CASE NO.

IN THE UNITED STATES SUPREME COURT

LOWER COURT CASE NO. 19-12676

IN RE ROBERT SARHAN ANABELLA SOURY
aka ANABELLA SARHAN

PETITIONERS

APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION FOR THE UNITED STATES SUPREME COURT

ARTHUR J. MORBURGER
Attorney for Appellant Robert Sarhan
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Fla. Bar No. 157287
Email: amorburger@bellsouth.net

ELEVENTH CIRCUIT COURT OF APPEALS
INDEX TO APPENDIX

DATE	TAB	DOCUMENTS
07/09/2019	A1	DOCKET FOR THE ELEVENTH CIRCUIT COURT OF APPEALS
09/19/2019	B1	APPELLANTS' EMERGENCY INITIAL BRIEF
09/19/2019	C1	SUPPLEMENTAL APPENDIX U.S.DISTRICT COURT
09/19/2019	D1	MOTION FOR SANCTIONS BY THE APPELLEE
10/21/2019	E1	ANSWER BRIEF OF APPELLEE, H & H INVESTORS, INC.
11/21/2019	F1	APPELLANTS' REPLY BRIEF
01/09/2020	G1	PER CURIAM RULING BY ELEVENTH CIR. COURT OF APPEALS
01/09/2020	H1	MOTION FOR SANCTIONS GRANTED
01/23/2020	I1	APPELLANTS MOTION FOR REHEARING AND REHEARING EN BANC
03/11/2020	J1	PETITION FOR REHEARING EN BANC DENIED

EXHIBIT A1

General Docket
United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 19-12676
Nature of Suit: 3440 Other Civil Rights
Robert Sarhan, et al v. H & H Investors, Inc.
Appeal From: Southern District of Florida
Fee Status: Fee Paid

Docketed: 07/09/2019
Termed: 01/09/2020

Case Type Information:
1) Private Civil
2) Federal Question
3) -

Originating Court Information:
District: 113C-1 : 1:19-cv-22588-DPG
Civil Proceeding: Darrin P. Gayles, U.S. District Judge
Date Filed: 06/21/2019
Date NOA Filed:
07/07/2019

Prior Cases:
None

Current Cases:
None

ROBERT SARHAN	Plaintiff - Appellant	Arthur J. Morburger Direct: 305-374-3373 [COR LD NTC Retained] Law Office of Arthur J. Morburger Firm: 305-374-3373 19 W FLAGLER ST STE 404 MIAMI, FL 33130-4404
ANABELLA SOURY, a.k.a. Anabella Sarhan	Plaintiff - Appellant	Arthur J. Morburger Direct: 305-374-3373 [COR LD NTC Retained] (see above)
versus		
H & H INVESTORS, INC., a Florida Corporation	Defendant - Appellee	Raul Gastesi Direct: 305-818-9993 [COR LD NTC Retained] Gastesi & Associates Firm: 305-818-9993 8105 NW 155TH ST HIALEAH, FL 33016

ROBERT SARHAN,
ANABELLA SOURY,
a.k.a. Anabella Sarhan,

Plaintiffs - Appellants,

versus

H & H INVESTORS, INC.,
a Florida Corporation,

Defendant - Appellee.

07/09/2019	4 pg, 104.79 KB	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellants Robert Sarhan and Anabella Soury on 07/07/2019. Fee Status: Fee Not Paid. No hearings to be transcribed. Awaiting Appellant's Certificate of Interested Persons due on or before 07/23/2019 as to Appellant Robert Sarhan. Awaiting Appellee's Certificate of Interested Persons due on or before 08/06/2019 as to Appellee H & H Investors, Inc. [Entered: 07/23/2019 11:31 AM]
07/23/2019		[19-12676]**RETURNED UNFILED**Appellant's brief filed by Robert Sarhan and Anabella Soury.--[Edited 07/25/2019 by RAV] (ECF: Arthur Morburger) [Entered: 07/23/2019 01:30 PM]
07/25/2019	76 pg, 5.57 MB	RETURNED UNFILED: Appellant's premature brief filed by Arthur J. Morburger for Robert Sarhan and Anabella Soury is returned unfiled because a briefing schedule has not issued. Also Attorney has not filed an appearance form. Please do not send a brief until a briefing schedule issues. Also the appendix must be filed separately. See 11th Cir.R. 28 and 30 for proper filing of a brief and appendix. [Entered: 07/25/2019 12:25 PM]
07/26/2019		Appellate fee was paid on 07/22/2019 as to Appellants Robert Sarhan and Anabella Soury. [Entered: 07/26/2019 10:44 AM]
07/26/2019	1 pg, 16.95 KB	Briefing Notice issued to Appellants Robert Sarhan and Anabella Soury. The appellant's brief is due on or before 08/19/2019. The appendix is due no later than 7 days from the filing of the appellant's brief. [Entered: 07/26/2019 10:56 AM]
07/26/2019		NOTICE OF CIP FILING DEFICIENCY to Arthur J. Morburger for Robert Sarhan and Anabella Soury. You are receiving this notice because you have not completed the Web-Based Stock Ticker Symbol CIP via the court's public web-page and have not filed the CIP via the electronic filing system (CM/ECF). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 07/26/2019 12:33 PM]
08/06/2019	1 pg, 244.21 KB	APPEARANCE of Counsel Form filed by Arthur J. Morburger (Fla. Bar No. 157287), Attorney for Robert Sarhan and Anabella Soury a/k/a Annabella Sarhan, Appellants, 19 W. Flagler St., Ste. 404, Miami, FL 33130, Phone: 305-374-3373 [19-12676] (ECF: Arthur Morburger) [Entered: 08/06/2019 11:38 AM]
08/06/2019	5 pg, 734.35 KB	*MOTION to expedite filed by Robert Sarhan and Anabella Soury. Opposition to Motion is Unknown. [8845208-1]* [19-12676] (ECF: Arthur Morburger) [Entered: 08/06/2019 11:42 AM]
08/06/2019	1 pg, 33.99 KB	APPEARANCE of Counsel Form filed by Raul Gastesi, Esq. for Appellee, H&H Investors, Inc. [19-12676] (ECF: Raul Gastesi) [Entered: 08/06/2019 05:59 PM]
08/06/2019	3 pg, 79.04 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by Raul Gastesi, Esq. for Appellee, H&H Investers, Inc.. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here http://www.ca11.uscourts.gov/web-based-cip or on the court's website. See 11th Cir. R. 26.1-2(b). [19-12676] (ECF: Raul Gastesi) [Entered: 08/06/2019 06:02 PM]
08/09/2019	2 pg, 16.9 KB	ORDER: Appellants' August 6, 2019 filing entitled "Appeal Should be Treated as an Emergency,' construed as a motion to expedite the appeal, is DENIED. [8845208-2] JP [Entered: 08/09/2019 12:32 PM]
08/09/2019		SECOND NOTICE OF CIP FILING DEFICIENCY to Arthur J. Morburger for Robert Sarhan and Anabella Soury. You are receiving this notice because you have not completed the Web-Based Stock Ticker Symbol CIP via the court's public web-page and have not filed the CIP via the electronic filing system (CM/ECF). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 08/09/2019 12:36 PM]
08/21/2019	2 pg, 12.87 KB	ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is hereby DISMISSED for want of prosecution because the appellant Robert Sarhan and Anabella Soury has failed to file an appellant's brief within the time fixed by the rules [Entered: 08/21/2019 04:28 PM]
08/28/2019	81 pg, 18.02 MB	*EMERGENCY MOTION to reinstate appeal filed by Robert Sarhan and Anabella Soury. Opposition to Motion is Unknown. [8865786-1]* [19-12676] (ECF: Arthur Morburger) [Entered: 08/28/2019 03:53 PM]
08/29/2019		Received paper copies of EBrief filed by Appellants Robert Sarhan and Anabella Soury. [Entered: 09/19/2019 03:02 PM]
08/29/2019		*DOCKETED IN ERROR*--[Edited 09/19/2019 by TLS] [Entered: 09/19/2019 03:03 PM]
08/29/2019		Received paper copies of EAppendix filed by Appellants Robert Sarhan and Anabella Soury. 1 VOLUMES - 2 COPIES [Entered: 09/19/2019 03:05 PM]
08/30/2019		Notice of deficient Motion to Reinstate Appeal filed by Arthur J. Morburger for Robert Sarhan and Anabella Soury. 1.) Document does not contain a Certificate of Compliance, see FRAP 32(g)(1). 2.) Document does not contain a Certificate of Service. Counsel must file a corrected motion using the Amend, Correct or Supplement Motion event within 3 days. [Entered: 08/30/2019 08:53 AM]

09/03/2019	6 pg, 64.34 KB	*Amended Motion [8865786-2] filed by Appellants Robert Sarhan and Anabella Soury.* [19-12676] (ECF: Arthur Morburger) [Entered: 09/03/2019 03:36 PM]
09/10/2019		*MOTION for attorney's fees or costs, to dismiss appeal as frivolous, to impose sanctions for damages and costs filed by H & H Investors, Inc.. Opposition to Motion is Unknown. [8875459-1]* [19-12676] (ECF: Raul Gastesi) [Entered: 09/10/2019 12:22 PM]
09/11/2019	14 pg, 207.58 KB	RETURNED UNFILED: Motion for attorney's fees or costs, to dismiss appeal as frivolous, to impose sanctions for damages and costs filed by Raul Gastesi for H & H Investors, Inc. is returned unfiled because this case is closed.--[Edited 09/11/2019 by TLS] Added remaining motions to text. [Entered: 09/11/2019 03:46 PM]
09/19/2019	2 pg, 16.51 KB	ORDER: Motion to reinstate appeal filed by Appellants Robert Sarhan and Anabella Soury is GRANTED. [8865786-2] WHP and KCN [Entered: 09/19/2019 02:47 PM]
09/19/2019	22 pg, 4.58 MB	Appellant's brief filed by Robert Sarhan and Anabella Soury. Service date: 07/22/2019 [19-12676] Attorney for Appellee: Gastesi - email. [Entered: 09/19/2019 02:54 PM]
09/19/2019	53 pg, 10.23 MB	Appendix filed [1 VOLUMES - 2 copies] by Attorney Arthur J. Morburger for Appellants Robert Sarhan and Anabella Soury. Service date: 07/22/2019 email - Attorney for Appellant: Morburger; Attorney for Appellee: Gastesi. [Entered: 09/19/2019 02:57 PM]
09/19/2019	2 pg, 16.36 KB	Briefing Notice issued to Appellee H & H Investors, Inc.. Appellee's brief is due on or before 10/21/2019. The Supplemental Appendix, if any, is due on 10/28/2019 as to Appellee H & H Investors, Inc.. [Entered: 09/19/2019 02:59 PM]
09/19/2019	13 pg, 272.74 KB	*MOTION to impose sanctions for damages and costs pursuant to FRAP 38 filed by H & H Investors, Inc.. . [8884986-1]* [19-12676]--[Edited 10/02/2019 by AGW] Edited to correct text and relief--[Edited 10/02/2019 by AGW] (ECF: Raul Gastesi) [Entered: 09/19/2019 03:19 PM]
10/21/2019	28 pg, 619.94 KB	Appellee's Brief filed by Appellee H & H Investors, Inc.. [19-12676] (ECF: Raul Gastesi) [Entered: 10/21/2019 05:50 PM]
10/21/2019	160 pg, 4.6 MB	Supplemental Appendix [1 VOLUMES] filed by Appellee H & H Investors, Inc.. [19-12676] (ECF: Raul Gastesi) [Entered: 10/21/2019 05:53 PM]
10/23/2019		Received paper copies of EBrief filed by Appellee H & H Investors, Inc.. [Entered: 10/23/2019 04:18 PM]
10/23/2019		Received paper copies of EAppendix filed by Appellee H & H Investors, Inc.. 1 VOLUMES - 2 COPIES [Entered: 10/23/2019 04:19 PM]
11/05/2019		Over the phone extension granted by clerk as to Attorney Arthur J. Morburger for Appellants Robert Sarhan and Anabella Soury. Updated Reply Brief. Due on 11/26/2019 as to Appellants Anabella Soury and Robert Sarhan. [Entered: 11/05/2019 10:48 AM]
11/21/2019	9 pg, 92.5 KB	Reply Brief filed by Appellants Robert Sarhan and Anabella Soury. [19-12676] (ECF: Arthur Morburger) [Entered: 11/21/2019 08:45 PM]
12/03/2019		Notice of deficient Reply Brief filed by Arthur J. Morburger for Robert Sarhan and Anabella Soury. Please mail the required paper copies of appellants' Reply Brief to the court within (3) days. [Entered: 12/03/2019 08:27 AM]
12/06/2019		Received paper copies of EBrief filed by Appellants Robert Sarhan and Anabella Soury. [Entered: 12/09/2019 10:01 AM]
12/10/2019		NOTICE OF CIP FILING DEFICIENCY to Arthur J. Morburger for Robert Sarhan and Anabella Soury. You are receiving this notice because you have not completed the Web-Based Stock Ticker Symbol CIP via the court's public web-page and have not filed the CIP via the electronic filing system (CM/ECF). Failure to comply with 11th Cir. Rules 26.1-1 through 26.1-4 may result in dismissal of the case or appeal under 11th Cir. R. 42-1(b), return of deficient documents without action, or other sanctions on counsel, the party, or both. [Entered: 12/10/2019 12:24 PM]
12/11/2019	3 pg, 47.9 KB	Certificate of Interested Persons and Corporate Disclosure Statement filed by. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here http://www.ca11.uscourts.gov/web-based-cip or on the court's website. See 11th Cir. R. 26.1-2(b). [19-12676] (ECF: Arthur Morburger) [Entered: 12/11/2019 11:05 AM]
01/09/2020	1 pg, 9.04 KB	Judgment entered as to Appellants Robert Sarhan and Anabella Soury. [Entered: 01/09/2020 08:31 AM]
01/09/2020	2 pg, 40.89 KB	ORDER: Motion for sanctions filed by Appellee H & H Investors, Inc. is GRANTED. [8884986-4] CRW, BBM and JP [Entered: 01/09/2020 08:35 AM]
01/09/2020		Opinion issued by court as to Appellants Robert Sarhan and Anabella Soury. Decision: Affirmed and

	7 pg, 42.96 KB	Remanded. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions. [Entered: 01/09/2020 08:46 AM]
01/23/2020	10 pg, 101.56 KB	Petition for rehearing en banc (with panel rehearing) filed by Appellants Robert Sarhan and Anabella Soury. [19-12676] (ECF: Arthur Morburger) [Entered: 01/23/2020 04:59 PM]
03/11/2020	2 pg, 37.74 KB	ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellants Robert Sarhan and Anabella Soury are DENIED. [9031605-1] [Entered: 03/11/2020 12:03 PM]
03/19/2020	2 pg, 580 KB	Mandate issued as to Appellants Robert Sarhan and Anabella Soury. [Entered: 03/19/2020 05:09 PM]

Clear All

(•) Documents and Docket Summary
( ) Documents Only

[ ] Include Page Numbers

Selected Pages: 0 Selected Size: 0 KB

View Selected

PACER Service Center			
Transaction Receipt			
04/03/2020 12:03:55			
PACER Login:	rs123456	**Client Code:**	
Description:	Docket Report (filtered)	**Search Criteria:**	19-12676
Billable Pages:	3	**Cost:**	0.30

EXHIBIT B1

CASE NO. 19-12676

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROBERT SARHAN and ANABELLASOURYA/K/A
ANABELLA SARHAN,

APPELLANTS

v.

