below actually entered judgment without any competent, substantial evidence in the trial record of the *correct* note and mortgage to support the judgment.

As the stipulation efiled by Wells Fargo on 9/5/18 states, "neither the correct original note and mortgage nor a copy thereof were attached to or appear in the trial court's evidence record in this matter." The undersigned alleges that, on this basis alone, there was a violation of

due process. As to the latter balance of the convenience, the Appellee will not be prejudiced by a stay herein and does not oppose the present motion. Thus, a stay herein is appropriate and necessary to preserve the status quo. As is clear from the attached email, opposing counsel sought and obtained permission from Wells Fargo to authorize the stay making the present request unopposed. The undersigned would like to elaborate on the effect of a denial of stay. Supreme Court Rule 23 states that a party to a judgment sought to be reviewed may present to a Justice an application to stay the enforcement of that judgment and that "An application for a stay shall set out with particularity why the relief sought is not available from any other court or judge. Except in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof. An application for a stay shall identify the judgment sought to be reviewed and have appended thereto a copy of the order and opinion,

if any, and a copy of the order, if any, of the court or judge below denying the relief sought, and shall set out specific reasons why a stay is justified." Supreme Court Rule 23 further states that, "A judge, court or Justice granting an application for a stay pending review by this Court may condition the stay on the filing of a supersedeas bond having an approved surety or sureties." However, neither party hereto requests the filing of such a bond. The undersigned thus files this amended motion for stay of mandate in order to preserve the status quo between the parties.

WHEREFORE, the Appellant moves the court to stay the effect of its 9/12/18, *per curiam affirmance*, and the effect of its 1/8/19, amended denial of the motion for rehearing and motion for rehearing en banc, until a Petition for Writ of Certiorari with the Supreme Court of the United States has been filed, the Supreme Court of the United States has resolved said petition, and any and all appeals herein have been fully resolved. If this request is denied, the undersigned requests this court to please set forth the basis for denial in the order.

Respectfully submitted on January 11, 2019

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

CERTIFICATE OF NON-OBJECTION FROM OPPOSING COUNSEL

I HEREBY CERTIFY that the undersigned has contacted opposing counsel as to the above motion who has expressed no objection to the same. Attached hereto is a copy of the email previously filed herein.

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email or by U.S. Mail on January 11, 2019, to the following:

VIA EMAIL

Sara F. Holladay-Tobias
Emily Rottmann
Hal Houston
McGuireWoods LLP
50 N. Laura Street
Jacksonville, Florida 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com

Albertelli Law
P.O. Box 23028
Tampa, Florida 33623
Attorney for Appellee
servealaw@albertellilaw.com

Milan Brkich, Esquire
1660 Ringling Blvd.
Second Floor
Sarasota, Florida 34236
mbrkich@scgov.net

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmont Road
Sarasota, Florida 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, Florida 34232

/s/ Steven Fox

Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

Hart - Stay approved

Holladay-Tobias, Sara F. <stobias@mcguirewoods.com>
Thu 10/18/2018, 9:15 AM
To: steven fox <stalanfox@msn.com>

Steven -- Good news -- I heard last night from my client that they approve a stay of the foreclosure sale pending resolution of all appeals.

Sara F. Holladay-Tobias
Partner
McGuireWoods LLP
Bank of America Tower
50 North Laura Street
Suite 3300
Jacksonville, FL 32202-3661
T: +1 904 798 2662
M: +1 904 382 8639
F: +1 904 360 6317
stobias@mcguirewoods.com
Bio | VCard | www.mcguirewoods.com

McGUIREWOODS

App 6 10 of 10

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

January 14, 2019

*****CONSOLIDATED*****
CASE NO.: 2D16-2875, 2D17-1110
L.T. No.: 2010-CA-012116 NC, 2010-CA-012116-NC

MILES CHRISTIAN - HART	v.	WELLS FARGO BANK, N. A.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's January 11, 2019, amended motion for stay of mandate is stricken as unauthorized. Counsel is cautioned that further motions filed in this appeal, arguing the same issues previously ruled upon by this court may subject him to sanctions.

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

Served:

Milan Brkich, Esq.
Emily Y. Rottmann, Esq.
Barbara Hart
Albertelli Law
C. H. Houston, I I I, Esq.
Sara F. Holladay-Tobias, Esq.
Steven Fox, Esq.
Karen E. Rushing, Clerk

ec

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

App 7

Filing # 83616674 E-Filed 01/19/2019 09:04:15 PM

IN THE CIRCUIT COURT OF THE
12TH JUDICIAL CIRCUIT, IN AND FOR
SARASOTA COUNTY, FLORIDA

CASE NO. 2010 CA 012116 NC

WELLS FARGO BANK, N.A.,

Plaintiff,

vs.

MILES CHRISTIAN-HART,

Defendant.
_____/

STIPULATION OF PARTIES

COMES NOW, the Plaintiff, WELLS FARGO BANK, N.A., and the Defendant, MILES CHRISTIAN-HART, through counsel, who file this Stipulation of Parties concerning any issuance of Mandate herein by the District Court of Appeal of the State of Florida, Second District, for the consolidated appeal of Case No. 2010 CA 012116 NC, in Second DCA Case No. 2D16-2875, and in Second DCA Case No. 2D17-1110, as follows:

I. The Defendant/Appellant intends to file a Petition for

App 8 1 of 4

Filed 01/22/2019 08:53 AM Karen E. Rushing, Clerk of the Circuit Court, Sarasota County, Fl

Writ of Certiorari before the Supreme Court of the United States of the Second District Court of Appeal's 9/12/18 per curiam affirmance of the trial court's judgment and post judgment orders herein, and of the Second District Court of Appeal's 1/8/19 amended order denying the timely filed motion for rehearing and rehearing en banc thereon, and, as such, the parties hereto stipulate and agree that notwithstanding any issuance of Mandate, neither side will proceed to schedule or reschedule a foreclosure sale herein, pending the filing and resolution of said Petition for Writ of Certiorari before the Supreme Court of the United States and the resolution of all appeals.

Respectfully submitted on January 19, 2019

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Miles Christian-Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

/s/ Sara F. Holladay-Tobias
Sara F. Holladay-Tobias, FBN 026225
Attorney for Wells Fargo Bank, N.A.
50 North Laura Street, Suite 3300
Jacksonville, Florida 32202
(904) 798-3200
Email: stobias/mcguirewoods.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been

furnished by email or by U.S. Mail on January 19, 2019, to the following:

VIA EMAIL

Sara F. Holladay-Tobias
Emily Rottmann
Hal Houston
McGuireWoods LLP
50 N. Laura Street
Jacksonville, Florida 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com

Albertelli Law
P.O. Box 23028
Tampa, Florida 33623
Attorney for Appellee
servealaw@albertellilaw.com

Milan Brkich, Esquire
1660 Ringling Blvd.
Second Floor
Sarasota, Florida 34236
mbrkich@scgov.net

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmont Road
Sarasota, Florida 34232

David M. Demarest, President
Sarasota Springs Community

Association, Inc.
4210 Ruth Way
Sarasota, Florida 34232

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Miles Christian-Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

SECOND DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION;

YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE, IF REQUIRED, IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE EDWARD C. LAROSE CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, SECOND DISTRICT, AND THE SEAL OF THE SAID COURT AT LAKELAND, FLORIDA ON THIS DAY.

DATE: February 06, 2019

SECOND DCA CASE NO. 16-2875, 2D17-1110

COUNTY OF ORIGIN: Sarasota

LOWER TRIBUNAL CASE NO. 2010-CA-012116 NC, 2010-CA-012116-NC

CASE STYLE: MILES CHRISTIAN - HART v. WELLS FARGO BANK, N. A.

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk

cc:
Sara F. Holladay - Tobias, Esq. Emily Y. Rottmann, Esq. Steven Fox, Esq.
Karen E. Rushing, Clerk

mep

IN THE TWELFTH JUDICIAL CIRCUIT COURT
IN AND FOR SARASOTA COUNTY, FLORIDA

WELLS FARGO BANK, N.A.,
Plaintiff,

Case No.: 2010-CA-12116-NC

v.

Circuit Civil Division E

MILES CHRISTIAN HART, et al.,
Defendant.

ORDER RESCHEDULING FORECLOSURE SALE

The Court previously entered a final judgment of foreclosure in this action on April 7, 2015. The Court cancelled the previous foreclosure sale date. There is no legal impediment to rescheduling the foreclosure sale.

IT IS ORDERED:

1. The judicial foreclosure sale is rescheduled to take place on **June 21, 2019** at 9:00 a.m. online at www.sarasota.realforeclose.com pursuant to the provisions of the final judgment previously entered in this case.

DONE AND ORDERED in open Court in Sarasota County, Florida, on 2/21/2019.

Hunter W. Carroll, Circuit Judge

Copies in open Court to:
Mr. Bowyer and Ms. Calvin for Plaintiff, *Attorneys for Plaintiffs*
Mr. Fox, *Attorneys for Defendants*

To the extent there is any party not present, counsel for Plaintiff shall serve a copy of this Order and file a certificate of mailing in the Court file.

App 10

☒ IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
☐ IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

CASE NUMBER: **2010 CA 012116 NC**

WELLS FARGO BANK N A
PLAINTIFF

vs

MILES CHRISTIAN HART
THE UNKNOWN SPOUSE OF MILES CHRISTIAN HART
ANY AND ALL UNKNOWN PARTIES CLAIMING BY THROUGH UN
SARASOTA COUNTY
SARASOTA SPRINGS COMMUNITY ASSOCIATION, INC.
TENANT #1
TENANT #2
TENANT #3
TENANT #4
DEFENDANT

COURT APPEARANCE RECORD

JUDGE:	**HUNTER W CARROLL**	**Evidence Record #**
DEPUTY CLERK:	D ACEVEDO-GONZALEZ	
PLTF. ATTY:	CHARLENE CALHOUN JASON BOWYER	**Plaintiff #**
DEF.ATTY:	STEVEN FOX	**Defendant #**
CT.RPTR:	LISA ROLLINS - GUARDIAN	

RULE INVOKED: ☐ YES ☑ NO
JURY SWORN: ☐ YES ☑ NO

PLAINTIFF'S WITNESSES SWORN:
Name Testified

1).
2).
3).
4).
5).

DEFENDANT'S WITNESSES SWORN:
Name Testified

1). MILES CHRISTIAN HART
2).
3).
4).
5).

PLAINTIFF'S MOTIONS:
Date/Motion/Ruling

1).
2).
3).
4).
5).

DEFENDANT'S MOTIONS:
Date/Motion/Ruling

1). MOTION TO STAY
RULING: DENIED. SALE HAS BEEN RESCHEDULED TO SALE DATE: JUNE 21ST, 2019 AT 9AM. ORDER ENTERD.
2).
3).
4).
5).

JURY POLLED: YES ☐ NO ☑

KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT

BY: D ACEVEDO-GONZALEZ
Deputy Clerk

DATE: February 21, 2019

App 11

IN THE TWELFTH JUDICIAL CIRCUIT COURT
IN AND FOR SARASOTA COUNTY, FLORIDA

Wells Fargo Bank, N.A.

v

Miles Christian-Hart

Case No.: 2010-CA-12116-NC

Division E

ORDER

Denying Defendant Hart's Motion for Stay and Reschedule Foreclosure Sale

BEFORE THE COURT on 4/22/19 & 5/21/19 was/were the following motions:

- Defendant Hart's Renewed Amended Unopposed Motion to Reschedule Sale, docketed 4/14/2019 [DE# 418]
- Defendant Hart's ore tenus motion for Stay

Having heard the argument of counsel/parties and being advised in the premises, it is

ORDERED AND ADJUDGED as follows: For the reasons explained in Open Court before a Court Reporter the Court denies the motion as it does not have the legal authority.

Please see the transcript for alternative findings as to what the Court would do if it had discretion

DONE AND ORDERED in Sarasota County, Florida, on 5/21/2019.

CIRCUIT JUDGE

Copies distributed to counsel/parties ✓ in Court or ____ via U.S. Mail or ____ via email to:

____ Plaintiff's counsel / Plaintiff *pro se*
X Defendant's counsel / Defendant *pro se* Mr Fox in Court
____ Other as follows: Mr Fox to serve Order on all parties

115.doc

App 12

Serial Number
19-01457S

Business Observer

Published Weekly
Sarasota, Sarasota County, Florida

COUNTY OF SARASOTA

2010 CA 012116 NC

STATE OF FLORIDA

Before the undersigned authority personally appeared Karen Ovadia who on oath says that he/she is Publisher's Representative of the Business Observer a weekly newspaper published at Sarasota, Sarasota County, Florida; that the attached copy of advertisement,

being a Notice of Rescheduled Sale

in the matter of Wells Fargo Bank vs. Miles Christian Hart et al

in the Circuit Court, was published in said newspaper in the

issues of 5/24/2019, 5/31/2019

Affiant further says that the said Business Observer is a newspaper published at Sarasota, Sarasota County, Florida, and that said newspaper has heretofore been continuously published and has been entered as periodicals matter at the Post Office in Sarasota in said Sarasota County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.
*This Notice was placed on the newspaper's website and floridapublicnotices.com on the same day the notice appeared in the newspaper.