H & H INVESTORS, INC.,
A Florida Corporation,

APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-22588

APPELLANTS' EMERGENCY INITIAL BRIEF

ARTHUR J. MORBURGER
Attorney for Appellants
19 W. Flagler St. Ste. 404
Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel of record for Appellant, certifies that, to the best of their knowledge, the following is a complete list of all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party:

1. Raul Gastesi, Esq. Attorney for H & H Investors, Inc. the Appellee
2. Judge Darrin P. Gayles U.S. District Judge Southern District of Florida
3. Judge Jon Gordon, Eleventh Judicial Circuit
4. Ralph Halim, President of H & H Investors, Inc. the Appellee
5. Judge Michael Hanzman, Eleventh Judicial Circuit
6. Robert L. Moore, Attorney for the Anabella Soury, Appellant
7. Arthur J. Morburger, Esq. Attorney for Robert Sarhan, Appellant
8. Robert Sarhan, the Appellant
9. Judge Robert Scola U.S. District Judge Southern District of Florida
10. Judge Rodney Smith U.S. District Judge Southern District of Florida
11. Anabella Soury, the Appellant

ORAL ARGUMENT

The issue is an important federal issue and merits consideration on oral argument. The Eleventh Circuit treatment of the Rooker Feldman Doctrine is an important federal issue affecting the due process rights of a party and inter relationship between State and Federal Court.

TABLE OF CONTENTS

Certificate of Interested Persons ii

Oral Argument Request iii

Table of Authorities v

Statement of the Case and the Facts 1

Argument

I. THE JUDGMENT, AMENDED JUDGMENT, AND APPEAL WERE ALL PROSECUTED WITHOUT ANY NOTICE TO ANABELLA OR HER ATTORNEY ROBERT L. MOORE, THEREBY DEPRIVING THE STATE COURT OF JURISDICTION OVER HER PERSON AND RENDERING THE *ROOKER-FELDMAN* DOCTRINE INAPPLICABLE TO HER **Page 6**

II. *ROOKER-FELDMAN* DOCTRINE HAS NO APPLICATION TO A STATE COURT PROCEEDING WHERE ANABELLA HAD NO REASONABLE OPPORTUNITY TO RAISE HER FEDERAL CLAIMS OR TO APPEAL, AND HAS NO APPLICATION TO RULE 1.540(B) MOTION PROCEEDINGS **Page 9**

III. THE COURT'S RELIANCE ON JUDGE SCOLA'S REMARKS IN REGARD TO THE REMOVAL OVERLOOKS THE FACT THAT ANABELLA WAS NOT A PARTY TO THE REMOVAL AND WAS NOT A PARTY TO THE APPEAL TO WHICH JUDGE SCOLA REFERRED **Page 13**

IV. ROOKER-FELDMAN DOCTRINE HAS NO APPLICATION TO ANY RULE 1.540(B) PROCEEDING OR TO ANY OTHER CRIMINALLY SANCTIONED PROCEEDING IN WHICH ROBERT SARHAN OR ANABELLA DID NOT AND WILL NOT HAVE A REASONABLE OPPORTUNITY TO RAISE THEIR FEDERAL CLAIMS IN STATE COURT **Page 14**

CONCLUSION 15

CERTIFICATE OF COMPLIANCE 16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

Association For Disabled Americans, Inc. v. Amoco Oil Co., 211 F.R.D. 457, 472 (S.D.Fla.2002) 7

Bharucha v. Reuters Holdings PLC, 810 F.Supp. 37, 40 (E.D.N.Y.,1993) 13,14

Casale v. Tilman, 558 F.3d 1258, 1260 (11th Cir. 2009) 7,13

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983) 7,13

Fiber Crete Homes, Inc. v. Division of Administration, 315 So.2d 492, 493 (Fla.Dist.Ct.App.1975) 10

Gomer ex rel. Gomer v. Philip Morris Inc., 106 F.Supp.2d 1262, 1267, fn. 5 (M.D.Ala. 2000) 11

In re Blonder, 2015 WL 5773230, at *11 (Bkrtcy.N.D.Ga. 2015) 8

Miami Bank & Trust Co. v. Rademacher Co., 5 So.2d 63, 64 (Fla. 1941) 8

Pompano Atlantis Condominium Association v. Merlino, 415 So.2d 153, 154 (Fla.Dist.Ct.App.1982) 10

Sarhan, et al. V. H & H Investors, Inc. et al., 19-CV-20368-RNS, ECF Nos. 37 & 38 (S.D. Fla. April 1, 2019) 6

Taylor v. Sturgell, 128 S.Ct. 2161, 2174 (2008) 7

Thurman v. Judicial Correction Services, Inc., 760 Fed.Appx. 733, 737 (11th Cir. 2019) 11

U.S. v. Napper, 887 F.2d 1528, 1534 (11 Cir. 1989) 11

Wood v. Orange County, 715 F.2d 1543, 1548 (11th Cir. 1983) 9,10

Fla.R.Civ.P. 1.540(b)(4) 9,10,13,14

Fla.R.Civ.P. 1.540(b)(3) 12

STATEMENT OF THE CASE AND THE FACTS

Plaintiffs/Appellants ROBERT SARHAN and ANABELLA SOURY A/K/AANABELLA SARHAN, sued Defendant/Appellee H & H Investors, Inc., in the United States District Court Southern District of Florida in Case No. 19-11177 **EXHIBIT B** and alleged:

"1. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1343 and 2201.
2. The venue of this action is properly in Miami—Dade County, Florida because Defendant has its office in Miami-Dade County and is a Florida corporation.
3. Plaintiffs own and reside at premises located at 22795 S.W. 212th Avenue Miami, Florida.
4. On June 23, 2008, Plaintiff Robert Sarhan signed a promissory note, payable to Defendant and Plaintiffs signed a mortgage of the Homestead Property.
5. Defendant is suing Plaintiffs for foreclosure in Miami-Dade County, Florida Circuit Court in Case No. 2012-07970, as to their Homestead Property in the area of SW Miami Dade County, Florida.
6. In that case, the court entered a Judgment and an Amended Judgment, copies of which are attached hereto. **[Exhibit C & D]**
7. The court did however fail to serve copies of those Judgments on Plaintiff Anabella Soury or her attorney Robert L. Moore and the time for appeal elapsed before they learned of the Judgments.
8. The aforementioned Final Judgment of Foreclosure contained the following Certificate of Service that specified Raul Gastesi and Michael Cotzen were served with copies, not Robert L. Moore, attorney for Anabella Soury:

EXHIBIT C

Page 6 of 6
Case No.: 2012-07970 CA 15

JUL 3 1 2017

DONE AND ORDERED in Chambers in Miami Dade County, Florida, this _____ day of _____, 2017.

Circuit Judge

Conformed Copies:
Plaintiff's Counsel: Raul Gastesi, Esq., 8105 N.W. 155th Street, Miami, Lakes, FL 33016, efiling@gastesi.com

Defendant's Counsel: Michael L. Cotzen, Esq., 20700 West Dixie Highway, Aventura, Florida 33180, Michael@cotzenlaw.com

ORIGINAL.
JUDGE JOSE M. ROJAS

9. The Amended Final Judgment of Foreclosure contained the following Certificate of Service that specified specified Raul Gastesi and successor attorney Arthur Morburger were served copies, not Robert L. Moore attorney for Anabella Soury:

EXHIBIT D

Copies:
DONE AND ORDERED in Chambers in Miami Dade County, Florida, this 16 day of Dec, 2018.

Circuit Judge

RODNEY
CIRCUIT JUDGE

Conformed Copies:
Plaintiff's Counsel: Raul Gastesi, Esq., 8105 N.W. 155th Street, Miami, Lakes, FL 33016, efiling@gastesi.com

Defendant's Counsel: Arthur J. Morburger, Esq. 19 West Flagler Street, Suite 404, Miami, Florida 33130, Amorburger@bellsouth.net

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION
NUMBER 10
THE COURT DISPOSES THIS CASE AGAINST
ANY PARTY NOT LISTED IN THIS FINAL ORDER
OR PREVIOUS ORDERS. THIS CASE IS CLOSED
AS TO ALL PARTIES

10. Meantime, the foreclosure sale was rescheduled to June 25, 2019, dispossessing Plaintiffs and their minor son from their home.

11. On June 18, 2019 Plaintiffs filed an **"Emergency Motion for Relief from Judgment as Void"** and a **"Declaration,"** copy of which

are attached hereto, claiming that the unserved Judgments were denials of due process and were void. **[Exhibit E] [Exhibit F]**

12. That Motion came on for hearing before Circuit Court Judge Michael Hanzman on June 20, 2019.

13. At the hearing, Judge Hanzman precluded counsel for Plaintiff Robert Sarhan from participating in the oral argument, in which Defendant's counsel was permitted to participate, and thereby denying Plaintiffs due process of law, ruling in advance that Robert Sarhan had no interest in the arguments raised in the Motion.

14. At that hearing, Judge Hanzman announced that he was denying that Motion and, in a further denial of due process, further ordered that Plaintiff Robert Sarhan and his attorney shall file nothing further in the case or be subject to the threat of sanctions. The ensuing order copy, which is attached hereto, likewise prohibited any "pro se filings" in the case, with a "criminal contempt" threatened. **[Exhibit G]**

15. That order also determined that the Final Judgment, entered in that case, would not be "void" even if Anabella Soury's claim that neither she nor her attorney were not served therewith were true. In fact, neither Anabella nor her attorney were served with the Final Judgment or the Amended Final Judgment, Robert Sarhan took an appeal from those Judgments but did not serve Anabella or her attorney, Anabella did not participate in that appeal. However, at page 2 of that order it is wrongly stated that "Defendants [plural] appealed that Final Judgment" and that the appellate ruling of affirmance is binding on "Defendant" Anabella— all in violation of her due process rights to be served and to have a reasonable opportunity to be heard. The order also ruled in violation of Anabella's due process rights — that no further motions "collaterally attacking the Final Judgment or Amended Final Judgment" would be heard, despite the fact that neither Anabella nor her attorney were served with those Judgments. The one-year time limit for filing a Rule 1.540(b)(3) fraud-on-the-court motion for relief from judgment does not apply to her because of that lack of service, so that it would be a denial of due process to treat fraud-on-the-court as having been adjudicated as to her. Attached hereto is Robert Sarhan's Motion for Relief from Judgment for Fraud on the Court, which was denied as untimely and on the merits against Robert Sarhan only. Robert Sarhan has filed previous Motion with prima facie evidence of Fraud on the Court which were timely and never heard. On April 16, 2019 Judge Rodney Smith granted a two-hour hearing, with evidence, to present the "Motion to vacate the Judgment for Fraud on the Court," However

Judge Smith was transferred to the United States District Court before the June 17 hearing and his replacement, Judge Hanzman, did not abide by what Judge Smith had scheduled and instead held a different prejudicial hearing without evidence in violation of due process and without notice and thereby ruled the motion lacked merits. Since this case was removed to Federal Court and remanded back to State Court the Motion and the case was stayed during bankruptcy, the time period was thereby stayed and the motion was not untimely.

16. Anabella intends to challenge the unserved Judgment and Third District decision as not binding on her and to move for relief from the unserved judgment based on fraud; and Plaintiffs intend to file an appeal from the denial of that Motion and to file a motion for stay pending appeal in the circuit court, but have some hesitancy and fear in doing so in light of the improper threat of sanctions.

17. On May 6, 2014 Plaintiff had to file an action for restraining order against Ralph Halim for "Stalking" his young son and himself. Following Robert Sarhan and his minor son while on a Sunday motorcycle ride around- the neighborhood, Halim, president of H&H Investors, stalked them, while in a car, and put them in fear of their lives. Weeks later, on June 25, 2014, Halim placed dead animals in front of Plaintiffs' gate. Then again on June 27, 2014 Halim placed dead animals at Plaintiffs' front gate The placement of dead animals and the stalking were Halim's motive to force Plaintiffs' family to move from their mortgaged premises, their home for 25 years. This enhances Plaintiffs' fear of sanctions retaliation. **[Exhibit H]**

18. On June 20, 2019 at 12:31pm, Ralph Halim called Plaintiff Robert Sarhan on his cell phone while he was at his attorney's office; the attorney also heard his remarks while on speaker phone. Halim's remarks were: "hey you mother fucker I haven't started with you yet, you just wait mother fucker, I am just getting started," This further enhances the aforementioned fear of sanctions retaliation.

19. As a result of those threats and Plaintiffs have suffered mental anguish and have expended funds to provide a home for Plaintiffs' minor son. Wherefore, Plaintiffs demand on an emergency basis a judgment against Defendants (1) declaring that the aforementioned Motion for Relief from Judgments as Void should be reheard with the participation of Robert Sarhan's attorney; (2) declaring that the unserved Judgments are due process violations of the rights of Plaintiffs and are void; that Anabella Sarhan was not precluded from moving for relief from the Judgment based on a claim of fraud, (3) enjoining the

imposition of any sanctions against Plaintiffs or their attorneys for the filing of an appeal or for the filing of any motion to stay pending appeal; (4) enjoining the Florida State court from precluding Anabella from moving for relief from the unserved Judgment based on fraud and enjoining reliance on the Third District decision of affirmance as law of the case or res judicata against Anabella, (5) enjoining the threatened criminal contempt" proceedings, (6) enjoining Defendants from any enforcement of the Judgments or of any orders derived from the Judgments, (7) awarding to Plaintiffs and against Defendants monetary damages, subject to the right to jury trial, to whatever extent authorized by law, (8) an emergency hearing and restraining order directing the clerk and the parties to stay the foreclosure sale in advance of the scheduled June 25, 2019 foreclosure sale.

20. Under penalties of perjury, I declare that I have read the foregoing and that

re true.

the statement of fact contained therein are _____

true." **EXHIBIT B**

21. Quoted hereinabove and inserted into the quotations of the complaint at pages 1 & 2 above are the Certificates of Service that appeared in the Final judgment **Exhibit C,** certify service of process on Raul Gastesi attorney for the Plaintiff and Michael Cotzen attorney for Robert Sarhan in the Final Judgement. In the Amended Final Judgement **Exhibit D,** certify service of process on Raul Gastesi attorney for the Plaintiff and Cotzen successor, Arthur J. Morburger, attorney for Robert Sarhan. NO where in the Certificates did their appear in reference to Anabella Soury or her attorney Robert L. Moore.

Judge Gayle dismissed the complaint *sua sponte*, ruling:

"Plaintiff filed their Emergency Complaint on June 21, 2019, seeking review of the latest Florida state court order denying them relief from a

> foreclosure judgment: This case shall be dismissed as Plaintiffs were recently denied the same sought relief on the same substantive issues presented here. *Sarhan, et al. V. H & H Investors, Inc. et al.*, 19-CV-20368-RNS, ECF Nos. 37 & 38 (S.D. Fla. April 1, 2019). In denying Plaintiff's motion to appeal *informa pauperis,* Judge Scola noted that Plaintiff's claims are frivolous and Mr. Sarhan is using the federal courts to delay the foreclosure sale and to disparage those who feel have wronged him."Id. at ECF No. 37. Further, this Court lacks jurisdiction over these claims pursuant to the Rooker -Feldman Doctrine. *Casale v. Tilman,* 558 F.3d 1258, 1260 (11th Cir. 2009). The doctrine bars federal claims raised in the state court and claims "inextricably intertwined" if it would 'effectively nullify' the state court judgment, or [if] it succeeds only to the extent that the state court wrongly decided the issues. *Casale*, 558 F. 3d at 1260. Plaintiffs seek to do just that. Accordingly, this case is dismissed without prejudice." **[Exhibit A]**

16. On June 30 , 2019, Plaintiff then filed a motion for rehearing **"Emergency Motion for Relief from Judgment as Void"** of the above-quoted ruling. The arguments raised in that motion are reincorporated in the argument section of this brief. **Exhibit E**

17. On July 1, 2019 Judge Gayle denied the motion for reconsideration without opinion. **[Exhibit A]** This appeal followed.

ARGUMENT

I. THE JUDGMENT, AMENDED JUDGMENT, AND APPEAL WERE ALL PROSECUTED WITHOUT ANY NOTICE TO ANABELLA OR HER ATTORNEY ROBERT L. MOORE, THEREBY DEPRIVING THE STATE COURT OF JURISDICTION OVER HER PERSON AND RENDERING THE *ROOKER-FELDMAN* DOCTRINE INAPPLICABLE TO HER

18. The Court incorrectly determined it did not have jurisdiction of this action under the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine does not apply,

as is hereafter set forth. The Court incorrectly cited, in support of its *Rooker-Feldman* ruling, *Casale v. Tillman*, 558 F.3rd 1258 (11th Cir. 2009) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Casale* held that doctrine to be applicable to the underlying Georgia state court decision, because that decision was entered with state tribunal jurisdiction. *Feldman* (as part of "Rooker-Feldman") is otherwise distinguished by the Eleventh Circuit cases cited in Argument II *infra*. *Feldman* also inappositely found that there was jurisdiction. By contrast, in the case at bar, under the verified allegations of the complaint, the relevant state-court judgments were entered ***without jurisdiction over Anabella Soury***:

19. In the appeal from the Final Judgment and Amended Final Judgment, Annabella was not a party. She had no notice of the entry of those Judgments. She did not file a notice of appeal. She was not served a copy of the brief. She was not listed as having been served with the appellate decision or the appellate mandate. The Third District had no jurisdiction over non-party Anabella Soury. Its decision was not at all binding on her. *Taylor v. Sturgell*, 128 S.Ct. 2161, 2174 (2008); *Association For Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 472 (S.D.Fla.2002) is directly on point. In that case, the Court held:

> "*In re Birmingham Reverse Discrimination Employment Litig.*, 833 F.2d 1492, 1498-99 (11th Cir.1987), cert. granted sub nom., *Martin v. Wilks*, 487 U.S. 1204, 108 S.Ct. 2843, 101 L.Ed.2d 881 (1988)(nonparties to consent decree not collaterally estopped); *EEOC*

> *v. Huttig Sash & Door Co.*, 511 F.2d 453, 455 (5th Cir.1975) (EEOC not privy to private suit and not barred by collateral estoppel or res judicata); *EEOC v. Jacksonville Shipyards, Inc.*, 696 F.Supp. 1438, 1441-42 (M.D.Fla.1988) (same)"

Miami Bank & Trust Co. v. Rademacher Co., 5 So.2d 63, 64 (Fla. 1941) held:

> "The notice of appeal, under the rule of *Gover v. Mann*, 114 Fla. 128, 153 So. 895, and *Rabinowitz v. Houk*, 100 Fla. 44, 129 So. 501, was insufficient ***notice*** to City National Bank, City of Miami and B. Wall so as to make them parties to this appeal and give the court ***jurisdiction*** over them in this appeal." (Italics added)

In re Blonder, 2015 WL 5773230, at *11 (Bkrtcy.N.D.Ga. 2015) likewise held:

> "The defendants argued that although they had notice of the case and were fully apprised of the developments in the case, the judgment was not binding because at all times the sheriff's attorney was in full charge of the ligation, they were never asked to defend the suit, and no notice was given that any judgments rendered against the sheriff would be conclusive as against them. Moreover, the attorneys for the deputies argued that defenses were available to the sheriff which could have been, but were not, raised in the case. The court held that the judgment was not conclusively binding on the deputies and their surety, stating: ***It is an elementary principle of justice, that no one ought to be bound, as to matter of private right, by a judgment or verdict to which he was not a party, where he could make no defense, from which he could not appeal, and which may have resulted from the negligence of another, or may have even been obtained by means of fraud and collusion.*** Id. An indemnitor must be given an opportunity to appear and to participate in the defense of the suit and it is not enough to be advised of the facts. Id. 'The effect of the omission of such notice and opportunity is that the judgment is not binding on the person liable over, who has a right to litigate again every essential fact necessary to support the judgment.' Id. The court determined that the deputies and their surety had notice of the pendency of the suits in which judgment was entered against the sheriff. Id. But because they were never asked to defend the suits, were never offered permission to defend the suits, and ***were not given notice that a judgment against the sheriff would be***

> ***binding on them, the court held they were not bound by the judgment.*** Id." (Italics added)

II. *ROOKER-FELDMAN* DOCTRINE HAS NO APPLICATION TO A STATE COURT PROCEEDING WHERE ANABELLA HAD NO REASONABLE OPPORTUNITY TO RAISE HER FEDERAL CLAIMS OR TO APPEAL, AND HAS NO APPLICATION TO RULE 1.540(B) MOTION PROCEEDINGS

20. The Sarhan's also cited in their motion for rehearing *Wood v. Orange County*, 715 F.2d 1543, 1548 (11th Cir. 1983), which is directly on point. In that case, the *Eleventh Circuit* held:

> "Second, defendants argue that plaintiffs could have raised their constitutional claims on appeal from the judgment creating the lien. Although defendants do not disagree with plaintiffs' allegation that they did not receive actual notice of the judgment until some 11 months after the judgment's entry, defendants contend that plaintiffs must be deemed to have had constructive knowledge of the judgment when it was entered. The cases cited by defendants in support of their argument, *e.g., Texas Gulf Citrus & Cattle Co. v. Kelley*, 591 F.2d 439, 440 (8th Cir.1979), are distinguishable. Those cases stand for the principle that where a party has had notice of proceedings he may be held to have had constructive knowledge of the judgment entered therein. See id.
> The party's constructive knowledge of the entry of judgment is conditioned on his actual notice that proceedings have been instituted against him. Defendants have cited no cases, and we find none, for the proposition that a party may be imputed with constructive knowledge of a judgment entered pursuant to ex-parte proceedings of which he has no actual notice. ***Because plaintiffs did not receive actual notice of the judgment until well after the time for filing an appeal had elapsed, they lacked a reasonable opportunity to appeal the judgment.***
>
> Finally, defendants argue that plaintiffs could have raised their objections by filing a Fla.R.Civ.P. 1.540 motion to set aside the final judgment creating the lien. Rule 1.540 provides that a court, upon a motion of a party made within one year of entry of judgment, may relieve a party from the judgment on grounds of, inter alia, inadvertence

> or surprise. ***Assuming that claims such as the plaintiffs are cognizable on a Rule 1.540 motion for relief from judgment, the Rooker bar does not apply.***

22. A Rule 1.540 motion is not a substitute for appeal, and the court deciding such a motion does not act as an appellate court. See *Pompano Atlantis Condominium Association v. Merlino,* 415 So. 2d 153, 154 (Fla. 4th DCA.1982). The rule permits a special kind of collateral attack on, rather than an appeal of, the judgment. *Fiber Crete Homes, Inc. v. Division of Administration,* 315 So.2d 492, 493 (Fla.Dist.Ct.App.1975). Proceedings surrounding Rule 1.540 are considered separate from those surrounding entry of the judgment. A denial of a Rule 1.540 motion is, for example, appealable not as the decision of a reviewing court but as a separate judgment in its own right. *Woods, 715* F.2d at 1548, held:

> ***Because Rule 1.540 proceedings are not part of the process of appellate review of the original judgment, it does not matter for purposes of Rooker that plaintiffs could have raised their claims in such proceedings. The federal court may perform a role that a state court deciding a Rule 1.540 motion might also be able to perform. But the federal court is not usurping the role of a state appellate court because a state court deciding a Rule 1.540 motion does not act as an appellate court. The district court does not violate Rooker's rationale by deciding plaintiffs' claims. Rooker simply precludes lower federal courts from acting as a state appellate court or as the United States Supreme Court in its capacity as reviewer of state decisions.*** *Rooker* is not a requirement that a plaintiff exhaust all conceivable state remedies; it does not require that where possible he institute proceedings so that state courts can consider the plaintiff's federal claims in the first instance. The important point is that plaintiffs lacked

a reasonable opportunity to raise their claims in the proceedings surrounding entry of the judgment.

Since plaintiffs did not have a reasonable opportunity to raise their claims in the state trial court where judgment was entered or on appeal of that judgment, the district court will not usurp the role of state appellate courts or the Supreme Court by accepting jurisdiction. The plaintiffs' allegations were not 'inextricably intertwined' with the state court judgment." (Italics added)

23. The above-quoted *Wood* decision is cited with approval by the same ***Eleventh Circuit*** in *U.S. v. Napper*, 887 F.2d 1528, 1534 (11 Cir. 1989), which held:

"The defendants in the federal suit argued that the *Rooker-Feldman* doctrine precluded the federal action because the defendant/plaintiffs had the opportunity to raise their constitutional claims at several stages in the state proceedings. The *Wood* court agreed to an extent, holding that *Rooker-Feldman* "operates where the plaintiff fails to raise his federal claims in state court." *Wood*, 715 F.2d at 1546.

The *Wood* court further held, however, that ***this rule applies only "where the plaintiff had a reasonable opportunity to raise his federal claims in the state proceedings***." Id. at 1547. If the plaintiff had no such reasonable opportunity, then the issue is not "inextricably intertwined" with the state action and the district court has "original" jurisdiction over it. Id." (Italics added)

24. *Wood* or *Napper* have been cited and adhered to in *Gomer ex rel. Gomer v. Philip Morris Inc.*, 106 F.Supp.2d 1262, 1267, fn. 5 (M.D.Ala. 2000) and *Thurman v. Judicial Correction Services, Inc.*, 760 Fed. Appx. 733, 737 (11th Cir. 2019) (finding that the plaintiff had a reasonable opportunity in state court to present his arguments).

As stated in Paragraph 9 of Plaintiffs' Complaint:

"On June 18, 2019 Plaintiffs filed an Emergency Motion for Relief from Judgment as Void and a Declaration, copy of which are attached hereto, claiming that the unserved Judgments were denials of due process and were void. That Motion came on for hearing before Circuit Court Judge Michael Hanzman on June 20, 2019.At the hearing, Judge Hanzman precluded counsel for Plaintiff Robert Sarhan from participating in the oral argument, in which Defendant's counsel was permitted to participate, and thereby denying Plaintiffs due process of law, ruling in advance that Robert Sarhan had no interest in the arguments raised in the Motion.

That order also determined that the Final Judgment, entered in that case, would not be "void" even if Anabella Soury's claim that neither she nor her attorney were not served therewith were true. In fact, ***neither Anabella nor her attorney were served with the Final Judgment or the Amended Final Judgment, Robert Sarhan took an appeal from those Judgments but did not serve Anabella or her attorney, Anabella did not participate in that appeal.***

However, at page 2 of that order it is wrongly stated that "Defendants [plural] appealed that Final Judgment" and that the appellate ruling of affirmance is binding on "Defendant" Anabella— ***all in violation of her due process rights to be served and to have a reasonable opportunity to be heard.*** The order also ruled in violation of Anabella's due process rights — that no further motions "collaterally attacking the Final Judgment or Amended Final Judgment" would be heard, despite the fact that neither Anabella nor her attorney were served with those Judgments.

The one-year time limit for filing a ***Rule 1.540(b)(3)*** fraud-on-the-court motion for relief from judgment does not apply to her because of that lack of service, so that it would be a denial of due process to treat fraud-on-the-court as having been adjudicated as to her."