Karen Ovadia

Karen Ovadia

Sworn to and subscribed before me this

31st day of May, 2019 A.D.

by Karen Ovadia who is personally known to me.

Notary Public, State of Florida
(SEAL)

Holly W. Botkin
Commission # GG099296
Expires: June 11, 2021
Bonded thru Aaron Notary

NOTICE OF RESCHEDULED SALE
IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL ACTION
CASE NO.: 2010 CA 012116 NC
WELLS FARGO BANK, N.A.,
Plaintiff, vs.
MILES CHRISTIAN HART, et al,
Defendant(s).

NOTICE IS HEREBY GIVEN Pursuant to an Order Rescheduling Foreclosure Sale dated February 21, 2019, and entered in Case No. 2010 CA 012116 NC of the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida in which Wells Fargo Bank, N.A., is the Plaintiff and Miles Christian Hart, Sarasota County, Sarasota Springs Community Association, Inc., The Unknown Spouse of Miles Christian Hart n/k/a Barbara Hart, are defendants, the Sarasota County Clerk of the Circuit Court will sell to the highest and best bidder for cash in/on the Internet: www.sarasota.realforeclose.com, Sarasota County, Florida at 9:00am on the 21th day of June, 2019, the following described property as set forth in said Final Judgment of Foreclosure:

LOT 253, UNIT 2, SARASOTA SPRINGS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 8 AT PAGE 6, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.
A/K/A 3439 BELMONT BLVD., SARASOTA, FL 34232-4905

Any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the Lis Pendens must file a claim within 60 days after the sale.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Sarasota County Jury Office, P.O. Box 3079, Sarasota, Florida 34230-3079, (941)861-7400, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

Dated in Hillsborough County, Florida this 21th day of May, 2019.

/s/ Nathan Grygiewicz
Nathan Grygiewicz, Esq.
FL Bar # 76121
Albertelli Law
Attorney for Plaintiff
P.O. Box 23028
Tampa, FL 33623
(813) 221-4743
(F) 10-52813
May 24, 31, 2019 19-01457S

App 13

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2006009266 1 PG
2006 JAN 17 01:29 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY,FLORIDA
HJAMES Receipt#736546

Recording Requested By:
Regions Financial Corporation

When Recorded Return To:
Regions Loan Servicing Release
P O Box 4897
Montgomery, AL 36103

2006009266

RELEASE OF MORTGAGE

STATE OF FLORIDA
COUNTY OF SARASOTA

KNOWN ALL MEN BY THESE PRESENTS that REGIONS BANK, holder of a certain Mortgage, whose parties, dates and recording information are below, does hereby acknowledge that it has received full payment and satisfaction of the same, and in consideration thereof, does hereby cancel and discharge said Mortgage.

Loan #: 25100002510225962
Original Mortgagor: MILES CHRISTIAN HART
Original Mortgagee: REGIONS BANK
Date of Mortgage: 07/02/2004
Date Recorded: 08/19/2004
Book: Page: INSTRUMENT #2004161726

IN WITNESS WHEREOF, by the Officers duly authorized, has duly executed the foregoing instrument on this January 06, 2006.

By: _____ _____
FELECIA MCBRIDE, SUPERVISOR CINDY VICK, MANAGER

PLT EXHIBIT # 6
CASE #2010CA011616NC
PLT: Wells Fargo
DEF: Hart et al
ID:
ADM:
4-2-15

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, _____, a Notary Public, in and for said County and State, do hereby certify that FELECIA MCBRIDE, SUPERVISOR, who is signed to the foregoing document and who is known to me, sworn to (or affirmed) and suscribed before me on this day, that being informed of the contents of said instrument, she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

WITNESS my hand and official seal this January 06, 2006,
(SEAL)

_____
(NOTARY)

Kelly Westbrook
Notary Public, State of Alabama
Alabama State at Large
My Commission Expires
April 12, 2009

Document Prepared by: BARBARA WYATT LOAN AMT $52,500
04275
050
12/6/05

"STATE OF FLORIDA, COUNTY OF SARASOTA
I hereby certify that the foregoing is a true and correct copy of pages _____ through _____ of the instrument filed in this office. The original instrument filed contains _____ pages.
☒ This copy has no redactions. ☐ This copy has been redacted pursuant to law.
Witness my hand and official seal this _____ day of _____, 20__."
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
By: _____ Deputy Clerk

App 14

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2006107172 2 PGS
2006 JUN 09 02:43 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
DCOURSEY Receipt#795130

2006107172

Recording Requested By:
Regions Financial Corporation

When Recorded Return To:
Regions Loan Servicing Release
P O Box 4897
Montgomery, AL 36103

25100002510226962 04275 026 06/06

REINSTATEMENT OF MORTGAGE
RECONFIRMATION OF LIEN

STATE OF FLORIDA
COUNTY OF SARASOTA

Before me, the undersigned authority, on this day personally appeared FELECIA MCBRIDE, SUPERVISOR of REGIONS BANK, Being of sound mind and lawful age and known to the undersigned to be the person whose name is subscribed to this instrument and, after first being duly sworn, did state the following to be true:

1. On 07/02/2004, MILES CHRISTIAN HART, AN UNMARRIED MAN (hereinafter referred to as "Mortgagor") Executed a Mortgage in the original principal sum of 52,500.00 payable to REGIONS BANK.

2. The Mortgage was recorded on 08/19/2004 in the Recorder of Deeds Office for SARASOTA County, Florida in Book at Page as Instrument 2004161726, which covered the property described as follows:

LOT 253, UNIT 2, SARASOTA SPRINGS SUBDIVISION

3. REGIONS BANK, an Alabama Corporation, erroneously executed a Release of Mortgage for the 52,500.00 Mortgage. The Release of Mortgage dated 01/06/2006 was filed in the Office of the Recorder of Deeds for SARASOTA County, Florida on 01/17/2006 in Book , Page , INSTRUMENT# 2006009266.

REGIONS BANK desires to reconfirm the lien and reconfirm the existence of the 52,500.00 Mortgage as a first priority lien on the Mortgaged Property.

1 of 2

App 15 1 of 2

NOW THEREFORE, in consideration of the foregoing, REGIONS BANK, hereby asserts and affirms the following:

4. REGIONS BANK hereby confirms the continuing existence and validity of the first lien of the 52,500.00 Mortgage recorded in the Office of the Recorder of Deeds for SARASOTA County, Florida.

5. The action taken by REGIONS BANK to discharge the 52,500.00 Mortgage was in error and is void, no consideration having been paid by the Mortgagor for such Release.

Executed this on June 2, 2006

REGIONS BANK

FELECIA MCBRIDE, SUPERVISOR

STATE OF ALABAMA
COUNTY OF MONTGOMERY

On June 2, 2006 before me Tomeka Ray, a Notary Public in and for Montgomery County, in the State of Alabama, personally appeared FELECIA MCBRIDE, SUPERVISOR, personally known to me to be the person whose name is subscribed to the within her authorized capacity, and that by his/her signature on the instrument the person of the entity upon behalf of which the person acted executed the instrument.

Witness my hand and official seal

Tomeka Ray
NOTARY PUBLIC

Tomeka Ray
My Commission Expires 01-07-2007

Document Prepared by TOMEKA RAY

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2005283615 1 PG
2005 DEC 28 02:48 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY,FLORIDA
ASAMS Receipt#729451

2005283615

Recording Requested By:
AMERICA'S SERVICING COMPANY

When Recorded Return To:

MILES CHRISTIAN-HART
3439 BELMONT BLVD
SARASOTA, FL 34232

RELEASE OF MORTGAGE

America's Servicing Company #:1205036312 "CHRISTIAN-HART" Lender ID:H01002/802320457 Sarasota, Florida
MERS #: 1000936 0435103500 6 VRU #: 1-888-679-6377

KNOW ALL MEN BY THESE PRESENTS that MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE GENERAL MORTGAGE CORPORATION OF AMERICA whose address is 4185 HALLMARK PARKWAY, SAN BERNARDINO, CA 92407 holder of a certain Mortgage, whose parties, dates and recording information are below, does hereby acknowledge that it has received full payment and satisfaction of the same, and in consideration thereof, does hereby cancel and discharge said Mortgage.

Original Mortgagor: MILES CHRISTIAN-HART , AN UNMARRIED MAN
Original Mortgagee: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR GENERAL MORTGAGE CORPORATION OF AMERICA
Dated: 02/27/2004 Recorded: 03/01/2004 in Book/Reel/Liber: N/A Page/Folio: N/A as Instrument No.: 2004037382 in the County of Sarasota State of Florida

Property Address: 3439 BELMONT BLVD, SARASOTA, FL 34232

IN WITNESS WHEREOF, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE GENERAL MORTGAGE CORPORATION OF AMERICA by the officers duly authorized, has duly executed the foregoing instrument.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE GENERAL MORTGAGE CORPORATION OF AMERICA
On December 16th, 2005

By: ____________
LYDIA HERRERA, Assistant Secretary

WITNESS ____________
TONYA MARSHALL

WITNESS ____________
DION CHESSAR

STATE OF California
COUNTY OF San Bernardino

On December 16th, 2005, before me, PATRICIA RODNEY-DAVIS, a Notary Public in and for San Bernardino in the State of California, personally appeared LYDIA HERRERA, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

PATRICIA RODNEY-DAVIS
Notary Expires: 02/03/2008 #1468036

PATRICIA RODNEY-DAVIS
COMM. #1468036
NOTARY PUBLIC - CALIFORNIA
SAN BERNARDINO COUNTY
My Comm. Expires Feb. 3, 2008

(This area for notarial seal)

Prepared By: Kathleen Fugate (106), AMERICA'S SERVICING COMPANY 4185 HALLMARK PARKWAY, MAC # X0702-013, SAN BERNARDINO, CA 92407 866-430-0675

*KF*KFWFMF*12/15/2005 ... FLSARAS* 1205036312 FLSTATE_MORT_REL *KF*KFWFMF*

STATE OF FLORIDA, COUNTY OF SARASOTA
I hereby certify that the foregoing is a true and correct copy of pages 1 through 1 of the instrument filed in this office. The original instrument filed contains 1 pages.
☐ This copy has no redactions. ☐ This copy has been redacted pursuant to law.
Witness my hand and official seal this ____ day of ____, 20__
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
By: ____________

App 16

EVIDENCE/EXHIBIT RECORD

NUMBER: 36233
CASE NUMBER: 2010CA12116NC **DATE:** 4.7.15 **JUDGE:** Nancy Donnellan
CLERK: Natalie Pizeggi , Deputy Clerk

PLAINTIFF/STATE:	**DEFENDANT/RESPONDENT:**
Wells Fargo Bank NA	Miles Christian Hart
Attorney: Charlene Calhoun	**Attorney:** Paul Cherry

Complete for Criminal Cases Only:
Agency:_____ **Agency#**_____ **State Atty#**_____ **Property#**_____

☑ Plaintiff/State ☐ Defendant
☐ Ward ☐ Guardian ☐ Beneficiary ☐ Personal Rep ☐ Interveners
☐ Other_____

	Description	Page	B/D/F/M/W*	Date Identified	Date Admitted	Received By
K	Original Note / Original Mortgage	23		4/7/15	4/7/15	NP

Side A - Page 1 of 2

*B=Biohazardous D=Drugs F=Firearms/ammunition M=Money W=Weapon

App 17 1 of 25

Chain of Custody

1) Exhibit(s) received in court and stored for a period of time:

A

Exhibits have been secured at locked drawer **from** 4.7.15 **to** 4.8.15
(Specific storage/area location) in Clerks Office (date) (date)

2) Exhibits transferred to Jury for deliberation: **From date & time** _____
☐ **All admitted items** ☐ **Excluded items:** _____ **To date & time** _____
Comments: _____

3) Custody Transferred: ☐ **Alternative Court Clerk** ☐ **Judge** ☐ **Other**

_____

Custody transferred from: _____ / _____ / _____
(deputy clerk or supervisor signature) (position title) (date)

Delivered to: _____ / _____ / _____
(name) (title) (date)

4) Exhibit(s) ☐ **Secured** ☐ **Transported** ☐ **Stored for Court Event Continued** ☐ **Other**

_____

Delivered to: _____ / _____ / _____
(deputy clerk or supervisor signature) (position title) (date)

Exhibits secured at _____ / _____
(location) (date)

Returned to: _____ / _____ / _____
(deputy clerk or supervisor signature) (position title) (date)

5) Records Management receives exhibits:

A) Exhibit(s) to be filed for record only:

_____

Location: ☐ **Secure in vault** ☐ **Secure in case file** ☐ **Other**

B) Exhibit(s) to be filed for record and scanned:

A

Location: ☑ **Secure in vault** ☐ **Secure in case file** ☐ **Other**

Received from: Natalie Pitteggi **Delivered to:** CARLOS BARDALEZ
(print name) (print name)

Received from: Natalie Pitteggi, 4.8.15 **Delivered to:** _____, 4/8/15
(signature & date) (signature & date)

RECEIPT

I, _____, have received the following Exhibit(s) _____
Per oral/written order of Judge _____ on this _____ day of _____, _____

_____ / _____
Signature Title

SPECIAL NOTES

2010CA/2116NC

LOAN NUMBER: 6052200349

NOTE

03/14/06 VENICE FL

[Date] [City] [State]

436 CERROMAR LANE 377, VENICE, FL 34293

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 75,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is BANK OF AMERICA, N.A.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.375 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on MAY 01, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on APRIL 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at BANK OF AMERICA, P.O. BOX 9000, GETZVILLE, NY 14068-9000 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. $ 467.91.