25. Attached to the complaint was a copy of Anabella's Declaration, verifying

The allegations of the complaint. The complaint was also verified by Robert Sarhan. At this stage of the proceedings, the Court is limited just to the allegations of the complaint and its attachments. **Exhibit D**, *Bharucha v. Reuters Holdings PLC*, 810 F. Supp. 37, 40 (E.D.N.Y.,1993) held:

> "The court must limit its analysis to the ***four corners of the complaint***, see *Cortec Industries, Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 44 (2d Cir.1991), and must accept plaintiffs' allegations of fact as true together with such reasonable inferences as may be drawn in its favor. *Stewart v. Jackson & Nash*, 976 F.2d 86, 87 (2d Cir.1992); *LaBounty v. Adler*, 933 F.2d 121, 123 (2d Cir.1991). A complaint should be dismissed only when it is clear that the plaintiff can prove no set of facts upon which he would be entitled to relief. *Conley v. Gibson*, 355 U.S. at 45-6, 78 S.Ct. at 102." (Italics added)

26. Applying *Wood* and *Napper* to Anabella's lack of notice, ***she had no reasonable opportunity to present her arguments in the state court proceedings***, either on appeal or in the lower court and Anabella's motions sought post judgment relief under Rule 1.540(b). Therefore, the *Rooker-Feldman* doctrine had no application to Anabella. The Court's citation to and reliance on *Casale v. Tillman*, 558 F.3rd 1258 (11th Cir. 2009) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), has no application because they did not involve a Rule 1.540(b) motion and did not concern a lack of opportunity to present arguments in state court.

III. THE COURT'S RELIANCE ON JUDGE SCOLA'S REMARKS IN REGARD TO THE REMOVAL OVERLOOKS THE FACT THAT ANABELLA WAS NOT A PARTY TO THE REMOVAL AND WAS NOT A PARTY TO THE APPEAL TO WHICH JUDGE SCOLA REFERRED

27. Moreover, the order of dismissal to which the instant motion for rehearing is directed additionally relies upon Judge Scola's ruling on Robert Sarhan's removal. However, here again, Anabella did not participate in that removal and did not receive any notice thereof. Additionally, Judge Scola's ruling on the removal was based on the Third District's aforementioned appellate ruling in the appeal to which Anabella was not a party and was not binding on her. In any event, that ruling did not cite to the Eleventh Circuit decisions in *Wood* or *Napper* or any of the other cases cited herein. Thus, the Court's citation to and reliance on Judge Scola's ruling on the removal petition is misplaced, improperly binding Anabella to proceedings in which she was a non-party and did not participate. An extrajudicial reliance on Judge Scola's findings is in any event erroneous since the motion at issue in the appeal at bar is in the context of a dismissal of the instant complaint. *Bharucha*, 810 F.Supp. at 40.

IV. ROOKER-FELDMAN DOCTRINE HAS NO APPLICATION TO ANY RULE 1.540(B) PROCEEDING OR TO ANY OTHER CRIMINALLY SANCTIONED PROCEEDING IN WHICH ROBERT SARHAN OR ANABELLA DID NOT AND WILL NOT HAVE A REASONABLE OPPORTUNITY TO RAISE THEIR FEDERAL CLAIMS IN THE STATE COURT

28. The Court also overlooked Plaintiffs' position, paraphrasing *Napper*, that they had "***no reasonable opportunity to raise the federal claims in state court,***" Judge Hanzman unconstitutionally prohibited Robert Sarhan's attorney from making any

oral argument or rebuttal at the hearing of his Rule 1.540(b)(4) motion for relief from judgment as void, determining that Sarhan had no interest in that motion, and additionally threatened criminal sanctions against him if he or his attorney files anything further in the state court proceeding. That is confirmed by the verified allegations of the complaint and by Judge Hanzman's order, also attached to the complaint. Based on that threat of criminal sanctions, there absolutely can be no future "reasonable opportunity" to raise any arguments as to Plaintiffs' federal claims in Florida state court; Judge Hanzman has unconstitutionally threatened Plaintiffs with criminal sanctions for any future Rule 1.540(b) motion, for any future objections to a certificate of sale under § 45.031(3) and (4), Fla. Stat., and for any future response in opposition to a later petition for writ of possession. **Exhibit E**

CONCLUSION

Therefore, both Anabella and Robert have irrefutable arguments, directly supported by the above-quoted Eleventh Circuit case precedent and other authority, determining that the *Rooker-Feldman* doctrine is not here applicable. The Court is requested to reverse the order of dismissal and the order denying rehearing and order that the motion for rehearing should be granted on an emergency basis because the state court has already wrongfully held a clerk's auction of the mortgaged premises, plaintiffs will suffer Irreparable Harm and be ousted from their home and from the home of a minor child where he is soon to start high school,

and has unconstitutionally threatened Plaintiffs with criminal sanctions for any further actions with regard to the upcoming certificate of sale, certificate of title, or petition for writ of possession.

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404 Miami, FL
33130 Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPE FACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

I hereby certify that this Brief complies with the page limitation requirements of Fed. R. App. P. 32(a)(7)(A) because it does not exceed 30 pages, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and eleventh Circuit Rule 32-4. I further hereby certify this Brief complies with the typeface requirements of Fed. R. Civ. P. 32(a)(5) and the type-style requirements of Fed. R. Civ. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 with 4,459 words, in Times New Roman 14-point font. Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Plaintiffs

19 W. Flagler St. Ste. 404 Miami, FL
33130 Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 22, 2019, I electronically filed the foregoing "APPELLANTS EMERGENCY INITIAL BRIEF" by using the Eleventh Circuit Court ECF system. I HEREBY FURTHER CERTIFY that I served the foregoing "APPELLANTS EMERGENCY INITIAL BRIEF" by email to Raul Gastesi rgastesi@gastesi.com.

I FURTHER CERTIFY that I furnished by U.S. Mail the appropriate copies of the Brief to the Clerk, U.S. Court of Appeals for the 11th Circuit, 56 Forsyth Street, N.W., Atlanta, GA 30303, this 22nd day of July 2019.

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404 Miami, FL
33130 Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

EXHIBIT C1

CASE NO. 19-12676

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROBERT SARHAN and ANABELLASOURYA/K/A
ANABELLA SARHAN,

APPELLANTS,

v.

H & H INVESTORS, INC.,
A Florida Corporation,

APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-22588

SUPPLEMENTAL APPENDIX

ARTHUR J. MORBURGER
19 W. Flagler St. Ste. 404
Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

Attorney for Appellant's

INDEX TO SUPPLEMENTAL APPENDIX

DESCRIPTION	DOCKET/ TAB NO.
District Court Docket Sheet	A
Judge Gayles Order, Exhibit A, Docket No. 5	A
Judge Gayles Order, Exhibit A, Docket No. 7	A
Emergency Complaint to the United States District Court	B
Final Judgment of Foreclosure	C
Amended Final Judgment of Foreclosure	D
Emergency Motion to Reconsider And Set Aside Wrongful Order	E
Declaration of Anabella Soury	F
Order of Judge Hanzman	G
Restraining Order and Dead Animals	H

EXHIBIT A

AOR,CLOSED

U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:19-cv-22588-DPG

Sarhan et al v. H & H Investors Inc.
Assigned to: Judge Darrin P. Gayles
Cause: 42:1983 Civil Rights Act

Date Filed: 06/21/2019
Date Terminated: 06/24/2019
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Robert Sarhan

represented by **Arthur J. Morburger**
19 W Flagler Street
Miami, FL 33130
305-374-3373
Email: amorburger@bellsouth.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Anabella Soury
also known as
Anabella Sarhan

represented by **Arthur J. Morburger**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

H & H Investors Inc.
a Florida Corporation

Date Filed	#	Docket Text
06/21/2019	1	EMERGENCY COMPLAINT PLAINTIFFS REQUEST EMERGENCY DECLARATORY RELIEF UNDER RULE 57 AND EMERGENCY INJUNCTION UNDER RULE 65 against H & H Investors Inc.. Filing fees $ 400.00, filed by Rodert Sarhan, Robert Soury. (Attachments: # 1 Civil Cover Sheet)(drz) (Main Document 1 replaced on 6/21/2019) (yar). (Additional attachment(s) added on 6/21/2019: # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F) (yar). Modified text on 6/21/2019 (yar). (Entered: 06/21/2019)
06/21/2019	2	Clerks Notice of Judge Assignment to Judge Darrin P. Gayles. Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Alicia M. Otazo-Reyes is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent.

		Pro se (NON-PRISONER) litigants may receive Notices of Electronic Filings (NEFS) via email after filing a Consent by Pro Se Litigant (NON-PRISONER) to Receive Notices of Electronic Filing. The consent form is available under the forms section of our website. (drz) (Entered: 06/21/2019)
06/21/2019	3	Clerk's Notice of Filing Deficiency Re: 1 Complaint filed by Anabella Soury, Rodert Sarhan. Document(s) were filed conventionally that should have been filed electronically (CM/ECF Administrative Procedures). (drz) (Entered: 06/21/2019)
06/21/2019	4	Clerks Notice of Receipt of Filing Fee received on 6/21/2019 in the amount of $ 400.00, receipt number FLS100189693. (vt) (Entered: 06/21/2019)
06/24/2019	5	PAPERLESS ORDER dismissing case. Plaintiffs filed their Emergency Complaint 1 on June 21, 2019, seeking review of the latest Florida state court order denying them relief from a foreclosure judgment. This case shall be dismissed as Plaintiffs were recently denied the same sought relief on the same substantive issues presented here. *Sarhan, et al. v. H&H Investors, Inc., et al.*, 19-CV-20368-RNS, ECF Nos. 37 & 38 (S.D. Fla. Apr. 1, 2019). In denying Plaintiffs' motion to appeal *in forma pauperis*, Judge Scola noted that Plaintiffs' claims are frivolous and Mr. Sarhan is "using the federal courts to delay the foreclosure sale and to disparage those who he feels have wronged him." *Id.* at ECF No. 37. Further, this Court lacks jurisdiction over these claims pursuant to the Rooker-Feldman doctrine. *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). The doctrine bars federal claims raised in the state court and claims "inextricably intertwined" with the state court's judgment. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983). "A claim is 'inextricably intertwined' if it would 'effectively nullify' the state court judgment, or [if] it 'succeeds only to the extent that the state court wrongly decided the issues.'" *Casale*, 558 F.3d at 1260. Plaintiffs seek to do just that. Accordingly, this case is dismissed without prejudice. Signed by Judge Darrin P. Gayles (isc) (Entered: 06/24/2019)
06/30/2019	6	Plaintiff's EMERGENCY MOTION with Certification of Emergency included by Robert Sarhan, Anabella Soury. Responses due by 7/15/2019 (Attachments: # 1 Certification) (Morburger, Arthur) (Entered: 06/30/2019)
07/02/2019	7	PAPERLESS ORDER denying 6 Emergency Motion to Reconsider. Signed by Judge Darrin P. Gayles (DPG) (Entered: 07/02/2019)

PACER Service Center			
Transaction Receipt			
07/06/2019 15:45:22			
PACER Login:	rs123456:3158216:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:19-cv-22588-DPG
Billable Pages:	2	**Cost:**	0.20

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION
CASE NO.:

ROBERT SARHAN and
ANABELLA SOURY A/K/A
ANABELLA SARHAN,

Plaintiff,

vs.

H&H INVESTORS, INC.,
A Florida Corporation,

Defendant

EMERGENCY COMPLAINT
PLAINTIFFS REQUEST EMERGENCY DECLATORY RELIEF UNDER RULE 57 AND EMERGENCY INJUNCTION UNDER RULE 65

Plaintiffs ROBERT SARHAN and ANABELLA SOURY A/K/A ANABELLA SARHAN, by and through undersigned counsel sue Defendant H & H Investors, Inc., and allege:

1. The Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1343 and 2201.

2. The venue of this action is properly in Miami–Dade County, Florida because Defendant has its office in Miami-Dade County and is a Florida corporation.

3. Plaintiffs own and reside at premises located at 22795 S.W. 212th Avenue

Miami, Florida.

4. On June 23, 2008, Plaintiff Robert Sarhan signed a promissory note, payable to Defendant and Plaintiffs signed a mortgage of the aforementioned premises.

5. Defendant is suing Plaintiffs for foreclosure in Miami-Dade County, Florida Circuit Court in Case No. 2012-07970, as to the aforementioned premises in the area of Homestead, Florida.

6. In that case, the court entered a Judgment and an Amended Judgment, copies of which are attached hereto.

7. The court did however fail to serve copies of those Judgments on Plaintiff Anabella Soury or her attorney and the time for appeal elapsed before they learned of the Judgments.

8. Meantime, the foreclosure sale was rescheduled to June 25, 2019, dispossessing Plaintiffs and their minor son from their home.

9. On June 18, 2019 Plaintiffs filed an Emergency Motion for Relief from Judgment as Void and a Declaration, copy of which are attached hereto, claiming that the unserved Judgments were denials of due process and were void.

10. That Motion came on for hearing before Circuit Court Judge Michael Hanzman on June 20, 2019.

11. At the hearing, Judge Hanzman precluded counsel for Plaintiff Robert

Sarhan from participating in the oral argument, in which Defendant's counsel was permitted to participate, and thereby denying Plaintiffs due process of law, ruling in advance that Robert Sarhan had no interest in the arguments raised in the Motion.

12. At that hearing, Judge Hanzman announced that he was denying that Motion and, in a further denial of due process, further ordered that Plaintiff Robert Sarhan and his attorney shall file nothing further in the case or be subject to the threat of sanctions. The ensuing order, copy which is attached hereto, likewise prohibited any "pro se filings" in the case, with a "criminal contempt" threatened.

13. That order also determined that the Final Judgment, entered in that case, would not be "void" even if Anabella Soury's claim that neither she nor her attorney were not served therewith were true. In fact, neither Anabella nor her attorney were served with the Final Judgment or the Amended Final Judgment, Robert Sarhan took an appeal from those Judgments but did not serve Anabella or her attorney, Anabella did ***not*** participate in that appeal. However, at page 2 of that order it is wrongly stated that "Defendants [plural] appealed that Final Judgment" and that the appellate ruling of affirmance is binding on "Defendant" Anabella– all in violation of her due process rights to be served and to have a reasonable opportunity to be heard. The order also ruled – in violation of Anabella's due process rights – that no further motions "collaterally attacking the Final Judgment

or Amended Final Judgment" would be heard, despite the fact that neither Anabella nor her attorney were served with those Judgments. The one-year time limit for filing a Rule 1.540(b)(3) fraud-on-the-court motion for relief from judgment does not apply to her because of that lack of service, so that it would be a denial of due process to treat fraud-on-the-court as having been adjudicated as to her. Attached hereto is Robert Sarhan's Motion for Relief from Judgment for Fraud on the Court, which was denied as untimely and on the merits against Robert Sarhan only. Robert Sarhan has filed previous Motion with *prima facie* evidence of Fraud on the Court which were timely and never heard. On April 16, 2019 Judge Rodney Smith granted a two hour hearing, with evidence, to present the "Motion to vacate the Judgment for Fraud on the Court." However Judge Smith was transferred to the United States District Court before the June 17 hearing and his replacement, Judge Hanzman, did not abide by what Judge Smith had scheduled and instead held a different prejudicial hearing without evidence in violation of due process and without notice and thereby ruled the motion lacked merits. Since this case was removed to Federal Court and remanded back to State Court the Motion and the case was stayed during bankruptcy, the time period was thereby stayed and the motion was not untimely.