4. BORROWER'S RIGHT TO PREPAY

I HAVE THE RIGHT TO MAKE PAYMENTS OF PRINCIPAL AT ANY TIME BEFORE THEY ARE DUE. A PAYMENT OF PRINCIPAL ONLY IS KNOWN AS A "PREPAYMENT." WHEN I MAKE A PREPAYMENT, I WILL TELL THE NOTE HOLDER IN WRITING THAT I AM DOING SO. I MAY NOT DESIGNATE A PAYMENT AS A PREPAYMENT IF I HAVE NOT MADE ALL THE MONTHLY PAYMENTS DUE UNDER THIS NOTE.

I MAY MAKE A FULL PREPAYMENT OR PARTIAL PREPAYMENT WITHOUT PAYING ANY PREPAYMENT CHARGE. AFTER PAYING ANY LATE FEES OR OUTSTANDING FEES THAT I OWE, THE NOTE HOLDER WILL USE MY PREPAYMENTS TO REDUCE THE AMOUNT OF PRINCIPAL THAT I OWE UNDER THIS NOTE. HOWEVER, THE NOTE HOLDER MAY APPLY MY PREPAYMENT TO THE ACCRUED AND UNPAID INTEREST ON THE PREPAYMENT AMOUNT BEFORE APPLYING MY PREPAYMENT TO REDUCE THE PRINCIPAL AMOUNT OF THIS NOTE. IF I MAKE A PARTIAL PREPAYMENT, THERE WILL BE NO CHANGES IN THE DUE DATES OR IN THE AMOUNT OF MY MONTHLY PAYMENT UNLESS THE NOTE HOLDER AGREES IN WRITING TO THOSE CHANGES.

PLT EXHIBIT #
CASE #: 2010CA 12116 NC
PLT: WELLS FARGO BANK NA (A)
DEF: MRS. CHRISTIAN HUT
ID: 4.7.16
ADM: 4.7.16

610 870824744 N 001 001

FLORIDA FIXED RATE NOTE – Single Family

BS5N(FL) (0101) VMP MORTGAGE FORMS - (800)521-7291

5RFL 03/13/06 1:51 PM 6052200349

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.0 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

11. DOCUMENTARY TAX

The state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Phyllis E. Savage (Seal)
PHYLLIS E SAVAGE -Borrower

(Seal)
-Borrower

PAY TO THE ORDER OF
WITHOUT RECOURSE
BANK OF AMERICA, N.A.
BY: Christina M Schmitt (Seal)
CHRISTINA M SCHMITT
ASSISTANT VICE PRESIDENT
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Sign Original Only)

(2V)

Return To: LOAN # 6052200349
FL9-700-01-01
JACKSONVILLE POST CLOSING
BANK OF AMERICA
9000 SOUTHSIDE BLVD.
BLDG 700, FILE RECEIPT DEPT.
JACKSONVILLE, FL 32256

This document was prepared by:
SABRINA DANIELS
BANK OF AMERICA, N.A.
9000 SOUTHSIDE BLVD., #600
JACKSONVILLE, FL 322560000

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2006063351 20 PGS
2006 APR 05 06:12 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY,FLORIDA
ARINGHOL Receipt#769690

Doc Stamp-Mort: 262.50
Intang. Tax: 150.00

2006063351

[Space Above This Line For Recording Data]

30599611 24 MORTGAGE 20

LOAN # 6052200349

8005

Recording Requested by &
When Recorded Return To:
US Recordings, Inc.
2925 Country Drive
St. Paul, MN 55117

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated MARCH 14, 2006, together with all Riders to this document.
(B) "Borrower" is PHYLLIS E. SAVAGE, AN UNMARRIED WOMAN

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is BANK OF AMERICA, N.A.

Lender is a NATIONAL BANKING ASSOCIATION
organized and existing under the laws of THE UNITED STATES OF AMERICA

Lender's address is 9000 SOUTHSIDE BLVD., #600, JACKSONVILLE, FL 322560000

Lender is the mortgagee under this Security Instrument.
(D) "Note" means the promissory note signed by Borrower and dated MARCH 14, 2006 . The Note states that Borrower owes Lender SEVENTY FIVE THOUSAND AND 00/100 Dollars (U.S. $ 75,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than APRIL 01, 2036 .
(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☒ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(K) "Escrow Items" means those items that are described in Section 3.
(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, the following described property located in the COUNTY of SARASOTA :
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

"LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF."

Parcel ID Number: 0443141249
436 CERROMAR LANE 377
VENICE
("Property Address"):

which currently has the address of
[Street]
[City], Florida 34293 [Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

Initials: P.S.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be

applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

Initials: PS

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of

the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the

date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate

Initials: B.S.

from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any

other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the

Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security

Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums

which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Attorneys' Fees. As used in this Security Instrument and the Note, "attorneys' fees" shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

25. Jury Trial Waiver. The Borrower hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Note.

Initials: RS

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Julia Krajic
WITNESS PRINTED NAME AND SIGNATURE
Julia Krajic

Judith E. Pushkarc
WITNESS PRINTED NAME AND SIGNATURE
Judith E. Pushkarc

Phyllis E Savage (Seal)
PHYLLIS E SAVAGE -Borrower

436 CERROMAR LANE 377 , VENICE , FL , 34293
(Address)

_____ (Seal)
-Borrower

(Address)

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

(Address)

(Address)

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

(Address)

(Address)

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

(Address)

(Address)

STATE OF FLORIDA, Sarasota County ss:

The foregoing instrument was acknowledged before me this

by Phyllis E Savage

who is personally known to me or who has produced FC DL as identification.

Julia A Krajic

Notary Public

JULIA A. KRAJIC
MY COMMISSION # DD 292425
EXPIRES March 5, 2008
Notary Public Underwriters

Initials: PS

LOAN # 6052200349

CONDOMINIUM RIDER

THIS CONDOMINIUM RIDER is made this 14TH day of MARCH, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to
BANK OF AMERICA, N.A.

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:
436 CERROMAR LANE 377
VENICE, FL 34293
(Property Address)

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:
FARMINGTON VISTAS
(Name of Condominium Project)

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear

interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.

Phyllis E. Savage (Seal)
PHYLLIS E SAVAGE -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

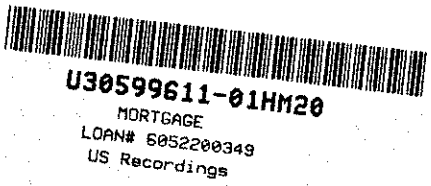
Customer Name:	**PHYLLIS SAVAGE**
Application #:	**6052200349**

Exhibit A (Legal Description)

UNIT 377, BUILDING 32, FARMINGTON VISTAS AT THE PLANTATION, A CONDOMINIUM RECORDED IN OFFICIAL RECORDS BOOK 1499, PAGE 1332, AND AMENDMENTS THERETO AND AS PER PLAT THEREOF RECORDED IN CONDOMINIUM BOOK 18, PAGE 28, AND AMENDMENTS THERETO, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

Being that parcel of land conveyed to Phyllis E. Savage, a single woman from Martha B. Rummell, a single woman by that deed dated 09/30/1996 and recorded 10/02/1996 in Deed Book 2897, at Page 2502 of the SARASOTA COUNTY, FL Public Registry.

Tax Map Reference: 0443141249



IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

WELLS FARGO BANK, N.A.,

Plaintiff,

v. **CASE NO. 2010 CA 012116 NC**

MILES CHRISTIAN HART, et. al,

Defendant(s)

_____/

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

THIS CAUSE having come before the Court on Defendant's Motion for New Trial, filed on April 17, 2015,[1] and the Court having reviewed the file and being otherwise duly and sufficiently advised, the Court hereby finds as follows:

Said Motion is **DENIED.**

DONE AND ORDERED in Sarasota County, Florida, this 8th day of June, 2016.

BRIAN A. ITEN, CIRCUIT JUDGE

Copies furnished to:

See Attached Service List

[1] The record reveals that the bench trial was held on April 7, 2015, at which time Defendant was represented by Paul Cherry, Esquire. On April 14, 2015, the Court issued its Order of Withdrawal of Counsel, relieving Mr. Cherry of further responsibility in this case. On April 17, 2015, Defendant filed his Pro Se Motion for New Trial. Said Motion was never heard. On May 3, 2016, Steven Fox, Esquire, filed Defendant's Motion to Set Aside and Vacate Foreclosure sale. The May 3rd Motion was granted at a May 6, 2016 hearing, where Mr. Fox appeared on behalf of Defendant. On June 1, 2016, Steven Fox filed his Amended Motion for New Trial. While the Court can, in its discretion, allow an amended motion for new trial to be filed beyond the 15-day window provided in Fla. R. Civ. P. 1.530(b), *see Adkins v. Burdeshaw*, 220 So. 2d 39, 41 (Fla. 1st DCA 1969), here the Court will not permit such amendment, inasmuch as said Amended Motion proves to be a nullity, for Mr. Fox has never filed a notice of appearance in this case. *See Pasco County v. Quail Hollow Properties, Inc.*, 693 So. 2d 82 (Fla. 2d DCA 1997).

App 18 1 of 2

SERVICE LIST
WELLS FARGO BANK, N.A. v MILES CHRISTIAN HART, et al.
2010 CA 012116 NC

ALBERTELLI LAW
P.O. BOX 23028
TAMPA FL 33623
servealaw@albertallilaw.com

LAW OFFICE OF STEVEN FOX
4634 HIGEL AVENUE
SARASOTA FL 34242

MILES CHRISTIAN HART
3439 BELMONT ROAD
SARASOTA FL 34232

App 18 2 of 2

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

WELLS FARGO BANK, N.A.,

Plaintiff,

v. **CASE NO. 2010 CA 012116 NC**

MILES CHRISTIAN HART, et. al,

Defendant(s)

_____/

AMENDED ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

THIS CAUSE having come before the Court on Defendant's Motion for New Trial, filed on April 17, 2015,[1] and the Court having reviewed the file and being otherwise duly and sufficiently advised, the Court hereby finds as follows:

Said Motion is **DENIED.**

DONE AND ORDERED in Sarasota County, Florida, this 8th day of June, 2016.

BRIAN A. ITEN, CIRCUIT JUDGE

Copies furnished to:

See Attached Service List

[1] The record reveals that the bench trial was held on April 7, 2015, at which time Defendant was represented by Paul Cherry, Esquire. On April 14, 2015, the Court issued its Order of Withdrawal of Counsel, relieving Mr. Cherry of further responsibility in this case. On April 17, 2015, Defendant filed his Pro Se Motion for New Trial. Said Motion was never heard. On May 3, 2016, Steven Fox, Esquire, filed Defendant's Motion to Set Aside and Vacate Foreclosure sale. The May 3rd Motion was granted at a May 6, 2016 hearing, where Mr. Fox appeared on behalf of Defendant. On June 1, 2016, Steven Fox filed his Amended Motion for New Trial. While a trial court can, in its discretion, allow an amended motion for new trial to be filed beyond the 15-day window provided in Fla. R. Civ. P. 1.530(b), *see Adkins v. Burdeshaw*, 220 So. 2d 39, 41 (Fla. 1st DCA 1969), here the Court will not permit such amendment for the following reasons: (a) said Amended Motion proves to be a nullity, for Mr. Fox filed no notice of appearance in this case prior to or contemporaneous with his filing of the Amended Motion, *see Pasco County v. Quail Hollow Properties, Inc.*, 693 So. 2d 82 (Fla. 2d DCA 1997), and (b) the Court, in exercising its discretion under Fla. R. Civ. P. 1.530(b), finds that the belated filing of said Amended Motion is unfairly prejudicial to Plaintiff.

SERVICE LIST
WELLS FARGO BANK, N.A. v MILES CHRISTIAN HART, et al.
2010 CA 012116 NC

ALBERTELLI LAW
P.O. BOX 23028
TAMPA FL 33623
servealaw@albertallilaw.com

LAW OFFICE OF STEVEN FOX
4634 HIGEL AVENUE
SARASOTA FL 34242

MILES CHRISTIAN HART
3439 BELMONT ROAD
SARASOTA FL 34232

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

WELLS FARGO BANK, N.A.,

Plaintiff,

v. **CASE NO. 2010 CA 012116 NC**

MILES CHRISTIAN HART, et. al,

Defendant(s)

_____/

ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO FILE OMITTED COUNTERCLAIM

THIS CAUSE having come before the Court on Defendant's Motion for Leave to File Amended Counterclaim, filed on April 17, 2015, and the Court having reviewed the file and being otherwise duly and sufficiently advised, the Court hereby finds as follows:

1) A bench trial was held on April 7, 2015, at which time Defendant was represented by Paul Cherry, Esquire.

2) On April 14, 2015, the Court issued its Order of Withdrawal of Counsel, relieving Mr. Cherry of further responsibility in this case.

3) On April 17, 2015, Defendant filed his Pro Se Motion for New Trial. Said Motion was never heard.

4) On May 3, 2016, Steven Fox, Esquire, filed Defendant's Motion to Set Aside and Vacate Foreclosure sale. The May 3rd Motion was granted at a May 6, 2016 hearing, where Mr. Fox appeared on behalf of Defendant.[1]

5) On June 1, 2016, at 6:49 pm, Steven Fox, Esquire, filed his Amended Motion for New Trial.

6) On June 1, 2016, at 6:54 pm, Steven Fox, Esquire, filed the instant Motion for Leave to File Amended Counterclaim. Said Motion included the following reference: "The undersigned counsel enters his appearance herein."

7) On June 8, 2016, the Court denied the April 17, 2015 Pro Se Motion for New Trial.

[1] At the time, the Court was not aware that Steven Fox, Esquire, had not filed a Notice of Appearance in the instant case.

8) In the June 8th Order, the Court indicated that it was not permitting the June 1, 2016 amendment to 2015 Motion for new trial.

9) Inasmuch as a new trial has been denied, the Court declines to provide leave to file the omitted counterclaim. *See* Fla. R. Civ. P. 1.170(f).

In light of the foregoing, said Motion is **DENIED.**

DONE AND ORDERED in Sarasota County, Florida, this 9th day of June, 2016.

BRIAN A. ITEN, CIRCUIT JUDGE

Copies furnished to:

See Attached Service List

SERVICE LIST
WELLS FARGO BANK, N.A. v MILES CHRISTIAN HART, et al.
2010 CA 012116 NC

ALBERTELLI LAW
P.O. BOX 23028
TAMPA FL 33623
servealaw@albertallilaw.com

LAW OFFICE OF STEVEN FOX
4634 HIGEL AVENUE
SARASOTA FL 34242

MILES CHRISTIAN HART
3439 BELMONT ROAD
SARASOTA FL 34232

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

Case No. 2D16-2875
L.T. Case No. 2010-CA-012116 NC
(Sarasota County)

STIPULATION OF PARTIES AND APPELLEE'S NOTICE OF WITHDRWAL OF STATEMENT AND ARGUMENT MADE IN ITS ANSWER BRIEF (PLEASE HAND TO MERITS PANEL)

Appellant Miles Christian-Hart ("Hart") and Appellee Wells Fargo Bank, N.A. ("Wells Fargo"), through counsel, file this Stipulation of Parties concerning service and notice issues related to the notice of taking deposition of David Finkelstein and other issues, and Notice of Withdrawal of Statement and Argument Made in Wells Fargo's Answer Brief, and state as follows:

1. On January 20, 2017, counsel for Hart sent an email to Albertelli Law, counsel for Wells Fargo in the trial court, stating: "How do either February 2nd, 6th, or 7th work for the deposition of witness David Finkelstein? If we do not hear back from you by the end of the day, we are choosing the 6th. Thank you."

2. Before the end of the day on January 20, 2017, at 4:55 p.m., Albertelli Law responded stating: "We are not in agreement on deposition dates until I check

with my attorney, and until my attorney advises me whether or not we would be filing a Motion for Protective Order. Thank you for your attention to this matter."

3. Also, on January 20, 2017, counsel for Hart, filed a status report with the Second DCA stating that Hart's counsel "has coordinated the deposition of a crucial witness to the original transaction that is the subject of the foreclosure action to occur on or before February 6, 2017." The deposition Hart's counsel was referring to was the deposition of David Finkelstein. Counsel of record in the appeal were served with this status report.

4. Then, on January 24, 2017, at 11:56 a.m., the Notice of Taking Deposition for David Finkelstein was filed and served on counsel of record, including, according to the service list, counsel of record in the appeal.

5. The deposition was taken on February 6, 2017, and was duly transcribed and filed with the trial court on February 15, 2017. No motion for protective order was filed with the trial court.

6. At the hearing on February 22, 2017, counsel for Hart made reference to the deposition to which Albertelli Law did not argue lack of notice.

7. Subsequently, on December 6, 2017, Wells Fargo filed an Answer Brief arguing lack of notice related to the deposition of David Finkelstein.

8. On December 15, 2017, Hart's counsel filed an Unopposed Motion to Supplement the Record to add the notice of taking deposition in support of his Reply Brief.

9. At oral argument, counsel for Wells Fargo began to make a statement to correct the record concerning the service issue and withdraw the lack of notice argument, but the panel desired to discuss a different issue so Wells Fargo's counsel was unable at that time to explain what happened.

10. In sum, the parties stipulate and agree that sufficient documentation in the Record exists that Wells Fargo was notified of the David Finkelstein deposition taken on February 6, 2017. Therefore, Wells Fargo withdraws its statements and arguments concerning lack of notice.

11. The parties further stipulate and agree that (i) no *written* request to take judicial notice of the correct original mortgage and note appears in the Record, and that (ii) neither the correct original note and mortgage nor a copy thereof were attached to or appear in the trial court's evidence record in this matter.

WHEREFORE, Wells Fargo respectfully withdraws its argument, and related statement, that the deposition of David Finkelstein was improper due to lack of notice and requests that this Court disregard such argument and related statements, and the parties further stipulate and agree to the other facts stated herein.

Respectfully submitted on September 5, 2018:

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

/s/ Sara F. Holladay-Tobias
Sara F. Holladay-Tobias, FBN 026225
Attorney for Appellee Wells Fargo
50 N. Laura Street, Suite 3300
Jacksonville, Florida 3222
(904) 798-3200
Email: stobias@mcguirewoods.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by E-mail or U.S. Mail on September 5, 2018 to the following:

VIA E-MAIL

Steven Fox, Esq.
Law Office of Steven Fox
4634 Higel Avenue
Sarasota, FL 34242
Stalanfox@msn.com
Attorney for Appellant
Miles Christian-Hart

Albertelli Law
P.O. Box 23028
Tampa, FL 33623
servalaw@albertallilaw.com
Attorney for Appellee
Wells Fargo Bank, N.A.

Milan Brkich, Esq.
1660 Ringling Blvd.
Second Floor
Sarasota, FL 34236
mbrkich@scgov.net
Attorney for Sarasota County

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmond Road
Sarasota, FL 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, FL 34232

/s/Sara F. Holladay-Tobias
Sara F. Holladay-Tobias
Emily Rottmann
Hal Houston
McGuireWoods, LLP
50 N. Laura Street, Suite 3300
Jacksonville, FL 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com
Attorneys for Appellee Wells Fargo

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

Case No. 2D16-2875
L.T. Case No. 2010-CA-012116 NC
(Sarasota County)

APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR REHERAING AND REHEARING *EN BANC*

Appellee Wells Fargo Bank, N.A. ("Wells Fargo"), through counsel, respectfully responds to Appellant Miles Christian-Hart's ("Appellant") Motion For Rehearing and Rehearing *En Banc* (the "Motion") filed on October 19, 2018, and requests that the Court deny the Motion. In support, Wells Fargo states as follows:

I. PROCEDURAL HISTORY

1. Appellant filed a Notice of Appeal to this Court on June 24, 2017, in which he stated that he was appealing the Final Judgment of Foreclosure, the Order denying the Motion for a New Trial, the Amended Order denying the Motion for a New Trial, the Order denying the Amended Motion for a New Trial, the Amended Order denying the Motion for a New Trial, and the Order denying the Motion for Leave to File an Omitted Counterclaim. (R.285-301).

2. While this Notice of Appeal was pending, Appellant filed a Proposed Statement of the Evidence with the Circuit Court for Sarasota County ("Trial Court") in an attempt to reconstruct the record of the trial ("Trial"), which occurred on April 7, 2015. (R.153-56). Wells Fargo responded to the Proposed Statement of the Evidence and a hearing was held on the issue on September 13, 2016. (R.387-458). No written statement of the evidence was ever entered into the Record; however, the Trial Court stated that the transcript of the September 13, 2016 hearing would suffice to show the recollection of the Trial Court, which admittedly was not much. (R. 419, 427, 444 Evidence Hearing Tr. 30:12, 38:20-25, 55:1-6).

3. Additionally, given that Appellant's Motion for Reconsideration of various orders was still pending, this Court relinquished jurisdiction to the Trial Court to rule on that Motion. After a hearing on the Motion for Reconsideration held on February 22, 2017, the Court issued an Order denying the Motion for Reconsideration. (R.724-26).

4. After this Court re-asserted jurisdiction, the parties fully briefed the issues in the case and the Court held an Oral Argument on August 29, 2018. Notably, at the Oral Argument, counsel for Wells Fargo never asserted that a written request (compared to an oral request) for judicial notice was made in the Trial Court concerning the introduction of the original Note and Mortgage at Trial, and it was generally agreed that no such written request had been made. Moreover, on

September 5, 2018, the parties filed a stipulation in which each party explicitly agreed that Wells Fargo did not make a written request for judicial notice before the Trial Court. Thus, this Court was fully aware that no such written judicial notice had been made in the Trial Court.

5. On September 11, 2018, Appellant filed a Motion to Relinquish Jurisdiction to obtain a written statement of the evidence, which Wells Fargo opposed on the grounds that the Trial Court had already stated on the record its recollection of the events at Trial.

6. On September 12, 2018, this Court issued a Per Curiam Affirmance of the Final Judgment and the various orders of the Trial Court. On September 24, 2018, the Court issued a further order denying the Motion to Relinquish jurisdiction.

7. Appellant filed the instant Motion, which contains sixty-six (66) pages of largely incoherent argument. However, as explained below, Appellant fails to demonstrate how the Court made any errors or oversights in its Per Curiam Affirmance and appears to re-argue the issues that have already been raised in the briefing and presented to the Court in the September 5, 2018 stipulation. Thus, this Court should deny the Motion for Rehearing and Rehearing *En Banc*.

II. ARGUMENT

8. Florida Rule of Appellate Procedure 9.330(a) states that a party who did not prevail on the appeal may file a motion for rehearing which "shall state with

particularity the points of law or fact that, in the opinion of the movant, the court has overlooked or misapprehended in its decision, and shall not present issues not previously raised in the proceeding." Fla. R. App. P. 9.330(a).

9. Motions for rehearing in courts of appeal "should be done under very limited circumstances; [they are] the exception to the norm." *Lawyers Title Ins. Corp. v. Reitzes*, 631 So. 2d 1100, 1101 (Fla. 4th DCA 1993).

10. As one court stated:

> Certainly it is not the function of a petition for rehearing to furnish a medium through which counsel may advise the court that they disagree with its conclusion, to reargue matters already discussed in briefs and oral argument and necessarily considered by the court, or to request the court to change its mind as to a matter which has already received the careful attention of the judges, or to further delay the termination of litigation.

State ex rel. Jaytex Realty Co. v. Green, 105 So. 2d 817, 818-19 (Fla. 1st DCA 1958).[1]

[1] Although this case was decided under a previous version of Rule 9.330, which explicitly stated that "[t]he motion shall not re-argue the merits of the court's order," the Committee Notes to the 2000 amendment, which removed that language, reaffirm that the purpose of motions under Rule 9.330 remain the same and such motions should not be used "to express mere disagreement with [the court's] resolution of the issues on appeal." Committee Notes to 2000 Amendment of Fla. R. Civ. P. 9.330.