14. Anabella intends to challenge the unserved Judgment and Third District

decision as not binding on her and to move for relief from the unserved judgment based on fraud; and Plaintiffs intend to file an appeal from the denial of that Motion and to file a motion for stay pending appeal in the circuit court, but have some hesitancy and fear in doing so in light of the improper threat of sanctions.

15. On May 6, 2014 Plaintiff had to file an action for restraining order against Ralph Halim for "Stalking" his young son and himself. Following Robert Sarhan and his minor son while on a Sunday motorcycle ride around the neighborhood, Halim, president of Defendant H&H Investors, stalked them, while in a car, and put them in fear of their lives. Weeks later, on June 25, 2014, Halim placed dead animals in front of Plaintiffs' gate. Then again on June 27, 2014 Halim placed dead animals at Plaintiffs' front gate The placement of dead animals and the stalking were Halim's motive to force Plaintiffs' family to move from their mortgaged premises, their home for 25 years. This enhances Plaintiffs' fear of sanctions retaliation.

16. On June 20, 2019 at 12:31pm, Ralph Halim called Plaintiff Robert Sarhan on his cell phone while he was at his attorneys office; the attorney also heard his remarks while on speaker phone. Halim's remarks were: "hey you mother fucker I haven't started with you yet, you just wait mother fucker, I am just getting started." This further enhances the aforementioned fear of sanctions retaliation.

17. As a result of those threats and fears, Plaintiffs have suffered mental anguish and have expended funds to provide a home for Plaintiffs' minor son.

Wherefore, Plaintiffs demand on an emergency basis a judgment against Defendants (1) declaring that the aforementioned Motion for Relief from Judgments as Void should be reheard with the participation of Robert Sarhan's attorney; (2) declaring that the unserved Judgments are due process violations of the rights of Plaintiffs and are void; that Anabella Sarhan was not precluded from moving for relief from the Judgment based on a claim of fraud, (3) enjoining the imposition of any sanctions against Plaintiffs or their attorneys for the filing of an appeal or for the filing of any motion to stay pending appeal; (4) enjoining the Florida State court from precluding Anabella from moving for relief from the unserved Judgment based on fraud and enjoining reliance on the Third District decision of affirmance as law of the case or res judicata against Anabella, (5) enjoining the threatened "criminal contempt" proceedings, (6) enjoining Defendants from any enforcement of the Judgments or of any orders derived from the Judgments, (7) awarding to Plaintiffs and against Defendants monetary damages, subject to the right to jury trial, to whatever extent authorized by law, (8) an emergency hearing and restraining order directing the clerk and the parties to stay the foreclosure sale in advance of the scheduled June 25, 2019 foreclosure sale.

Under penalties of perjury, I declare that I have read the foregoing and that the statement of fact contained therein are true.

Robert Sarhan

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fla. Bar No. 157287
s/Arthur J. Morburger

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy was served on H & H Investors through his attorney, Raul Gastesi by email to rgastesi@gastesi.com.

EXHIBIT C

CFN: 20170438510 BOOK 30634 PAGE 3074
DATE:07/31/2017 12:47:04 PM
HARVEY RUVIN, CLERK OF COURT, MIA-DADE

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 12-07970 CA 15

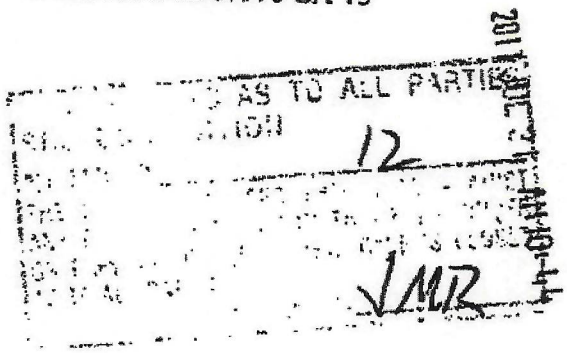
H&H INVESTORS, INC., a Florida Corporation,

Plaintiff,

v.

ROBERT SARHAN, ANABELLA SARHAN A/K/A ANABELLA SOURY A/K/A ANABELLA AMIN ALHARES A/K/A ANABELLA HARRIS, et. al.,

Defendants.



KENDRICK CAMERON

9
19
19

CLOSURE

FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was heard before the Court for trial commencing July 14, 2017.

1. The Plaintiff in this cause filed a Motion in Limine titled "Plaintiff's Motion in Limine to Exclude Any References to Any Improper Acts of Plaintiff Prior to Execution of Settlement Stipulation," dated July 14, 2017 (hereinafter "Motion in Limine").

2. A copy of the Stipulation of Settlement Agreement (hereinafter "Settlement Agreement") is attached as **Exhibit "A"**.

3. A copy of the Order of Dismissal referenced in the Settlement Agreement is attached as **Exhibit "B"**.

4. The Court finds that the Settlement Agreement is clear and unambiguous and resolved all issues between the parties through the date thereof, to wit: December 17, 2009. This finding is over Defendant's objection.

5. The Plaintiff and the Defendant further performed in accordance with the terms of the Settlement Agreement until the Defendant, Robert Sarhan, admittedly breached said Settlement Agreement by failing to make the required payments.

6. Robert Sarhan attempted to raise the defense of predatory lending once again during the trial of this cause, specifically, violations of the Florida Fair Lending Act (FFLA), which allegedly occurred when the loan was originally executed in June 2008 (hereinafter "FFLA Defense").

RECORDED

7. In anticipation of said FFLA Defense, the Plaintiff filed the Motion in Limine to exclude references to the FFLA Defense, contending that the Settlement Agreement resolved all issues between the parties to that point in time.

8. This Court GRANTED said Motion in Limine.

9. Prior to granting the Motion in Limine, Defendant, Robert Sarhan, conceded that the Settlement Agreement, if found to be in effect, had been breached and if the Motion in Limine were granted, there would otherwise be no defense to this action.

10. The Defendant, Robert Sarhan, has never moved to have the Settlement Agreement set aside. In fact, the Order entered by Judge Israel Reyes (attached hereto as Exhibit "B") approving the Settlement Agreement remains in full force and effect.

11. The parties have agreed that the below figures would be the proper figures without the benefit of the FFLA Defense.

Therefore, being that the Defendant, Robert Sarhan, breached the Stipulation of Settlement, **IT IS ORDERED AND ADJUDGED** that a **FINAL JUDGMENT OF FORECLOSURE** is **GRANTED.** A Final Judgment of foreclosure is otherwise hereby entered against all of the Defendants:

12. **Amounts Due and Owing.** Plaintiff is due:

Principal due on the Stipulation of Settlement secured by the Note & Mortgage foreclosed: Stipulated Amount	**$371,437.50**
Interest on the note and mortgage from February 1, 2010 to June 30, 2011) (515 days at 6% interest per Stipulation of Settlement - $50.59 daily)	$26,156.85
Interest on the note and mortgage from July 1, 2011 to July 20, 2017) (2,211 days at 18% default interest per Note & Mortgage - $152.39 daily)	$336,934.29
Sub-Total	**$734,528.64**
Taxes for the year(s) of 2010 through 2014	$29,808.19
Interest only on Taxes for the year(s) of 2010 through 2014	$7,576.27
Additional Costs:	
Appraisal Service – Manny Mendoza	$345.00
Inspection 01/09/2015	$200.00
Sub- Total	**$772,458.10**
Three (3) Payments Received from Robert Sarhan (waiving NSF and Late fees)	- $5,571.57
Payment Credit pursuant to Florida Statute 702.10 Court Order	-$111,600.00
Sub-Total	**$655,286.53**
Credits provided by Lender	-$28,176.74
Sub-Total	**$627,109.79**

CFN 20170438510 BOOK 30634 PAGE 3076

Attorneys' Fees: The Court reserves jurisdiction over the parties for the purpose of determining Plaintiff's reasonable attorney's fees. Attorneys' Fees Total:	**RESERVE JURISDICTION**
Court Costs, Now Taxed: The Court reserves jurisdiction over the parties for the purpose of determining Plaintiff's costs.	**RESERVE JURISDICTION**
Less: Escrow Balance	$0.00
Less: Other	$0.00
GRAND TOTAL	**$627,109.79**

13. **Interest.** The grand total amount referenced in Paragraph 12 shall bear interest from this date forward at the prevailing legal rate of interest, 4.75% a year.

14. **Lien on Property.** Plaintiff, whose address is 11810 S.W. 206TH ST, Miami, Fl. 33177, holds a lien for the grand total sum superior to all claims or estates of the Defendants, on the following described property in Miami Dade County, Florida:

Legal Description: THE SW ¼ of the NW ¼ of the SE ¼ of Section 16, Township 56 South, Range 38 East, Lying and Being Miami-Dade County, Florida

Address: 22795 S.W. 212th Avenue, Miami, Florida 33170

Parcel I.D.: 30-6816-000-2170.

The lien of the Plaintiff is superior in dignity to any right title interest or claim of the Defendants and all persons , corporations, or other entities claiming by, through, or under the Defendants or any of them and the property will be sold free and clear of all claims of the Defendants.

15. **Sale of property.** If the grand total amount with interest at the rate described in **Paragraph** 2 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale on SEP 1 9 2017 **(no sooner than 50 days from the date of this Judgment)**, **at 9:00 A.M.** to the highest bidder for cash, except as prescribed in Paragraph 6, at Room 908, 140 West Flagler Street, Miami, Florida after having first given notice as required by Section 45.031, Florida Statutes, using the following method: By electronic sale beginning at **9:00 A.M.** (time of sale) on the prescribed date at **www.miamidade.realforeclose.com** (website).

16. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If plaintiff is the purchaser, the Clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

17. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs; second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 13 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

18. **Right of Possession.** Upon filing of the Certificate of Sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720, Fla. Stat., if any. Upon filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property.

19. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession and deficiency judgments.

20. **Right of Redemption.** On filing the Certificate of Sale, Defendant's right of redemption as proscribed by Section 45.0315, Florida Statutes shall be terminated. .

21. **Assignment of Bid.** Plaintiff may assign its bid and/or judgment at (or prior to) the foreclosure sale without further order of the Court.

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

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

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (305) 375-5943), WITHIN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

JUL 3 1 2017

DONE AND ORDERED in Chambers in Miami Dade County, Florida, this _____ day of _____, 2017.

Circuit Judge

Conformed Copies:
Plaintiff's Counsel: Raul Gastesi, Esq., 8105 N.W. 155th Street, Miami, Lakes, FL 33016, efiling@gastesi.com

Defendant's Counsel: Michael L. Cotzen, Esq., 20700 West Dixie Highway, Aventura, Florida 33180, Michael@cotzenlaw.com

ORIGINAL
JUDGE JOSE M. RODRIGUEZ

COPY HAND DELIVERED
TO PLTF'S ATTY
IN LIEU OF MAILING

EXHIBIT D

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 12-07970 CA 15

H&H INVESTORS, INC., a Florida Corporation,

Plaintiff,

v.

ROBERT SARHAN, ANABELLA SARHAN A/K/A ANABELLA SOURY A/K/A ANABELLA AMIN ALHARES A/K/A ANABELLA HARRIS, et. al.,

Defendants.

_____/

AMENDED FINAL JUDGMENT OF FORECLOSURE

THIS ACTION was originally heard before the Court for trial commencing July 14, 2017 whereby a Final Judgment was entered on July 31, 2017 ("Final Judgment") and thereafter on Plaintiff's Second Motion to Reset Foreclosure Sale and to Amend Final Judgment ("Motion") which is hereby granted as follows:

1. **Amounts Due and Owing.** Plaintiff is due:

Principal due on the Stipulation of Settlement secured by the Note & Mortgage foreclosed: Stipulated Amount	$371,437.50
Interest on the note and mortgage from February 1, 2010 to June 30, 2011) (515 days at 6% interest per Stipulation of Settlement - $50.59 daily)	$26,156.85
Interest on the note and mortgage from July 1, 2011 to July 31, 2017) (2,222 days at 18% default interest per Note & Mortgage - $152.39 daily)	$338,610.58
Post Judgment Interest from August 1, 2017 through December 31, 2017 (152 days at 4.75%)	$12,404.72
Post Judgment Interest from January 1, 2018 through December 11, 2018 (344 days at 5.53%)	$32,683.93
Sub-Total	$781,293.58
Taxes for the year(s) of 2010 through 2014	$29,808.19
Taxes for the year(s) of 2015 through ~~2018~~ 2014	~~$25,221.19~~ $3,395.23
Interest only on Taxes for the year(s) of 2010 through 2014	$7,576.27

Additional Costs:	
Appraisal Service – Manny Mendoza	$345.00
Inspection 01/09/2015	$200.00
~~Sub-Total~~	~~$844,444.38~~
Three (3) Payments Received from Robert Sarhan (waiving NSF and Late fees)	-$5,571.57
Payment Credit pursuant to Florida Statute 702.10 Court Order	-$111,600.00
~~Sub-Total~~	~~$727,272.66~~
Credits provided by Lender	-$28,176.74
~~Sub-Total~~	~~$699,095.92~~
Gastesi & Associates, P.A. – Trial Court	$12,500.00
Gastesi & Associates, P.A. – Appeal	$10,000.00
Gastesi & Associates, P.A. – Federal Court Remand	~~$1,500.00~~
Gastesi & Associates, P.A. –Subject Property Conveyance Post-Divorce	~~$1,000.00~~
Gastesi & Associates, P.A. – Injunction Proceeding	~~$1,000.00~~
Paul Contessa – Bankruptcy Proceeding	~~$13,604.50~~
Albert Cardet – Bankruptcy Proceeding	~~$4,292.00~~
Sub-Total	~~$742,992.42~~
Court Costs, Now Taxed:	
Gastesi & Associates, P.A. – Trial Court	~~$12,612.24~~ $11,379.80
Sub-Total	~~$755,604.66~~
GRAND TOTAL	~~$755,604.66~~ $721,149.76

2. **Interest.** The grand total amount referenced in Paragraph 1 shall bear interest from this date forward at the prevailing legal rate of interest, 5.53% a year.