11. Additionally, a rehearing *en banc* shall only be granted if the issue is of exceptional importance or if it is necessary to maintain the uniformity of decisions of the Court. Fla. R. App. P. 9.331.

12. In this case, Appellant filed a sixty-six (66) page motion that essentially re-argues the merits of the case, which the parties already covered in the briefing, at oral argument, and by the stipulation filed on September 5, 2018. The main issues that Appellant raises in the Motion are as follows: (1) that no written request for judicial notice was made in the Trial Court and that the wrong Note and Mortgage were entered into evidence by the Clerk of the Trial Court[2]; (2) that Appellant was not provided with proper notice of Trial because the notice was given twenty-nine (29) days prior to Trial; (3) that no hearing was held on Appellant's Amended Motion for a New Trial and Motion for Leave to File a Counterclaim; (4) that the original Order denying the Amended Motion for a New Trial was incorrect based upon the Trial Court's statement that counsel for Appellant had not filed a Notice of

[2] Appellant asserts that counsel for Wells Fargo "confirmed that it did not offer up the note and mortgage into evidence." Motion at 35. This is an incorrect interpretation of the Stipulation filed on September 5, 2018. In that Stipulation, counsel for Wells Fargo agreed that the wrong Note and Mortgage had been entered into the evidence record by the Clerk. This was likely a simple mistake by the clerk because the Note and Mortgage that were entered related to a separate foreclosure case, which went to trial on the same day. (R.898, Reconsideration Hearing Tr. 43:17-19). However, counsel for Wells Fargo has never stated that Wells Fargo did not introduce a *copy* of the Note and Mortgage at Trial and no transcript of the Trial exists to determine whether a copy of the Note and Mortgage were actually admitted at Trial.

Appearance; (5) that the Trial Court erred in determining that the Amended Motion for a New Trial prejudiced Wells Fargo; (6) that the Trial Court somehow misunderstood its role in deciding the Motion for Reconsideration; and (7) that the Court should advise whether it considered the Motion to Relinquish jurisdiction before it issued a the Per Curiam Affirmance. *See generally* Motion.

13. All of the issues mentioned above, with the exception of the last issue[3], were heavily briefed and argued by both sides and the Stipulation of September 5, 2018, was before the Court when it issued its Per Curiam Affirmance on September 12, 2018. *See, e.g.,* Initial Br. at 36-38 (arguing that Trial should not have commenced due to less than thirty (30) days notice and outstanding discovery), 41-47 (arguing that the Amended Motion for a New Trial should not have been denied due to a lack of notice of appearance or based upon prejudice, and that the wrong Note and Mortgage were entered into evidence), 47-50 (arguing that the Trial Court should have held a hearing on the Amended Motion for a New Trial and that the Trial Court misunderstood its role with regard to the Motion for Reconsideration); *see also* Stipulation, filed September 5, 2018.

[3] It is not entirely clear how it would matter whether the Trial Court considered the Motion to Relinquish before or after the Per Curiam Affirmance. What is clear is that the Motion was filed before the issuance of the Per Curiam Affirmance and, therefore, the Trial Court had the opportunity to review that Motion but still decided to affirm the Final Judgment and various orders of the Trial Court.

14. Instead of concisely raising points of law that the Court may have overlooked, Appellant uses his Motion for Rehearing to re-argue the merits of the case, which is not permitted in a Motion for Rehearing. *Green*, 105 So. 2d at 818-19.

15. The bottom line here is that there is no transcript from the Trial to allow this Court to determine the nature of the testimony and evidence at Trial. Additionally, although the parties and the Trial Court attempted to reconstruct the record of the Trial, the Trial Court had very little recollection about the Trial. Therefore, a presumption of correctness exists and, absent some fundamental error, the Final Judgment of Foreclosure should be affirmed. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979); *see City of Hialeah v. Cascardo*, 443 So. 2d 448, 450 (Fla. 1st DCA 1984); *Mills v. Heenan*, 382 So. 2d 1317, 1318 (Fla. 5th DCA 1980). Appellant fails to demonstrate any such fundamental error in this matter.

16. Additionally, Appellant attempts to argue that a rehearing *en banc* is necessary because this case is of exceptional importance to mortgagors' due process rights. Motion at 12. However, as demonstrated throughout the briefing, Appellant never established any due process violation. He argued that the Trial Court's notice of trial was served twenty-nine (29) days prior to the Trial, instead of the required thirty (30) days under Florida Rule of Civil Procedure 1.440. Motion at 14.

However, "[m]inor violations of rule 1.440 are insufficient grounds for reversal when it is clear that no deprivation of due process resulted from the violation." *HSBC Bank USA, N.A. v. Serban*, 148 So. 3d 1287, 1290 (Fla. 1st DCA 2014).

17. In this case, Appellant was given the chance to present his defense, cross-examine any witnesses, and otherwise participate in the Trial; thus, Appellant has not shown prejudice that would result in a due process violation. *Labor Ready Southeast Inc. v. Australian Warehouses Condo. Ass'n*, 962 So. 2d 1053, 1053 (Fla. 4th DCA 2007) (stating that where a party has "received actual, timely notice of trial," there is no due process violation, and a party is "precluded from arguing prejudice based upon a technical violation."); *Abrams v. Paul,* 453 So. 2d 826 (Fla. 1st DCA 1984) (actual receipt of notice of trial twenty-seven days before trial does not violate due process, and defendants would be unable to show prejudice from the technical violation). Moreover, he cannot claim that this issue is of "exceptional importance" where he cannot even demonstrate a due process violation. Thus, Appellant's Motion for Rehearing and Rehearing *En Banc* should be denied.

18. Of note, Appellant has requested and Wells Fargo has stipulated and agreed that Appellant may file a reply to this Response within five days of service.

III. CONCLUSION

WHEREFORE, Wells Fargo respectfully requests that this Court deny Appellant's Motion and for such other and further relief as the Court deems appropriate.

Dated November 19, 2018 Respectfully Submitted,

McGUIREWOODS LLP

By */s/ Sara F. Holladay-Tobias*

Sara F. Holladay-Tobias
Florida Bar No. 0026225
Primary E-Mail: stobias@mcguirewoods.com
Secondary E-Mail: flservice@mcguirewoods.com
Emily Y. Rottmann
Florida Bar No. 0093154
Primary E-Mail: erottmann@mcguirewoods.com
Secondary E-Mail: clambert@mcguirewoods.com
C. H. Houston III
Florida Bar No. 0100268
Primary E-Mail: hhouston@mcguirewoods.com
Secondary E-Mail: flservice@mcguirewoods.com
50 N. Laura Street, Suite 3300
Jacksonville, Florida 32202
(904) 798-3200
(904) 798-3207 (fax)

Attorneys for Appellee Wells Fargo, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by E-mail or U.S. Mail on November 19, 2018 to the following:

VIA E-MAIL

Steven Fox, Esq.
Law Office of Steven Fox
4634 Higel Avenue
Sarasota, FL 34242
Stalanfox@msn.com
Attorney for Appellant
Miles Christian-Hart

Albertelli Law
P.O. Box 23028
Tampa, FL 33623
servalaw@albertallilaw.com
Attorney for Appellee
Wells Fargo Bank, N.A.

Milan Brkich, Esq.
1660 Ringling Blvd.
Second Floor
Sarasota, FL 34236
mbrkich@scgov.net
Attorney for Sarasota County

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmond Road
Sarasota, FL 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, FL 34232

/s/ Sara F. Holladay-Tobias

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART,

Appellant,

CASE NO. 2D16-2875
L.T. CASE NO. 2010-CA-012116 NC

vs.

WELLS FARGO BANK, N.A.,

Appellee.
_____/

APPELLANT'S UNOPPOSED MOTION FOR LEAVE TO FILE REPLY

COMES NOW, the undersigned counsel, on behalf of the Appellant, who files this his UNOPPOSED and AGREED motion for leave to file this his reply to the Appellee's Response to the Appellant's Motion for Rehearing and Motion for Rehearing En Banc, filed by the Appellee on November 19, 2018, as follows:

I. On October 19, 2018, the undersigned filed his motion for rehearing and motion for rehearing en banc. The motion for rehearing raised specific issues to be considered by the merits panel, including, but not limited to whether the stipulation efiled by Wells Fargo on 9/5/18, had been received and considered prior to its issuance of the per curiam affirmance on 9/12/18,

whether the Further Motion to Relinquish Jurisdiction efiled by the Appellant on 9/12/18, had been received and considered prior to issuance of the per curiam affirmance on 9/12/18, and whether the per curiam affirmance reflected all of the orders appealed from Judges Donnellan, Iten, and Mercurio, and not just the listed judges, Donnellan and Iten. The motion for rehearing en banc contends that the Appellant/Mortgagor's procedural due process rights in the context of foreclosure proceedings have been violated, and, as such, the issues herein are ones of exceptional importance. The motion for rehearing/motion for rehearing en banc was timely filed on October 19, 2018, and pursuant to Rule 9.331 of the Florida Rules of Appellate Procedure, a response was to be served within 10 days of service of said motion, or on or before October 29, 2018. Also, as per the Internal Operating Procedures of the Second DCA, effective 4/12/18, the Appellee was obliged to respond to the same within 10 days of service of the motion, or on or before October 29, 2018; specifically, in the section entitled "Rehearing en banc" it states, "The clerk forwards to the primary judge a motion for rehearing en banc, upon receipt of the motion. Provided the motion for rehearing appears to be timely and sufficient, the primary judge holds the motion for ten days to afford the opposing

side an opportunity to respond." On November 5, 2018, Appellee filed a motion for extension of time to November 19, 2018, in which to respond to the October 19, 2018, motion. Although said motion was untimely, on November 13, 2018, this court granted Appellee's motion for extension of time to November 19, 2018. In that same order, this court noted the Appellant's response and objection of November 5, 2018, but struck the undersigned's renewed response and objection of November 8, 2018, as unauthorized. However, the docket reveals that the clerk has struck *both* the Appellant's November 5, 2018, response and objection and the Appellant's November 8, 2018, response and objection. Such action was erroneous and the undersigned requests that at least the November 5, 2018, response and objection be reinstated. Further, the November 13, 2018, order directed Appellee to respond to the motion for rehearing en banc, although, on November 19, 2018, the Appellee responded to ***both*** the motion for rehearing ***and*** the motion for rehearing en banc. In any case, on page 8 of the Appellee's response filed and served on November 19, 2018, the Appellee confirmed that pursuant to a stipulation/agreement between the parties that the Appellant may reply to the November 19, 2018, response as

follows:

> "Of note, Appellant has requested and Wells Fargo has stipulated and agreed that Appellant may file a reply to this Response within five day of service."

In sum, given that this court has granted the Appellee additional leave to respond, and given that the parties have stipulated/agreed that the Appellant may reply to said response, the undersigned counsel moves the court to allow the Appellant to reply herein. This is especially critical in this case as Wells Fargo's November 19, 2018, response is itself misleading on one of the dispositive issues. As will be seen below, throughout this case, Wells Fargo has asserted that as it filed the so-called original note and mortgage herein in June, 2012, that, at trial, it physically introduced ***neither*** the original note and mortgage nor a copy thereof, and only verbally requested the court to take judicial notice of the previously filed original note and mortgage. On Page 7 of the hearing transcript of the 9/13/16 settlement conference held to settle the record herein, Wells Fargo counsel stated emphatically that no mortgage or note—original or copy—had been introduced at the 4/7/15, foreclosure trial, as follows,

> "The original documents have previously been filed with the Court. And during the trial, there was no admission of a note and mortgage—a physical admission, other than

> asking—telling the Court that the original documents were previously filed and asking the court to take judicial notice of them and admit them into evidence." (R. 396).

The undersigned has stated repeatedly that one cannot take judicial notice of a mortgage, and, that, in any event, one cannot verbally request to take judicial notice of a document. This is a due process requirement that a request to take judicial notice be made in writing. Wells Fargo is aware that its failure to make such a written request itself violated due process. Accordingly, for the first time in the entire case, in a footnote on page 5 of its November 19, 2018, response, Wells Fargo reverses the position that it has held during the entire case, suddenly claiming,

> "However, counsel for Wells Fargo has never stated that Wells Fargo did not introduce a *copy* of the Note and Mortgage at Trial and no transcript of the Trial exists to determine whether a copy of the Note and Mortgage were actually admitted at Trial."

Noting that the mortgage and note appearing in the evidence record are derived from another case, now, Wells Fargo's story is that it ***did*** introduce a copy of the Note and Mortgage at the trial. The full membership of the Second DCA must be made aware of what is at

stake here. Equally without merit, Wells Fargo argues in its response that there can be no due process violation under Rule 1.440 although the trial went forward on the 29th day after the date of the order setting trial, instead of the 30th day after the order as prescribed under Rule 1.440, as such a violation was "minor" and Hart not prejudiced thereby although the record shows that Hart was owed discovery within 30 days of the order setting trial, and it was Wells Fargo which had moved for a continuance as it was unable to provide such discovery within 30 days! The Appellant was prejudiced by the court's failure to comply with Rule 1.440. Wells Fargo's statement of the law as to Rule 1.440 is not current law. Current law is set forth in the initial brief which cites *Mourning v. Ballast Nedam Const.* Inc., 964 So.2d 889 (Fla. 4th DCA 2007), which mandates that a trial be set for hearing not less than 30 days from the service of the notice for trial. The Third DCA recently cited *Mourning* for this proposition in *Nationstar Mortgage, LL.C. v. Prine,* 179 So.3d 409 (Fla. 3d DCA 2015), in which the trial court also had denied a continuance and the Appellant had been unable to prepare for trial. The Third DCA reversed and remanded for a new trial based on Rule 1.440. The foregoing points summarize the position of the undersigned in opposition to the Appellee's 11/19/18 response.

What follows is a more detailed explanation of these two points. It should be noted that while the Appellant did make numerous other points in the motion for rehearing/motion for rehearing en banc, as noted by Appellee, those points were heavily briefed and argued by both sides. As such, those remaining points stand and should be considered along with the instant points in ruling on the motion for rehearing/motion for rehearing en banc. Appellant contends that the points raised in the motion for rehearing/motion for rehearing en banc do demonstrate fundamental error and are of exceptional importance and the case should be remanded with directions to vacate and set aside the Final Judgment of Foreclosure.

PROCEDURAL HISTORY—EMPHASIZING THE NOTE, MORTGAGE, AND RULE 1.440

On March 9, 2015, the trial court signed an order setting trial for April 7, 2015 (R. 130). On March 9, 2015, the trial court also signed an order on the Defendant's Motion to Compel Discovery, stating that Wells Fargo "shall provide within 30 days..." various information and again stating, "Trial set for April 7, 2015 at 2 p.m." (R. 152). As noted on page 5 of the initial brief, the April 7, 2015, trial date "violated Rule 1.440 which requires a minimum of 30 days to elapse

from the order setting trial." On March 26, 2015, Wells Fargo served its amended witness and exhibit lists (R. 138-40), in which Wells Fargo failed to disclose the releases it wound up introducing at trial. It is noteworthy that in its Amended Witness and Exhibit lists filed on March 26, 2015, Wells Fargo disclosed among its "intended exhibits" to be offered at the upcoming foreclosure trial, the promissory note and the mortgage, and that prior to the foreclosure trial, Wells Fargo did not file a written request to take judicial notice of the note and mortgage. Moreover, in its amended witness and exhibit lists, Wells Fargo listed a new corporate representative named Torrie Scott. The Appellant noted that, in such disclosure, Ms. Scott had just been named as a witness and thus filed a motion in limine that Wells Fargo not be permitted to call her as a witness at the trial. (R. 141-43). The day before the trial, on April 6, 2015, Wells Fargo served its "motion to continue non-jury trial", copy attached, noting that although the trial was set for April 7, 2015, the thirty day period had not elapsed, and, as such, "the April 7, 2015, trial should be continued to allow Plaintiff the time provided by the Order to comply." (R. 150-52). Hart agreed to this motion for continuance, and expecting the trial to be continued, did not bring a court

reporter to the trial. On April 7, 2015, the trial court denied the motion for continuance and the motion in limine and forced the trial to go forward at which judgment was entered. (R. 153-57). As Wells Fargo counsel later stated to the successor judge at R. 886, "And, your Honor, the court did address the motion to continue. As opposing counsel stated there was an agreement."

On April 17, 2015, Hart timely filed his own motion for new trial under Rule 1.530 on the basis that the court had forced the defendant to go to trial despite outstanding discovery violations by the Plaintiff (R. 251-52). At the post-trial hearing held before Judge Iten, Hart testified,

> "So I didn't have a court reporter there or anything because we thought we were just going up for a continuance. So we were not prepared. That's why I filed a motion for a new trial, because I felt my due process was being, you know—discovery had never been met." (R. 336).

In addition to the original motion for a new trial, the undersigned filed an amended motion for new trial (R. 264-65) and a motion for leave to file omitted counterclaim. (R. 266-70). The undersigned noted that the loan had never been funded—the closing had been cancelled

and the Defendant did not benefit from the loan—and that Wells Fargo had failed to make a prima facie case by "offering admissible evidence at the foreclosure trial." The judgment of foreclosure had stated that "THIS action was tried before the Court. On the evidence presented..." but the evidence record showed that there was not a scintilla of competent, substantial evidence of a mortgage and a note executed by Hart actually being presented to the trial court—the only such evidence admitted was a mortgage with another bank (Bank of America) and for another mortgagor (Savage). Although Judge Iten denied the original and amended motions for new trial (R. 271-74) as well as the motion for leave to file omitted counter-claim, (R. 275-77), he disqualified himself (R. 280) and the undersigned timely filed a motion for reconsideration of Judge Iten's orders noting that "in each and every instance, the trial court failed to provide an opportunity to be heard and violated fundamental due process" (R. 282-84) observing that the amended motion for new trial had added two additional grounds—that the purported mortgage was not funded and that Wells Fargo had failed to make a prima facie case, stating,

"In fact, the evidentiary record is clear that the trial court had admitted evidence herein related to a loan from another borrower (Savage) at an entirely different bank (Bank of America)." Subsequently, Wells Fargo responded that "Defendant alleges that the trial court failed to provide an opportunity to be heard and that the Defendant was deprived of fundamental due process. However, Defendant does not cite any Florida Rule of Civil Procedure or appellate authority that requires a hearing on the motions." (R. 460-63). At issue however is that the trial court had ruled a hearing *would* be held on the original motion for new trial, but then abruptly cancelled that hearing. As to the amended motion for new trial, the court denied the same on the basis that a notice of appearance having never been filed (later amended by the court to a notice of appearance having been filed, but five minutes too late) and further that Wells Fargo had been "prejudiced" by the filing. As the court was denying the amended motion for new trial, the court also denied the motion for leave to file the counterclaim. Clearly, declaring the amended motion for new trial a nullity—and denying an opportunity to be heard on the same—on the basis a notice of appearance was efiled five

Ann 23 11 of 23

minutes late was a denial of due process as was "finding" prejudice when, as a matter of due process, this issue should have been raised by a *party*--and ruled upon by the court after hearing from *both* sides. Likewise, using this denial as a basis for denying the motion for leave to file omitted counterclaim was a denial of due process and the successor judge who "affirmed" all such rulings was likewise denying due process (R. 724-733).

NO ORIGINAL OR COPY OF MORTGAGE AND NOTE OFFERED AT TRIAL

The evidence record reflects not a scintilla of competent, substantial evidence in support of the judgment as it relates to the note and mortgage purportedly executed. As there was no trial transcript, on 9/13/16, a hearing/settlement conference was convened at which the same attorney for Albertelli Law—Ms. Charline Calhoun—who had appeared on behalf of Wells Fargo at the 4/7/15 foreclosure trial, appeared before the same judge (Donnellan) who had presided at the original trial. At the 9/13/16 hearing, Ms. Cahoun stated clearly that no mortgage or note, original or copy, had been introduced at the 4/7/15 trial, stating,

> "The original documents have previously been filed with the Court. And during the trial, there was no admission of

> a note and mortgage—a physical admission, other than asking—telling the Court that the original documents were previously filed and asking the Court to take judicial notice of them and admit them into evidence." (R. 396).

To recap, neither the ***physical*** original of the note and mortgage nor a copy thereof were introduced at the trial. Instead, Ms. Calhoun stated that she had requested the trial court to take judicial notice of the *previously filed* documents and admit them into evidence. On this score, the undersigned stated at the hearing,

> "If the Court looks at the court appearance record, there was no written request to take judicial notice. As this Court is well aware, if one seeks to take judicial notice, one must file a written request to take judicial notice to that effect in advance of the trial." (R. 399).

Wells Fargo responded that,

> "And opposing counsel stated that I did not make a request for judicial notice. As part of my questioning in the trial, your Honor, when an original document has already been filed with the Court, I will ask the Court to take judicial notice of it and admit it into evidence as it appears in the Court's record. And that's what took place in this case. And the original documents were previously filed. The clerk made an error and took the original documents from another case that was in front of the court and also admitted that into evidence as well." (R. 404).

Then, the court explained how she had been allowing bank counsel to request the court to take judicial notice of previously filed

mortgages and notes in her foreclosure trials, as follows,

> "You can make that argument to the appellate court. It was standard operating procedure, as a matter of fact, the original documents had to be filed before the trial. There was a check-off list that said they had to be filed before. Check-off list showed they had been filed in every case. So the court took judicial notice rather than having the Clerk bring over the original documents. So I'm not getting into that argument. That's for the appellate court." (R. 410).

At the hearing on the motion for reconsideration, the successor judge (Mercurio) stated that the note and mortgage in evidence

"was not the original note and mortgage executed by Mr. Hart.

And that Court appearance from the trial doesn't have any

indication that there was ever a request for judicial notice".

(R. 881). A colloquy between the court and Ms. Calhoun went as follows,

> "Stop for a second. As an officer of the court, are you representing to me, that during the trial of this case in front of Judge Donnellan, you offered into evidence, or provided her with the original note and mortgage?" (R. 887).

to which Ms. Calhoun responded,

> "The original note was already filed your Honor. What I did ask her to do is to take judicial notice of it and admit it into evidence as it appears in the court's file. That's what I do for all of my cases, and that's what I do for all of the cases that has the note and mortgage already filed." (R. 887-88).

In another colloquy between the court and Ms. Calhoun, the court stated,

> "So it does not appear at this point, that there was any clerk error in substituting documents from one Court file to another. But that's not your position, Ms. Calhoun. As I understand your position, the Savage documents that are in Mr. Hart's file, should actually have been in the Savage file. And that he didn't actually offer the original note and mortgage in Mr. Hart's file into evidence. You requested the Court to take judicial notice of the already-filed original note and mortgage." (R. 898-89).

to which Ms. Calhoun responded, "Correct, your Honor." (R. 899).

In sum, it has always been Wells Fargo's position that Wells Fargo requested the trial court to take judicial notice of the *previously filed* original note and mortgage, not, as Wells Fargo now indicates in its November 19, 2018, response, that Wells Fargo actually introduced a *copy* of the previously filed original note and mortgage at the 4/7/15 foreclosure trial.

THE APPELLATE BRIEFS

In the argument section of the Appellant's initial brief entitled "whether the trial court erred in setting the trial date", it states on page 36, that,

> "Florida Rules of Civil Procedure Rule 1.440© provides that a trial date shall be set not less than 30 days from service of

> the notice for trial. In the instant case, on March 9, 2015, Judge Donnellan set the trial date for April 7, 2015, which was only *29* days. As the court put it in *Mourning v. Ballast Nedam Construction, Inc.,* 964 So.2d 889 (Fla. 4th DCA 2007), the order setting the case for trial shall give at least 30 days' notice from the entry of that order to the trial date itself. This requirement of due process is well established. See, *Bennett v. Cont'l Chems., Inc.,* 492 So.2d 724 (Fla. 1st DCA 1986) and *Rivera v. Rivera,* 562 So.2d 833 (Fla. 1st DCA 1990)."

In *Rivera,* the notice of hearing was dated August 1, 1989, and the final hearing dated August 9, 1989, so the First DCA held that Rule 1.440 required reversal. Also, in the argument section of the Appellant's initial brief entitled "whether the court erred in admitting the note, mortgage", it states on page 47, that,

> "A plaintiff in a mortgage foreclosure must produce the original of the note or make a satisfactory explanation for its failure to do so. *Deutsche Bank v. Clarke,* 87 So.3d 58 (Fla. 4th DCA 2012). Here, neither the originals of the note and the mortgage nor copies thereof were admitted as evidence at trial. The only note and mortgage admitted was for a loan with Bank of America by Phyllis Savage. The proper note and mortgage were not admitted at the April 7, 2015, trial, and a new trial is required."