3. **Lien on Property.** Plaintiff, whose address is 11810 S.W. 206TH ST, Miami, Fl. 33177, holds a lien for the Grand Total Sum superior to all claims or estates of the Defendants, on the following described property in Miami Dade County, Florida:

Legal Description: THE SW ¼ of the NW ¼ of the SE ¼ of Section 16, Township 56 South, Range 38 East, Lying and Being Miami-Dade County, Florida

Address: 22795 S.W. 212th Avenue, Miami, Florida 33170

Parcel I.D.: 30-6816-000-2170.

The lien of the Plaintiff is superior in dignity to any right title interest or claim of the Defendants and all persons, corporations, or other entities claiming by, through, or under the Defendants or any of them and the property will be sold free and clear of all claims of the Defendants.

4. **Sale of property.** If the grand total amount with interest at the rate described in Paragraph 2 and all costs accrued subsequent to this judgment are not paid, the Clerk of the Court shall sell the subject property at public sale on **JANUARY 30, 2018**, at 9:00 A.M. to the highest bidder for cash, except as prescribed in Paragraph 6, at Room 908, 140 West Flagler Street, Miami, Florida after having first given notice as required by Section 45.031, Florida Statutes, using the following method: By electronic sale beginning at 9:00 A.M. (time of sale) on the prescribed date at www.miamidade.realforeclose.com (website).

5. **Costs.** Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for documentary stamps affixed to the certificate of title. If plaintiff is the purchaser, the Clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

6. **Distribution of Proceeds.** On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of the plaintiff's costs; second, documentary stamps affixed to the Certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to the plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 2 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

7. **Right of Possession.** Upon filing of the Certificate of Sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the Notice of Lis Pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under Chapter 718 or Chapter 720, Fla. Stat., if any. Upon filing of the Certificate of Title, the person named on the Certificate of Title shall be let into possession of the property.

8. **Jurisdiction.** The Court retains jurisdiction of this action to enter further orders that are proper, including, without limitation, writs of possession and deficiency judgments.

9. **Right of Redemption.** On filing the Certificate of Sale, Defendant's right of redemption as proscribed by Section 45.0315, Florida Statutes shall be terminated..

10. **Assignment of Bid.** Plaintiff may assign its bid and/or judgment at (or prior to) the foreclosure sale without further order of the Court.

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

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

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE: (305) 375-5943), WITHIN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT THE LEGAL AID SOCIETY AT THE DADE COUNTY BAR ASSOCIATION, 123 N.W. FIRST AVENUE, SUITE 214, MIAMI, FLORIDA, (TELEPHONE: (305) 579-5733), TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT THE DADE COUNTY BAR ASSOCIATION LEGAL AID SOCIETY, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE AND ORDERED in Chambers in Miami Dade County, Florida, this 11th day of Dec, 2018.

Circuit Judge

RODNEY [illegible]
CIRCUIT JUDGE

Conformed Copies:
Plaintiff's Counsel: Raul Gastesi, Esq., 8105 N.W. 155th Street, Miami, Lakes, FL 33016, efiling@gastesi.com

Defendant's Counsel: Arthur J. Morburger, Esq. 19 West Flagler Street, Suite 404, Miami, Florida 33130, Amorburger@bellsouth.net

FINAL ORDERS AS TO ALL PARTIES
SRS DISPOSITION
NUMBER 12
THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.
JUDGE'S Initials

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA,
MIAMI DIVISION CASE NO.: 19-CV-22588 DPG

ROBERT SARHAN and
ANABELLASOURYA/K/A
ANABELLA SARHAN,
Plaintiffs
v.
INVESTORS, INC.,
A Florida Corporation,
Defendant

EMERGENCY MOTION TO RECONSIDER AND SET ASIDE ITS WRONGFUL ORDER OF DISMISSAL AND GRANT THE RELIEF PRAYED FOR IN THE COMPLAINT

Plaintiffs ROBERT SARHAN and ANABELLA SOURY A/K/A ANABELLA SARHAN, by and through undersigned counsel, move the Court pursuant to Fed. R. Civ. P. 59(e) to reconsider and set aside its wrongful order of dismissal and grant the relief prayed for in the Complaint on the following grounds.

SUMMARY OF ARGUMENT

The Judgment, Amended Judgment, and appeal were all prosecuted without any notice to Anabella, thereby depriving the court of jurisdiction over her person, under *Miami Bank & Trust Co. v. Rademacher Co.*, 5 So.2d 63, 64 (Fla. 1941), and rendering the *Rooker-Feldman* doctrine inapplicable to her

Under *Wood v. Orange County*, 715 F.2d 1543, 1548 (11th Cir. 1983) and *U.S. v. Napper*, 887 F.2d 1528, 1534 (11 Cir. 1989), *Rooker-Feldman* doctrine has no application to a state court proceeding where Anabella had no

reasonable opportunity to raise her federal claims or to appeal, and has no application to Rule 1.540(b) motion proceedings

The court's reliance on Judge Scola's remarks in regard to the removal overlooks the fact that Anabella was not a party to the removal and was not a party to the appeal to which Judge Scola referred

Under *Wood* and *Napper*, the *Rooker-Feldman* doctrine has no application to any Rule 1.540(b) motion or to any other criminally sanctioned proceeding in which Robert Sarhan or Anabella did not and will not have a reasonable opportunity to raise their federal claims

ARGUMENT

I. THE JUDGMENT, AMENDED JUDGMENT, AND APPEAL WERE ALL PROSECUTED WITHOUT ANY NOTICE TO ANABELLA, THEREBY DEPRIVING THE COURT OF JURISDICTION OVER HER PERSON AND RENDERING THE *ROOKER-FELDMAN* DOCTRINE INAPPLICABLE TO HER

The Court incorrectly determined it did not have jurisdiction of this action under the *Rooker-Feldman* doctrine. However, the *Rooker-Feldman* doctrine does not apply, as is hereafter set forth. The Court incorrectly cited, in support of its *Rooker-Feldman* ruling, *Casale v. Tillman*, 558 F.3rd 1258 (11th Cir. 2009) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Casale* held that doctrine to be applicable to the underlying Georgia state court

decision, because that decision was entered with state tribunal jurisdiction. *Feldman* (as part of "Rooker-Feldman") is otherwise distinguished by the Eleventh Circuit cases cited in Argument II *infra*. *Feldman* also inappositely found that there was jurisdiction. By contrast, in the case at bar, under the verified allegations of the complaint, the relevant state-court decisions were entered ***without jurisdiction over Anabella Soury***:

In the appeal from the Final Judgment and Amended Final Judgment, Annabella was not a party. She had no notice of the entry of those Judgments. She did not file a notice of appeal. She was not served a copy of the brief. She was not listed as having been served with the appellate decision or the appellate mandate. The Third District had no jurisdiction over non-party Anabella Soury. Its decision was not at all binding on her. *Taylor v. Sturgell*, 128 S.Ct. 2161, 2174 (2008); *Association For Disabled Americans, Inc. v.Amoco Oil Co.*, 211 F.R.D. 457, 472 (S.D.Fla.2002) is directly on point. In that case, the Court held:

> "*In re Birmingham Reverse Discrimination Employment Litig.*, 833 F.2d 1492, 1498-99 (11th Cir.1987), cert. granted sub nom., *Martin v. Wilks*, 487 U.S. 1204, 108 S.Ct. 2843, 101 L.Ed.2d 881 (1988)(nonparties to consent decree not collaterally estopped); *EEOC v. Huttig Sash & Door Co.*, 511 F.2d 453, 455 (5th Cir.1975) (EEOC not privy to private suit and not barred by collateral estoppel or res judicata); *EEOC v. Jacksonville Shipyards, Inc.*, 696 F.Supp. 1438, 1441-42 (M.D.Fla.1988) (same)"

Miami Bank & Trust Co. v. Rademacher Co., 5 So.2d 63, 64 (Fla. 1941) held:

"The notice of appeal, under the rule of *Gover v. Mann*, 114 Fla. 128, 153 So. 895, and *Rabinowitz v. Houk*, 100 Fla. 44, 129 So. 501, was insufficient ***notice*** to City National Bank, City of Miami and B. Wall so as to make them parties to this appeal and give the court ***jurisdiction*** over them in this appeal." (Italics added)

In re Blonder, 2015 WL 5773230, at *11 (Bkrtcy.N.D.Ga. 2015) likewise held:

"The defendants argued that although they had notice of the case and were fully apprised of the developments in the case, the judgment was not binding because at all times the sheriff's attorney was in full charge of the ligation, they were never asked to defend the suit, and no notice was given that any judgments rendered against the sheriff would be conclusive as against them. Moreover, the attorneys for the deputies argued that defenses were available to the sheriff which could have been, but were not, raised in the case. The court held that the judgment was not conclusively binding on the deputies and their surety, stating:
It is an elementary principle of justice, that no one ought to be bound, as to matter of private right, by a judgment or verdict to which he was not a party, where he could make no defense, from which he could not appeal, and which may have resulted from the negligence of another, or may have even been obtained by means of fraud and collusion.
Id. An indemnitor must be given an opportunity to appear and to participate in the defense of the suit and it is not enough to be advised of the facts. Id. 'The effect of the omission of such notice and opportunity is that the judgment is not binding on the person liable over, who has a right to litigate again every essential fact necessary to support the judgment.' Id. The court determined that the deputies and their surety had notice of the pendency of the suits in which judgment was entered against the sheriff. Id. But because they were never asked to defend the suits, were never offered permission to defend the suits, and ***were not given notice that a judgment against the sheriff would be binding on them, the court held they were not bound by the judgment.*** Id." (Italics added)

II. *ROOKER-FELDMAN* DOCTRINE HAS NO APPLICATION TO A STATE COURT PROCEEDING WHERE ANABELLA HAD NO REASONABLE OPPORTUNITY TO RAISE HER FEDERAL CLAIMS OR TO APPEAL, AND HAS NO APPLICATION TO RULE 1.540(B) MOTION PROCEEDINGS

Also directly on point is *Wood v. Orange County*, 715 F.2d 1543, 1548 (11th Cir. 1983), in which the ***Eleventh Circuit*** held:

"Second, defendants argue that plaintiffs could have raised their constitutional claims on appeal from the judgment creating the lien. Although defendants do not disagree with plaintiffs' allegation that they did not receive actual notice of the judgment until some 11 months after the judgment's entry, defendants contend that plaintiffs must be deemed to have had constructive knowledge of the judgment when it was entered. The cases cited by defendants in support of their argument, *e.g., Texas Gulf Citrus & Cattle Co. v. Kelley*, 591 F.2d 439, 440 (8th Cir.1979), are distinguishable. Those cases stand for the principle that where a party has had notice of proceedings he may be held to have had constructive knowledge of the judgment entered therein. See id.

The party's constructive knowledge of the entry of judgment is conditioned on his actual notice that proceedings have been instituted against him. Defendants have cited no cases, and we find none, for the proposition that a party may be imputed with constructive knowledge of a judgment entered pursuant to ex parte proceedings of which he has no actual notice. ***Because plaintiffs did not receive actual notice of the judgment until well after the time for filing an appeal had elapsed, they lacked a reasonable opportunity to appeal the judgment.***

Finally, defendants argue that plaintiffs could have raised their objections by filing a Fla.R.Civ.P. 1.540 motion to set aside the final judgment creating the lien. Rule 1.540 provides that a court, upon a motion of a party made within one year of entry of judgment, may relieve a party from the judgment on grounds of, inter alia, inadvertence or surprise. ***Assuming that claims such as the plaintiffs' are cognizable on a Rule 1.540 motion for relief from judgment, the Rooker bar does not apply.***

A Rule 1.540 motion is not a substitute for appeal, and the court deciding such

a motion does not act as an appellate court. See *Pompano Atlantis Condominium Association v. Merlino,* 415 So.2d 153, 154 (Fla.Dist.Ct.App.1982). The rule permits a special kind of collateral attack on, rather than an appeal of, the judgment. *Fiber Crete Homes, Inc. v. Division of Administration,* 315 So.2d 492, 493 (Fla.Dist.Ct.App.1975). Proceedings surrounding Rule 1.540 are considered separate from those surrounding entry of the judgment. A denial of a Rule 1.540 motion is, for example, appealable not as the decision of a reviewing court but as a separate judgment in its own right.

Because Rule 1.540 proceedings are not part of the process of appellate review of the original judgment, it does not matter for purposes of Rooker that plaintiffs could have raised their claims in such proceedings. The federal court may perform a role that a state court deciding a Rule 1.540 motion might also be able to perform. But the federal court is not usurping the role of a state appellate court because a state court deciding a Rule 1.540 motion does not act as an appellate court. The district court does not violate Rooker's rationale by deciding plaintiffs' claims. Rooker simply precludes lower federal courts from acting as a state appellate court or as the United States Supreme Court in its capacity as reviewer of state decisions. *Rooker* is not a requirement that a plaintiff exhaust all conceivable state remedies; it does not require that where possible he institute proceedings so that state courts can consider the plaintiff's federal claims in the first instance. The important point is that plaintiffs lacked a reasonable opportunity to raise their claims in the proceedings surrounding entry of the judgment.

Since plaintiffs did not have a reasonable opportunity to raise their claims in the state trial court where judgment was entered or on appeal of that judgment, the district court will not usurp the role of state appellate courts or the Supreme Court by accepting jurisdiction. The plaintiffs' allegations were not 'inextricably intertwined' with the state court judgment." (Italics added)

The above-quoted *Wood* decision is cited with approval by the same ***Eleventh Circuit*** in *U.S. v. Napper*, 887 F.2d 1528, 1534 (11 Cir. 1989), which held:

"The defendants in the federal suit argued that the *Rooker-Feldman* doctrine precluded the federal action because the defendant/plaintiffs had the opportunity to raise their constitutional claims at several stages in the state

proceedings. The *Wood* court agreed to an extent, holding that *Rooker-Feldman* "operates where the plaintiff fails to raise his federal claims in state court." *Wood*, 715 F.2d at 1546.

The *Wood* court further held, however, that ***this rule applies only "where the plaintiff had a reasonable opportunity to raise his federal claims in the state proceedings***." Id. at 1547. If the plaintiff had no such reasonable opportunity, then the issue is not "inextricably intertwined" with the state action and the district court has "original" jurisdiction over it. Id." (Italics added)

Wood or *Napper* have been cited and adhered to in *Gomer ex rel. Gomer v. Philip Morris Inc.*, 106 F.Supp.2d 1262, 1267, fn. 5 (M.D.Ala. 2000) and *Thurman v. Judicial Correction Services, Inc.*, 760 Fed.Appx. 733, 737 (11th Cir. 2019) (finding that the plaintiff had a reasonable opportunity in state court to present his arguments).