In Wells Fargo's answer brief, Wells Fargo states on page 5 that "Wells Fargo filed a motion to continue the April 7, 2015, trial because it had not had time to comply with the March 9, 2015, discovery order and the parties appeared before the Trial Court as

instructed by the Order Setting Trial on April 7, 2015 (R. 150-52). However, the Trial Court denied the Motion for Continuance and the trial went forward on April 7, 2015." In its Answer Brief, at page 21, Wells Fargo ignores *Mourning and* Rivera but cited *Labor Ready Southeast Inc.* v. Australian Warehouses Condo. Ass'n, 962 So.2d 1053 (Fla. 4th DCA 2007), but, as noted in the Reply Brief, *Labor Ready* is dissimilar in that both parties were prepared to go to trial, unlike the present case where neither party was prepared to go to trial. In its answer brief, Wells Fargo cites *Abrams v. Paul,* 453 So.2d 826 (Fla. 1st DCA 1984) and *Bennett v. Cont. Chem., Inc.,* 492 So.2d 724 (Fla. 1st DCA 1986). However, *Bennett* required strict compliance with Rule 1.440 and quoted Judge Zehmer's dissent in *Abrams v. Paul, that,* "Rule 1.440 is absolutely unambiguous in its requirement that the setting of trial shall be done by order of the court properly served on the defendants. That rule contains no authority for setting trial without prior notice to opposing counsel at least 30 days prior to the trial date." Also, in *Bennett,* the First DCA rejected the argument that the appellant did not make an effort to request the court to remove the action from

the calendar. In its Answer Brief, Wells Fargo cites *Parrish v. Dougherty,* 505 So.2d 646 (Fla. 1st DCA 1987), which it claimed clarified the First DCA's prior "strict compliance" ruling in *Bennett* and that the Rule 1.440 provision does not require "automatically reversible error regardless of the circumstances." Page 21 of Answer Brief. However, *Parrish* involved a completely different fact pattern. In *Parrish* the appellant's attorney *was* prepared to go to trial, as was the case with *Labor Ready,* which is the opposite of this case where the Appellant had agreed to Appellee's request for continuance as *neither* party was *ready* for trial. As the undersigned noted on page 5 of the Reply Brief, Wells Fargo ignores BAC Homes Loans v. Parrish, 146 So.3d 526 (Fla. 1st DCA 2014), where it was found to be reversible error to set a trial date 28 days from the date of the order noting that this made the judgment defective as well as the recent case of *Wells Fargo Bank v. Sawh,* 194 So.3d 475 (Fla. 3d DCA 2016), in which Wells Fargo asserted violation of its own Rule 1.440 rights, and that, without a transcript, the court held a trial court must provide at least 30 days' notice from the date of the order.

On the issue of the note and mortgage itself, on page 10 of the Answer Brief, Wells Fargo stated,

> "Counsel for Hart also argued that there should be a new trial because the Note and Mortgage that were entered into the evidence record were not the correct Note and Mortgage related to this case. (R. 876, Reconsideration Hearing Tr. 21-12-22). However, counsel for Wells Fargo conceded that the wrong Note and Mortgage were erroneously admitted into evidence and the Court agreed that it appeared that the Note and Mortgage admitted into evidence did not relate to this matter but rather to another foreclosure case heard on the same day (R. 898, Reconsideration Hearing Tr. 43-17-19). In this matter, counsel for Wells Fargo stated that, at trial, he had requested the Trial Court to take judicial notice of the Note and Mortgage that were in the court file and which were filed in June 2012. (R.877, 899, Reconsideration Hearing Tr. 22:2-3, 44:1-4)."

Again, *at this point*, Wells Fargo is not representing that copies of the original note and mortgage filed in June, 2012, were introduced at the trial. In fact, in the section of the Answer Brief entitled, "Final Judgment of Foreclosure" on page 15, Wells Fargo stated that the trial court's decision to enter a final judgment of foreclosure is to be reviewed under the "substantial, competent evidence" standard and noted that as no transcript of the trial exists, "the Final Judgment has the presumption of correctness, and the burden rests on Hart to demonstrate reversible error through Record evidence or through a showing of fundamental error, i.e., when a trial court

enters an order in violation of a litigant's due process rights." In response, on page 3 of the Reply Brief, the undersigned noted that Wells Fargo had failed to cite similar cases dealing with "unopposed motions for continuance" citing the leading case of *Reive v. Deutsche Bank Nat. Trust Company,* 190 So.3d 93 (Fla. 4th DCA 2015), where the trial court had also been presented with an unopposed motion to continue which it denied while simultaneously permitting the bank to use witnesses and documents not disclosed in the pretrial stipulation. As noted on page 4 of the Reply Brief, the Fourth DCA held therein that this is a matter of due process, stating,

> "We conclude that the court's denial of the continuance together with the admission of witnesses and documents not timely disclosed to the defendant constituted 'surprise in fact' in this case and violated *Binger v. King Pest Control,* 401 So.2d 1310, 1313-14 (Fla. 1981). The failure to give adequate notice of evidence and witnesses constitutes a due process violation."

As the undersigned noted on page 4 of the Reply Brief, here, the bank witness had just been disclosed and the releases never disclosed. The undersigned also noted that the trial court abused her discretion by setting the trial date 29 days from the date of the

order setting trial which didn't even make sense as the discovery wasn't due until April 8, 2015, which is why Wells Fargo moved for the continuance. The undersigned noted that in the Answer Brief, Wells Fargo had ignored *Mourning v. Ballast, Nedam Construction, Inc.,* 964 So.2d 889 (Fla. 4th DCA 2007) but cited *Labor Ready Southeast Inc. v. Austalian Warehouses Condo Ass'n, 962 So.2d 1053* (Fla. 4th DCA 2007), where there was no due process violation as the attorneys were prepared to go to trial." Also, Wells Fargo ignored the recent case of *Wells Fargo v. Sawh,* 194 So.3d 475 (Fla. 3d DCA 2016), in which the court held the trial court must provide at least 30 days' notice from the date of the order and *BAC Home Loans v. Parrish,* 146 So.3d 526 (Fla. 1st DCA 2014), where it was held to be reversible error to set a trial 28 days from the date of the order making the judgment defective.

On page 7 of the Reply Brief, the undersigned responded to Wells Fargo's purported use of judicial notice at the instant trial noting that a mortgage is not a proper item for which a court can take judicial notice, as noted in *Sandefur v. RVS Capital, LLC,* 183 So.3d 1258, (Fla. 4th DCA 2016), and that, in any event, the court

herein did not follow the established procedures to take judicial notice. As the undersigned noted on page 7 of the Reply Brief, responding to Wells Fargo's answer brief, "There was no written filing to take judicial notice nor a verbal request to take judicial notice either. (R. 157, 881). While F.S. 90.202(6) allows a court to take judicial notice of its own records in a pending case, that doesn't 'admit' a record into evidence and the rules of evidence still apply. See, *Holt v. Calchas,* 155 So.3d 499 (Fla. 4th DCA 2015)."

THE SEPTEMBER 5, 2018, STIPULATION

On 9/5/18, Wells Fargo efiled a stipulation. In the stipulation, Wells Fargo conceded that, contrary to its representations to the court, it had been notified of the Finkelstein deposition. Also, in that stipulation, it stated that the parties had further stipulated and agreed that no written request to take judicial notice of the correct original mortgage and note appears in the record and that that neither the correct original note and mortgage nor a copy thereof were attached to nor appeared in the trial court's evidence record in this matter.

THE SEPTEMBER 13, 2018 FURTHER MOTION TO RELINQUISH JURISDICTION

On September 13, 2018, the undersigned filed a further motion to relinquish jurisdiction, again noting that there was no physical admission of the note and mortgage at trial. In the motion, the undersigned noted that the court had not followed the procedures to take judicial notice and that in any case one cannot take judicial notice of a mortgage. As noted in that motion, as the 9/5/18 stipulation makes clear, "neither the original nor a copy of the copy of the correct note and mortgage appears in the evidence record." As noted at the end of the Further Motion to Relinquish Jurisdiction, the undersigned "has conferred with opposing counsel about the instant motion who is addressing the matter with her client." On September 12, 2018, this court issued a per curiam affirmance, and on September 24, 2018, the merits panel denied the Further Motion to Relinquish Jurisdiction. (Wells Fargo never filed a response to that motion but on September 24, 2018, did email the undersigned that it opposed the motion, without citing a reason therefor.) On October 19, 2018, the undersigned timely filed a motion for rehearing and for rehearing en banc. On page 26 thereof, it states that neither the original note and mortgage nor

a copy thereof were introduced in evidence. Commencing with page 31 of the motion for rehearing en banc, the undersigned details what should be contained in the evidence record in a foreclosure. This is not the case where a note/mortgage has been "lost." In this case, the original note and mortgage were in the clerk's file and should have been introduced at the trial. As noted on page 32 of the motion for rehearing en banc, in the Second DCA case of *Fair v. Kaufman,* 647 So.2d 167 (Fla. 2d DCA 1994), as here, the original note and mortgage were already in the court file, with the Second DCA holding that the introduction of such documents in a prior proceeding did not "obviate the necessity for proper introduction at trial." Rather than dealing with the actual facts of no original nor a copy thereof having been introduced at the trial, in its response to the motion for rehearing/motion for rehearing en banc, Wells Fargo now claims on page 5 that,

> "However, counsel for Wells Fargo has never stated that Wells Fargo did not introduce a *copy* of the note and Mortgage at Trial and no transcript of the Trial exists to determine whether a copy of the Note and Mortgage were actually admitted at Trial."

This is simply untrue. As noted repeatedly, Ms. Charline Calhoun stated that she did not physically offer up the note and mortgage because the original note and mortgage had been filed

and she had verbally requested the court to take judicial notice. She stated this was her practice in her cases and the trial court stated that it was her practice to do the same. Thus, this was not only a due process violation but a recurring violation, and one of exceptional importance. Also alarming is Wells Fargo's claim that the violation of Rule 1.440 was minor and no deprivation of due process resulted. As the undersigned noted in his reply brief and in his motion for rehearing en banc, in *BAC Home Loans v. Parrish,* 146 So.3d 526 (Fla. 1st DCA 2014), it was held to be reversible error to set a trial 28 days from the date of the trial order which made the judgment defective. In its response, Wells Fargo again cites *Labor Ready* but, as noted previously, in that case, there could be no due process violation as the parties were ready for trial. Wells Fargo again cites *Abrams v. Paul* 453 So.2d 826 (Fla. 1st DCA 1984), involving a totally different situation and *Bennett v. Cont'l Chems. Inc.,* 492 So.2d 724 (Fla. 1st DCA 1986), where the First DCA held that "in the interest of promoting uniformity and upholding the requirements of due process, that strict compliance with Rule 1.440 is mandatory." *Bennett* was not later modified drastically as alleged by Wells Fargo but it was clarified that where the parties had been *prepared* to go to trial, Rule 1.440 did not

necessarily apply. In this case, again, neither side was prepared to go to trial. As the undersigned put it in the motion for rehearing en banc, citing *Wells Fargo v. Sawh,* 194 So.3d 475 (Fla. 3d DCA 2016), "If as a matter of due process, it was fundamental error to hold a hearing/ trial within less than 30 days when Wells Fargo was the appellant, the same standard of due process should apply herein on the same issue where Wells Fargo was the appellee." In its response, Wells Fargo continues to assert the Appellant was not prejudiced, but here the Appellant was clearly prejudiced in that the holding of the trial within 30 days meant that the full discovery would not be provided to him prior to the trial which is why Appellant agreed to the Appellee's request for a continuance. In Wells Fargo's response, Wells Fargo cites to HSBC Bank, N.A., v. Serban, 148 So.3d 1287 (Fla. 1st DCA 2014), for the proposition that minor violations of Rule 1.440 are "insufficient grounds for reversal when it is clear that no deprivation of due process resulted from the violation". However, subsequent to *Serban,* the leading case of *Nationstar Mortg., LLC v. Prine,* 179 So.3d 145 (Fla. 3d DCA 2015), was decided. In *Prine,* the Third DCA held that due process requires notice and an opportunity to be heard before judgment is rendered and spelled out the relationship between Rule 1.440 and a motion for

continuance as is the case herein! As the Third DCA held, "Rule 1.440© mandates that a trial be set not less than thirty days from the service of the notice for trial. *Mourning v. Ballast Nedam Const. Inc.,* 964 So.2d 889 (Fla. 4th DCA 2007)." In *Nationstar,* Nationstar's counsel appeared at the trial and requested a continuance. In *Nationstar, as* here, the trial court denied the motion for continuance and Nationstar lost. In *Nationstar,* however, the Third DCA remanded for a new trial. The instant case is even more egregious as both sides had supported a continuance. This is just one of the due process violations which are of exceptional importance mandating reversal. The motion for rehearing/motion for rehearing en banc should be granted.

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-36676
Email: stalanfox@msn.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email or by U.S. Mail on November 26, 2018, to the following:

ADD 23 ORAL 23

VIA EMAIL

Sara F. Holladay-Tobias
Emily Rottman
Hal Houston
McGuireWoods LLP
50 N. Laura Street
Jacksonville, Florida 32202
stobias@mcguirewoods.com
erottmann@mcguirewoods.com
hhouston@mcguirewoods.com
flservice@mcguirewoods.com

Albertelli Law
P.O. Box 23028
Tampa, Florida 33623
Attorney for Appellee
servealaw@albertellilaw.com

Milan Brkich, Esquire
1660 Ringling Blvd.
Second Floor
Sarasota, Florida 34236
mbrkich@scgov.net

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmont Road
Sarasota, Florida 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, Florida 34232

/s/ Steven Fox
Steven Fox, FBN 246654
Attorney for Appellant Hart
4634 Higel Avenue
Sarasota, Florida 34242
(941) 225-3676
Email: stalanfox@msn.com

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL ACTION

WELLS FARGO BANK, N.A.,
Plaintiff,

vs.

CASE NO.: 2010 CA 012116 NC
DIVISION: C

MILES CHRISTIAN HART, et al.
Defendant(s).
_____/

PLAINTIFF'S MOTION TO CONTINUE NON-JURY TRIAL

COMES NOW, Plaintiff, **WELLS FARGO BANK, N.A.**, by and through its undersigned counsel and hereby files this Motion to Continue Non-Jury Trial and as grounds states as follows:

1. This Honorable Court entered an Order setting the Trial to take place in this matter on April 7, 2015.
2. On or about March 9, 2015 an Order was entered providing the Plaintiff with thirty (30) days to respond to Defendant's Request for Interrogatories. This time period as not elapsed. A copy of the Order is attached hereto as Exhibit "A".
3. As such, the trial should be continued to allow Plaintiff the time provided by the Oder to comply.

WHEREFORE, the Plaintiff respectfully requests this Court continue the trial now set for April 7, 2015 and for such other and further relief deemed just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by the U.S. Mail or eService this 6th day of April, 2015, to all parties on the attached service list.

Albertelli Law
P.O. Box 23028
Tampa, FL 33623
(813)221-4743
(813) 221-9171 facsimile
eService: servealaw@albertellilaw.com

By: _____
Florida Bar No.: 16141

NC - 10-52813

Service List

Miles Christian Hart
c/o Paul S. Cherry, Esq.
6625 Taeda Drive
Sarasota, FL 34241-9149
E-Serve 1: squillhead@verizon.net

Sarasota County
c/o Milan Brkich, Esq.
1660 Ringling Blvd., Second Floor
Sarasota, FL 34236
E-Serve 1: mbrkich@scgov.net

Sarasota Springs Community Association, Inc.
c/o Registered Agent, Kuehl Diani
4210 Ruth Way
Sarasota, FL 34232-3940

The Unknown Spouse of Miles Christian Hart n/k/a Barbara Hart
3439 Belmont Blvd
Sarasota, FL 34232

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

10-52813
B Wells

Wells Fargo Bank, NA
Plaintiff

vs.

CASE NO.: 2010CA12116 NC

Miles Christian Hart
Defendant

ORDER ON MOTION

Upon consideration in open court having heard the Defendant's/Plaintiff's Motion to

Compel Discovery.

the Court makes these findings:

Granted.

Plaintiff shall provide within 30 days:

1) Witness employer
2) # of years of employment with plaintiff/servicer
3) Current position and duties.
4) All prior positions with plaintiff/servicer.

There shall be no more Discovery propounded by the Defendant.

Trial set for April 7, 2015 at 2 p.m.

DONE AND ORDERED, in Sarasota, Sarasota County, Florida this 9th day

of March, 2015.

Nancy Ann Guillan
CIRCUIT JUDGE

Copies furnished to:
Plaintiff ✓
Defendant ✓
Other

EXHIBIT
"A"

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

December 03, 2018

*****CONSOLIDATED*****
CASE NO.: 2D16-2875
2D17-1110
L.T. No.: 2010-CA-012116 NC,
2010-CA-012116-NC

MILES CHRISTIAN - HART	v.	WELLS FARGO BANK, N. A.
Appellant / Petitioner(s),		Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's November 26, 2018, unopposed motion for leave to file reply (time stamped at 12:06 p.m.) is granted to the extent that Appellant is seeking the reinstatement of his November 5, 2018, response and objection to Appellee's motion for extension of time that was erroneously stricken. The clerk is directed to correct the docket consistent with this order. The motion is denied to the extent that Appellant is seeking leave to file a reply to Appellee's November 19, 2018, response to Appellant's motion for rehearing and rehearing en banc. Appellant's November 26, 2018, unopposed motion for leave to file a reply (time stamped at 8:04 p.m.) is stricken as duplicative.

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

Served:

Milan Brkich, Esq.
Emily Y. Rottmann, Esq.
Barbara Hart
Albertelli Law
C. H. Houston, I I I, Esq.
Steven Fox, Esq.
Sara F. Holladay - Tobias, Esq.
Karen E. Rushing, Clerk

ec

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

App 29

IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA

MILES CHRISTIAN-HART

Appellant,

v.

WELLS FARGO BANK, N.A.,

Appellee.

Case No. 2D16-2875
L.T. Case No. 2010-CA-012116 NC
(Sarasota County)

NOTICE OF WITHDRAWAL OF STATEMENT IN APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR REHEARING

Appellee Wells Fargo Bank, N.A. ("Wells Fargo"), through counsel, respectfully files this Notice of Withdrawal of a Statement in Wells Fargo's Response to Appellant Miles Christian-Hart's ("Hart") Motion for Rehearing and states as follows:

1. After this Court issued its opinion affirming the final judgment of foreclosure and the orders of the Circuit Court for Sarasota County, Florida on September 12, 2018, Hart filed his Motion for Rehearing on October 19, 2018.

2. Wells Fargo filed its response to the Motion for Rehearing on November 19, 2018.

3. Upon further review, Wells Fargo hereby notifies the Court that it withdraws the statements made in footnote two (2) on page five (5) of the response.

WHEREFORE, Wells Fargo withdraws the statements made in footnote two (2) on page five (5) of its response to Hart's Motion for Rehearing.

Respectfully Submitted,

McGUIREWOODS LLP

By *__/s/ C. H. Houston III__*

Sara F. Holladay-Tobias
Florida Bar No. 0026225
Primary E-Mail: stobias@mcguirewoods.com
Secondary E-Mail: flservice@mcguirewoods.com
Emily Y. Rottmann
Florida Bar No. 0093154
Primary E-Mail: erottmann@mcguirewoods.com
Secondary E-Mail: clambert@mcguirewoods.com
C. H. Houston III
Florida Bar No. 0100268
Primary E-Mail: hhouston@mcguirewoods.com
Secondary E-Mail: flservice@mcguirewoods.com
50 N. Laura Street, Suite 3300
Jacksonville, Florida 32202
(904) 798-3200
(904) 798-3207 (fax)

Attorneys for Appellee Wells Fargo, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by E-mail or U.S. Mail on December 4, 2018 to the following:

VIA E-MAIL

Steven Fox, Esq.
Law Office of Steven Fox
4634 Higel Avenue
Sarasota, FL 34242
Stalanfox@msn.com
Attorney for Appellant
Miles Christian-Hart

Albertelli Law
P.O. Box 23028
Tampa, FL 33623
servalaw@albertallilaw.com
Attorney for Appellee
Wells Fargo Bank, N.A.

Milan Brkich, Esq.
1660 Ringling Blvd.
Second Floor
Sarasota, FL 34236
mbrkich@scgov.net
Attorney for Sarasota County

VIA U.S. MAIL

The Unknown Spouse of Miles
Christian Hart n/k/a Barbara Hart
3439 Belmond Road
Sarasota, FL 34232

David M. Demarest, President
Sarasota Springs Community
Association, Inc.
4210 Ruth Way
Sarasota, FL 34232

/s/ C. H. Houston III
Attorney

Serial Number
19-01457S

Business Observer

Published Weekly
Sarasota, Sarasota County, Florida

COUNTY OF SARASOTA

2010 CA 012116 NC

STATE OF FLORIDA

Before the undersigned authority personally appeared Karen Ovadia who on oath says that he/she is Publisher's Representative of the Business Observer a weekly newspaper published at Sarasota, Sarasota County, Florida; that the attached copy of advertisement,

being a Notice of Rescheduled Sale

in the matter of Wells Fargo Bank vs. Miles Christian Hart et al

in the Circuit Court, was published in said newspaper in the

issues of 5/24/2019, 5/31/2019

Affiant further says that the said Business Observer is a newspaper published at Sarasota, Sarasota County, Florida, and that said newspaper has heretofore been continuously published and has been entered as periodicals matter at the Post Office in Sarasota in said Sarasota County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.
*This Notice was placed on the newspaper's website and floridapublicnotices.com on the same day the notice appeared in the newspaper.

Karen Ovadia

Karen Ovadia

Sworn to and subscribed before me this

31st day of May, 2019 A.D.

by Karen Ovadia who is personally known to me.

Holly W. Botkin

Notary Public, State of Florida
(SEAL)

Holly W. Botkin
Commission # GG099286
Expires: June 11, 2021
Bonded thru Aaron Notary

NOTICE OF RESCHEDULED SALE
IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY,
FLORIDA
CIVIL ACTION
CASE NO.: 2010 CA 012116 NC
WELLS FARGO BANK, N.A.,
Plaintiff, vs.
MILES CHRISTIAN HART, et al,
Defendant(s).

NOTICE IS HEREBY GIVEN Pursuant to an Order Rescheduling Foreclosure Sale dated February 21, 2019, and entered in Case No. 2010 CA 012116 NC of the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida in which Wells Fargo Bank, N.A., is the Plaintiff and Miles Christian Hart, Sarasota County, Sarasota Springs Community Association, Inc., The Unknown Spouse of Miles Christian Hart n/k/a Barbara Hart, are defendants, the Sarasota County Clerk of the Circuit Court will sell to the highest and best bidder for cash in/on the Internet: www.sarasota.realforeclose.com, Sarasota County, Florida at 9:00am on the 21th day of June, 2019, the following described property as set forth in said Final Judgment of Foreclosure:

LOT 253, UNIT 2, SARASOTA SPRINGS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 8 AT PAGE 6, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.
A/K/A 3439 BELMONT BLVD., SARASOTA, FL 34232-4905

Any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the Lis Pendens must file a claim within 60 days after the sale.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Sarasota County Jury Office, P.O. Box 3079, Sarasota, Florida 34230-3079, (941)861-7400, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

Dated in Hillsborough County, Florida this 21th day of May, 2019.

/s/ Nathan Gryglewicz
Nathan Gryglewicz, Esq.
FL Bar # 762121
Albertelli Law
Attorney for Plaintiff
P.O. Box 23028
Tampa, FL 33623
(813) 221-4743
eXT 10-52815
May 24, 31, 2019 19-01457S

App. 26 1 of 3

Filing # 89932131 E-Filed 05/22/2019 10:24:03 AM

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL ACTION

WELLS FARGO BANK, N.A.,

Plaintiff,

vs.

CASE NO.: 2010 CA 012116 NC
DIVISION:

MILES CHRISTIAN HART, et al,

Defendant(s).
_____/

NOTICE OF RESCHEDULED SALE

NOTICE IS HEREBY GIVEN Pursuant to an Order Rescheduling Foreclosure Sale dated February 21, 2019, and entered in Case No. 2010 CA 012116 NC of the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida in which Wells Fargo Bank, N.A., is the Plaintiff and Miles Christian Hart, Sarasota County, Sarasota Springs Community Association, Inc., The Unknown Spouse of Miles Christian Hart n/k/a Barbara Hart, are defendants, the Sarasota County Clerk of the Circuit Court will sell to the highest and best bidder for cash in/on the Internet: www.sarasota.realforeclose.com, Sarasota County, Florida at 9:00am on the 21th day of June, 2019, the following described property as set forth in said Final Judgment of Foreclosure:

LOT 253, UNIT 2, SARASOTA SPRINGS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 8 AT PAGE 6, OF THE PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

Filed 05/22/2019 03:35 PM Karen E. Rushing Clerk of the Circuit Court Sarasota County, Fl

A/K/A 3439 BELMONT BLVD., SARASOTA, FL 34232-4905

Any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the Lis Pendens must file a claim within 60 days after the sale.

Dated in Hillsborough County, Florida this 21th day of May, 2019.

/s/ Nathan Gryglewicz
Nathan Gryglewicz, Esq.
FL Bar # 762121

Albertelli Law
Attorney for Plaintiff
P.O. Box 23028
Tampa, FL 33623
(813) 221-4743
CT - 10-52813

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Sarasota County Jury Office, P.O. Box 3079, Sarasota, Florida 34230-3079, (941)861-7400, at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

The above is to be published in the Business Observer
PO Box 2234, Sarasota, Florida 34230