As stated in Paragraph 9 of Plaintiffs' Complaint:

"On June 18, 2019 Plaintiffs filed an Emergency Motion for Relief from Judgment as Void and a Declaration, copy of which are attached hereto, claiming that the unserved Judgments were denials of due process and were void. That Motion came on for hearing before Circuit Court Judge Michael Hanzman on June 20, 2019.At the hearing, Judge Hanzman precluded counsel for Plaintiff Robert Sarhan from participating in the oral argument, in which Defendant's counsel was permitted to participate, and thereby denying Plaintiffs due process of law, ruling in advance that Robert Sarhan had no interest in the arguments raised in the Motion.

That order also determined that the Final Judgment, entered in that case, would not be "void" even if Anabella Soury's claim that neither she nor her attorney were not served therewith were true. In fact, ***neither Anabella nor her attorney were served with the Final Judgment or the Amended Final Judgment, Robert Sarhan took an appeal from those Judgments but did not serve Anabella or her attorney, Anabella did not participate in that appeal.***

However, at page 2 of that order it is wrongly stated that "Defendants [plural] appealed that Final Judgment" and that the appellate ruling of affirmance is binding on "Defendant" Anabella— ***all in violation of her due process rights to be served and to have a reasonable opportunity to be heard.*** The order also ruled in violation of Anabella's due process rights — that no further motions "collaterally attacking the Final Judgment or Amended Final Judgment" would be heard, despite the fact that neither Anabella nor her attorney were served with those Judgments.

The one-year time limit for filing a ***Rule 1.540(b)(3)*** fraud-on-the-court motion for relief from judgment does not apply to her because of that lack of service, so that it would be a denial of due process to treat fraud-on-the-court as having been adjudicated as to her."

Attached to the complaint was a copy of Anabella's Declaration, verifying the allegations of the complaint. The complaint was verified by Robert Sarhan. At this stage of the proceedings, the Court is limited just to the allegations of the complaint and its attachments. *Bharucha v. Reuters Holdings PLC*, 810 F.Supp. 37, 40 (E.D.N.Y.,1993) held:

"the court must limit its analysis to the ***four corners of the complaint***, see *Cortec Industries, Inc. v. Sum Holding, L.P.*, 949 F.2d 42, 44 (2d Cir.1991), and must accept plaintiffs' allegations of fact as true together with such reasonable inferences as may be drawn in its favor. *Stewart v. Jackson & Nash*, 976 F.2d 86, 87 (2d Cir.1992); *LaBounty v. Adler*, 933 F.2d 121, 123 (2d Cir.1991). A complaint should be dismissed only when it is clear that the plaintiff can prove no set of facts upon which he would be entitled to relief. *Conley v. Gibson*, 355 U.S. at 45-6, 78 S.Ct. at 102." (Italics added)

Applying *Wood* and *Napper* to Anabella's lack of notice, ***she had no reasonable opportunity to present her arguments in the state court proceedings***, either on appeal or in the lower court and Anabella's motions sought postjudgment relief

under Rule 1.540(b). Therefore, the *Rooker-Feldman* doctrine had no application to Anabella. The Court's citation to and reliance on *Casale v. Tillman*, 558 F.3rd 1258 (11th Cir. 2009) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), has no application because they did not involve a Rule 1.540(b) motion and did not concern a lack of opportunity to present arguments in state court.

III. THE COURT'S RELIANCE ON JUDGE SCOLA'S REMARKS IN REGARD TO THE REMOVAL OVERLOOKS THE FACT THAT ANABELLA WAS NOT A PARTY TO THE REMOVAL AND WAS NOT A PARTY TO THE APPEAL TO WHICH JUDGE SCOLA REFERRED

Moreover, the order of dismissal to which the instant motion for rehearing is directed additionally relies upon Judge Scola's ruling on Robert Sarhan's removal. However, here again, Anabella did not participate in that removal and did not receive any notice thereof. Additionally, Judge Scola's ruling on the removal was based on the Third District's aforementioned appellate ruling in the appeal to which Anabella was not a party and was not binding on her. In any event, that ruling did not cite to the Eleventh Circuit decisions in *Wood* or *Napper* or any of the other cases cited herein. Thus, the Court's citation to and reliance on Judge Scola's ruling on the removal petition is misplaced, improperly binding Anabella to proceedings in which she was a non-party and did not participate. An extrajudicial reliance on Judge Scola's findings is in any event erroneous since the motion at issue in the

case at bar is in the context of a dismissal of the instant complaint. *Bharucha*, 810 F.Supp. at 40.

IV. ROOKER-FELDMAN DOCTRINE HAS NO APPLICATION TO ANY RULE 1.540(B) PROCEEDING OR TO ANY OTHER CRIMINALLY SANCTIONED PROCEEDING IN WHICH ROBERT SARHAN OR ANABELLA DID NOT AND WILL NOT HAVE A REASONABLE OPPORTUNITY TO RAISE THEIR FEDERAL CLAIMS

The Court also overlooked Plaintiffs' position, paraphrasing *Napper*, that they had "***no reasonable opportunity to raise the federal claims in state court,***" Judge Hanzman unconstitutionally prohibited Robert Sarhan's attorney from making any oral argument or rebuttal at the hearing of his Rule 1.540(b)(4) motion for relief from judgment as void, determining that Sarhan had no interest in that motion, and additionally threatened criminal sanctions against him if he or his attorney files anything further in the state court proceeding. That is confirmed by the verified allegations of the complaint and by Judge Hanzman's order, also attached to the complaint. Based on that threat of criminal sanctions, there absolutely can be no future "reasonable opportunity" to raise any arguments as to Plaintiffs' federal claims in Florida state court; Judge Hanzman has unconstitutionally threatened Plaintiffs with criminal sanctions for any future Rule 1.540(b) motion, for any future objections to a certificate of sale under § 45.031(3) and (4), Fla. Stat., and for any future response in opposition to a later petition for

writ of possession.

CONCLUSION

Therefore, both Anabella and Robert have irrefutable arguments, directly supported by the above-quoted Eleventh Circuit case precedent and other authority, determining that the *Rooker-Feldman* doctrine is not here applicable. This motion should be granted. The Court is requested to grant this motion on an emergency basis because the state court has already wrongfully held a clerk's auction of the mortgaged premises and has unconstitutionally threatened Plaintiffs with criminal sanctions for any further actions with regard to the upcoming certificate of sale, certificate of title, or petition for writ of possession. The Court is mandated to immediately vacate its order of dismissal on an ***sua sponte*** basis. *Burnam v. Amoco Container Co.*, 738 F.2d 1230, 1232 (11th Cir. 1984) and grant the relief urgently prayed for in the Complaint on an emergency basis.

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373 Amorburger@bellsouth.net
Fl . Bar No. 157287
__/s/ Arthur J. Morburger

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy was served on H & H Investors through his attorney, Raul Gastesi by email to rgastesi@gastesi.com on June 30, 2019.

__/s/*Arthur J. Morburger*_____

EXHIBIT D1

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Appeal No.: 19-12676
District Court Docket No.: 1:19-cv-22588

ROBERT SARHAN, et al. Appellant, v. H&H INVESTORS, INC. A FLORIDA CORPORATION Appellee.	Related Appeal No.: 19-11177 District Court Docket No.: 1:19-cv-20368 STATE CASE NO: 12-07970 CA 01

CERTIFICATE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT

COMES NOW, the Appellee, H&H INVESTORS, INC. by and through undersigned counsel and hereby submits its Certificate of Interested Parties, and Corporate Disclosure stating that the following persons and entities have a financial interest in the outcome of this case:

1. Dr. Robert Sarhan as Appellant.

    a. Dr. Robert Sarhan is represented by the Law Office of Arthur J. Morburger.

2. Anabella Soury, a.k.a. Anabella Sarhan, as Appellant.
    a. Anabella Soury is represented by the Law Office of Arthur J. Morburger.
3. H & H Investors, Inc. as Appellee. H & H Investors, Inc. received a final judgment on July 31st, 2017 and seeks to foreclose on Plaintiff's property.
    a. H & H Investors, Inc. are represented by Gastesi, Lopez & Mestre, PLLC.
    b. H & H Investors, Inc. is owned 100% by Rafael Halim, Individually.
    c. H&H Investors' business address is: 11810 S.W. 206th St. Miami, Fl 33177.
4. Arthur Moreburger, Esq.- Law Office of Arthur J. Morburger. Counsel for Appellants, Robert Sarhan and Anabella Soury, a.k.a. Anabella Sarhan.
    a. Address: 19 W. Flagler St. Ste. 404, Miami, FL 33130
5. Raul Gastesi, Esq.- Gastesi, Lopez & Mestre, PLLC. Counsel for Appellee, H & H Investors, Inc.
    a. Address: 8105 N.W. 155 Street, Miami Lakes FL 33016.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2019, I electronically filed the foregoing Certificate with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following at their email address on file with the Court:

Raul Gastesi, Jr., Esq.
Gastesi, Lopez & Mestre, PLLC.
8105 N.W. 155 Street
Miami Lakes, FL 33016
Email: gastesi@glmlegal.com
efiling@glmlegal.com

ARTHUR A. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404
Miami, FL 33130
Email: amorburger@bellsouth.com

Respectfully submitted,

/s/ RAUL GASTESI, JR.
ATTORNEY FOR H&H INVESTORS
Raul Gastesi, Jr. Esq.
Fla Bar No.: 825778
Gastesi, Lopez & Mestre, PLLC.
8105 NW 155th Street
Miami Lakes, Florida 33016
E-mail: gastesi@glmlegal.com

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Appeal No.: 19-12676
District Court No.: 1:19-cv-22588

ROBERT SARHAN, et al. Appellant, v. H&H INVESTORS, INC. A FLORIDA CORPORATION Appellee.	Related Appeal No.: 19-11177 District Court No.: 1:19-cv-20368 STATE CASE NO: 12-07970 CA 01

MOTION FOR SANCTIONS

The Appellee by and through undersigned counsel and pursuant to the Federal Rules of Appellate Procedure hereby files this Motion for Sanctions against the Appellants and their attorney, Arthur Morburger, Esq. and as grounds therefore states:

STATEMENT OF THE CASE AND FACTS

This appeal, just like the vast majority of the litigation/suits in this matter, is frivolous, meritless, and made in bad faith. The attorney representing the Appellants,

Arthur Morburger, is well aware of these facts and the circumstances surrounding this matter giving rise to sanctions.

Federal Rule of Appellate Procedure 38 authorizes this Court to sanction an appeal that is frivolous and award just damages and single or double costs to the Appellee. Fed. R. App. P. 38.

The underlying cause in this appeal was summarily dismissed by paperless Order entered on June 24, 2019 by the District Court Judge and Appellants filed the instant appeal. The Appeal was later dismissed on August 21, 2019 and Appellants then filed "Appellants Emergency Motion to Recall Mandate and Reinstate Appeal" on August 28, 2019 and also filed "Appellants Emergency Motion to Recall Mandate and Reinstate Appeal" on September 3, 2019. This is simply another attempt to extend the inevitable.

The procedural history behind this case consists of a laundry list of frivolous claims, completely devoid of any merit, and made with the sole purpose of delaying the pending expiration of the case. These filings, like many others, are Dr. Sarhan's desperate, last-ditch attempt to keep the litigation alive, with the hopes that he and his legal team might conjure some kind of new way to continue to delay the end of this case. The fact is, Dr. Sarhan and his legal team have exhausted all of their options, and no other legal avenues remain. Their conduct, which falls nothing short of scandalous, should be sanctioned.

This appeal stems from the dismissal case in District Court Case No.: 1:19-cv-22588. In said case Dr. Sarhan sought to review a State Court order by Judge Hanzman denying them relief from foreclosure judgment. *See Id.* at ECF No. 5. Case No.: 1:19-cv-22588 was rightfully dismissed as the Appellants continuously seek relief knowing clearly that their efforts lack merit and jurisdiction.

Dr. Sarhan's first attempt to seek relief from the district court was under Case No. 1:18-cv-20088. This was Dr. Sarhan's first removal to Federal Court after Final Judgment was entered in State Court and after losing the appeal in the Third District Court of Appeals. After the case was remanded to State Court, Dr. Sarhan sued virtually everyone that has ever ruled against him in this matter or that he believed has committed any wrongdoing, including but not limited to: the Governor of Florida, the Director of the FBI, two (2) FBI agents, three (3) Judges of the Third District Court of Appeals, two (2) Judges from the Circuit Court for Miami-Dade County, undersigned counsel and the Court Reporter. *See generally* Case No. 1:18-cv-20088.

That case was "removed" from State Court but brought into the United States District Court as a new case. This mix-up caused Appellee to expend further resources due to the confusion caused and the need to have the case remanded back. *See* Case No. 1:19-cv-203D ECF Nos. 13 & 38. Dr. Sarhan later sought to Appeal said dismissal in forma pauperis. That appeal was not taken in good faith by the

District Court. That appeal is still active to this day before this Court under Appeal No.: 19-11177 and is being frivolously litigated by the Appellants simultaneously with this Appeal.

As demonstrated by the Orders of Dismissal, these cases were dismissed on similar grounds and the Appellants had no expectation of success on the merits. Yet they proceeded to file the case that gave rise to this appeal, 1:19-cv-22588, after both of the previous removals had been dismissed on similar grounds.

After approximately five (5) years of litigation at that time, the Final Judgment was entered for Appellee on July 31, 2017. Appellant Sarhan then filed motions for reconsideration and rehearing, all of which were denied. Ultimately, the matter was appealed to the Third District Court of Appeal under case No. 3D18-89 and the rulings of the trial court were affirmed *per curiam*. Further Motions for Rehearing and for issuance of a written opinion by the Third District Court of Appeal were denied.

Throughout this time, the Appellants raised nearly every issue imaginable at the trial court and appellate levels, with no regard as to whether the issues had any merit. Every opportunity to litigate the issue was provided. The Defendants lost at trial, lost on appeal, and, yet, insisted on continuing with their frivolous filings including six (6) bankruptcy filings. The Appellants have submitted thirty (30) or more post-final judgment filings at the trial court level.

Since the entry of the Final Judgment, the Appellants have filed three (3) separate lawsuits in federal court, all of which were summarily dismissed. There are now two (2) appeals pending in the Eleventh U.S. Circuit Court of Appeals, and one (1) appeal pending before the Third District Court of Appeal on this matter.

Regarding Ms. Soury, Summary Judgment was entered against her on April 10, 2013. After Summary Judgment was entered against Appellant Ms. Soury, Mr. Moore (her attorney in state court and in the Third District Court of Appeal) did not file a single pleading in the appealable matter. Appellant now claims that she was not served with any Orders or Judgments in the matter and that for said reason the Final Judgment is void. This fact is simply not true.

Her attorney, Robert Moore seemingly abandoned the case for six (6) years, failing to file so much as a witness list, exhibit list, or other pretrial motions. Mr. Moore failed to appear at what would otherwise have been the calendar call and made no effort to appear at a trial, post-judgment hearings, and during the appeal. Mr. Moore also failed to attend a single hearing after the judgment on the Motion for Summary Judgment was entered against Ms. Soury on April 10, 2013. Mr. Moore did not attend mediation or a single deposition, he did not file any pleadings, or otherwise participate in the case despite having been served with over *sixty-four* (64) different pleadings, notices, and or documents during the matter. Furthermore, until

recently, Mr. Moore even failed to include himself as an interested party on the E-Portal for state court filings.

The Appellants have been admonished by the state Court. They have been informed that their questionable practices are a waste of judicial resources. *Hanzman Order* at 6. The district court has also noted on two separate occasions that their claims are frivolous. *See* Case No. 19-12676 at ECF No. 5; *see also* Case No. 1:19-cv-20368-RNS at ECF No. 13. The fact is, this case is finally reaching the end, and with each passing day, the Appellants' and their lawyer's desperation grows larger. The Appellants and their lawyers have resorted to continuing to file frivolous pleadings and have now also done so at the Appellate level.

The Appellant Anabella Soury filed this meritless appeal of a mortgage foreclosure case without ever claiming that she had a meritorious defense nor claiming that she had the ability to cure the default either by having the funds to pay-off the mortgage or that she has a willing buyer to purchase the property. Ms. Soury does not claim that the amount of the Judgment was calculated incorrectly. In fact, Anabella Soury does not even appeal the order granting the Summary Judgment against her setting forth that any interest that she may have is inferior to that of the Appellee lender. This appeal is simply another wasteful tactic that is meant to disregard any judicial decision brought down against the Appellants. The Appellants consistently rely on the same meritless arguments, with only slight tweaks for the

sake of avoiding outright dismissal. The fact remains, the case law is clear. Lack of receipt of an order or judgment is not sufficient to render that order or judgment void. *Purdue v. R.J. Reynolds Tobacco Co.*, 259 So. 3d 918, 922 (Fla. 2d DCA 2018). In fact, judgments are valid unless they are entered by an illegally organized court, a court that lacks subject matter jurisdiction, or if adverse parties were not given an opportunity to be heard. *Curbelo v. Ullman*, 571 So. 2d 443, 445 (Fla. 1990). Therefore, "errors, irregularities, or wrongdoing in proceedings, short of illegal deprivation of opportunity to be heard, [do] not render the judgment void." *Id.* Moreover, Fla. R. Jud. Admin. 2.516(h), which controls the service of judicial orders and judgments, clearly states that it is merely a directory rule and "failure to comply with it does not affect the order or judgment, its finality, or any proceedings arising in the action." Fla. R. Jud. Admin. 2.516(h)(3).

To this day there has never been a reason to engage in litigation in federal court. This is a matter that is to be litigated in state court. *See generally Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983) (the "*Rooker-Feldman* doctrine"). Even as a state court matter, this cause is frivolous as the Appellants continue to rely on Fla. R. Jud. Admin. 2.516 when referencing the lower court's alleged failure to serve Ms. Soury with the Final Judgment and Amended Final Judgment.

That rule clearly and unequivocally states that failure to comply with subsection (h) [the subsection dedicated to judicial orders and judgments] does not affect the order or judgment, its finality, or any proceedings arising in the action, since it is merely a directory rule. However, the Appellants insist on mischaracterizing the law. That is clearly sanctionable conduct.

Ms. Soury otherwise had ample opportunity to be heard and to participate in court proceedings but chose not to. The Appellants have failed to show even a single instance in which Ms. Soury was denied the opportunity to be heard due to her lack of notice, and that the outcome would have been in any way different had she been heard.

This was a simple and straightforward foreclosure case involving admitted repeated breaches by Dr. Sarhan of loan documents and the subsequent settlement agreement, and the Appellants have done their very best to convert it into a judicial mayhem. Enough is enough. The Appellants and their lawyers must be shown that their actions have consequences. As a result, the Appellants and their lawyers should be sanctioned for filing, yet again, another frivolous appeal.

There are two pending matters before this Court, none of which has any merit. Dr. Sarhan's history of litigation as a pro se litigant as well as when represented by counsel has demonstrated his harassing and vexatious nature and Counsel are

knowingly assisting him in this regard. The Appellants and their Counsel had no good faith expectation of prevailing.

CONCLUSION

Dr. Sarhan, Ms. Soury, and their lawyer's conduct is sanctionable and will continue undeterred until they are made to pay monetarily and otherwise appropriately sanctioned. There are two pending matters before this Court, neither of which has any merit. Dr. Sarhan's history of litigation as a pro se litigant as well as when represented by counsel has demonstrated his harassing and vexatious nature and Counsel are knowingly assisting him in this regard. The Appellants and their Counsel have no good faith expectation of prevailing in this matter and simply seek to continue delaying its finality. Sanctions should be entered against the Appellants and their Counsel.

CERTIFICATE OF COMPLIANCE

I certify that this Motion complies with the type-volume limitation set forth in Rule 32(g)(1) and 27(d) of the Federal Rules of Appellate Procedure. The Motion uses Times New Roman 14-point typeface and contains 1926 words.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2019, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following at their email address on file with the Court:

ARTHUR A. MORBURGER
Attorney for Plaintiffs
19 W. Flagler St. Ste. 404
Miami, FL 33130
Email: amorburger@bellsouth.com

Respectfully submitted,

/s/ RAUL GASTESI, JR.

ATTORNEY FOR H&H INVESTORS
Raul Gastesi, Jr. Esq.
Fla Bar No.: 825778
Gastesi, Lopez & Mestre, PLLC.
8105 NW 155th Street
Miami Lakes, Florida 33016
E-mail: gastesi@glmlegal.com

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12676-AA

ROBERT SARHAN,
ANABELLA SOURY,
a.k.a. Anabella Sarhan,

Plaintiffs - Appellants,

versus

H & H INVESTORS, INC.,
a Florida Corporation,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

EXHIBIT E1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 19-12676-AA
LT No. 1:19-cv-22588-DPG

Related Appeals:
NO. 19-11177-A
LT No. 1:19-cv-20368-RNS
NO.18-12422-E
LT No. 1:18-cv-20088-JEM

ROBERT SARHAN and ANABELLA SOURY a.k.a ANABELLA SARHAN,
Appellants,
v.

H&H INVESTORS, INC., a Florida Corporation,
Appellee.

ANSWER BRIEF OF APPELLEE, H&H INVESTORS, INC.

RAUL GASTESI, JR.
Florida Bar No.: 825778
GASTESI, LOPEZ & MESTRE, PLLC.
Counsel for Appellee
8105 NW 155th Street
Miami Lakes, Florida 33016
Tel: 305-818-9993
Fax: 305-818-9997
efiling@glmlegal.com
gastesi@glmlegal.com

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Certificate of Interested Parties and Corporate Disclosure Statement pursuant to 11th Cir. R. 26.1 stating that the following persons and entities have a financial interest in the outcome of this case:

1. Dr. Robert Sarhan as Appellant.
    a. Dr. Robert Sarhan is represented by the Law Office of Arthur J. Morburger.
2. Anabella Soury, a.k.a. Anabella Sarhan, as Appellant.
    a. Anabella Soury is represented by the Law Office of Arthur J. Morburger.
3. H & H Investors, Inc. as Appellee. H & H Investors, Inc. received a final judgment on July 31st, 2017 and foreclosed on Plaintiff's property.
    a. H & H Investors, Inc. are represented by Gastesi, Lopez & Mestre, PLLC.
    b. H & H Investors, Inc. is owned 100% by Rafael Halim, Individually.

c. H&H Investors' business address is: 11810 S.W. 206th St. Miami, Fl 33177.

4. Arthur Moreburger, Esq.- Law Office of Arthur J. Morburger. Counsel for Appellants, Robert Sarhan and Anabella Soury, a.k.a. Anabella Sarhan.

   a. Address: 19 W. Flagler St. Ste. 404, Miami, FL 33130

5. Raul Gastesi, Esq.- Gastesi, Lopez & Mestre, PLLC. Counsel for Appellee, H & H Investors, Inc.

   a. Address: 8105 N.W. 155 Street, Miami Lakes FL 33016.

STATEMENT REGARDING ORAL ARGUMENTS

Appellee does not request Oral Argument.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS 2

STATEMENT REGARDING ORAL ARGUMENTS 4

TABLE OF CONTENTS 5

TABLE OF CITATIONS 7

STATEMENT OF JURISDICTION 8

STATEMENT OF THE ISSUES 8

STATEMENT OF THE CASE 9

SUMMARY OF THE ARGUMENT 15

ARGUMENT 18

I. **ANABELLA SOURY WAS TIMELY SERVED WITH NOTICE OF THE PROCEEDINGS INITIATED AGAINST THE APPELLANTS IN STATE COURT AND THE STATE COURT ACTED WITHIN ITS JURISDICTIONAL AUTHORITY AT ALL TIMES**

II. **THE *ROOKER-FELDMAN* DOCTRINE APPLIES BECAUSE THE APPELLANTS COMMENCED A NEW ACTION IN FEDERAL COURT SEEKING RELIEF FROM A STATE COURT JUDGMENT AND ANABELLA SOURY HAD A REASONABLE OPPORTUNITY TO RAISE ALL OF HER CLAIMS AND DEFENSES BECAUSE SHE WAS PROPERLY SERVED AT THE COMMENCEMENT OF THE ACTION AND SHE UNSUCCESSFULLY LITIGATED A MOTION FOR SUMMARY JUDGMENT**

III. **ANABELLA'S PARTICIPATION IN AN IMPROPER REMOVAL PROCEEDING IS IRRELEVANT TO THE COURT'S DETERMINATION OF JURISDICTION PURSUANT TO THE *ROOKER-FELDMAN* DOCTRINE.**

IV. **JUDGE HANZMAN'S RULING WAS PROPER BECAUSE SARHAN DID NOT HAVE STANDING TO ARGUE A MOTION ON BEHALF OF ANABELLA SOURY AND PRECLUDING SARHAN FROM MAKING ANY *PRO SE* FILINGS IS A RECOGNIZED SANCTION IN FLORIDA.**

CONCLUSION 25

CERTIFICATE OF COMPLIANCE 27

CERTIFICATE OF SERVICE 28

TABLE OF CITATIONS

Cases

Fla. Stat. 26.012(g) 18, 19, 20

Fla. R. Civ. Pro. 1.070 18

D. C. Court of Appeals v. Feldman, 460 U.S. 482.....18, 20

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005) 20

Casale v. Tillman, 558 F.3d 1258, 1260 (11th Cir. 2009).....18, 19

Powell v. Powell, 80 F.3d 464, 467 (11th Cir. 1996) 18

Lomax v. Reynolds, 119 So. 3d 562, 565 (Fla. 3d DCA 2013) 24, 25

STATEMENT OF JURISDICTION

This is an appeal from a decision of the District Court that dismissed case 1:19-cv-22588-DPG. The District Court's subject matter jurisdiction, or lack thereof, is the ultimate issue on appeal in this matter. The District Court lacks subject matter jurisdiction under both diversity and federal question, and properly dismissed Appellant's action pursuant to the *Rooker-Feldman* doctrine.

Pursuant to 28 U.S.C. § 1291, this Court maintains appellate jurisdiction over this appeal.

STATEMENT OF THE ISSUES

Whether the lower court properly found that it lacked subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine when the Appellants' claims are inextricably intertwined with its state court claims, the Appellants had a reasonable opportunity to raise all their claims in state court, the state court acted within its jurisdictional authority at all times material hereto.

STATEMENT OF THE CASE

Dr. Sarhan, Ms. Soury, and their attorneys, for nearly eight years have made baseless, improper, and frivolous filings with the sole purpose of delaying the underlying foreclosure action for as long as possible. The Appellants' irresponsible behavior has resulted in a convoluted procedural history and confusing underlying facts. However, this specific appeal stems from an Order entered by Judge Michael A. Hanzman that attempted to put a stop to the Appellants' antics, and warned them that further frivolous filings would result in sanctions. Judge Hanzman admonished the Appellants and their attorneys, and instructed them to refrain from continuing to behave irresponsibly. The Appellants, unhappy with the realization that the end to the legal nightmare created by them was near, resorted to more frivolous filings.

The subject Order was entered by Judge Hanzman on June 20, 2019, in the Circuit Court for Miami-Dade County, Florida. On June 21, 2019, almost immediately after having lost, again, in state court, the Appellants, well aware that there was no likelihood of success on the merits, filed an Emergency Complaint in the United States District Court for the Southern District of Florida. Said

Complaint was promptly dismissed by Judge Darrin P. Gayles because, as stated by Judge Gayles, "Plaintiffs were recently denied the same sought relief on the same substantive issues presented here." Furthermore, Judge Gayles explained that the district court lacked jurisdiction pursuant to the *Rooker-Feldman* doctrine, because the claims were inextricably intertwined with the state court claims. A Notice of Appeal for this Dismissal was filed on July 7, 2019. On that same day, the Appellants also appealed the same subject Order to the Florida Third District Court of Appeal under case number 3D19-1322. The Florida Third District Court of Appeal per curiam affirmed the Circuit Court Order on September 18, 2019. See App. 1.

The matter before this Court began as a simple and straightforward state foreclosure case involving Dr. Sarhan's admitted and repeated breaches of loan obligations and a subsequent settlement agreement. Dr. Sarhan initially requested and obtained a commercial loan as a second mortgage for $70,000.00 from Appellee for commercial agricultural purposes to conduct repairs on the Property and expand his tree farm business, known as "Bob's Tree Farm." Later, Appellant defaulted on the first mortgage on the subject property and Appellee had no alternative but to advance additional monies to pay-off the first mortgage to Coconut Grove Bank.

Dr. Sarhan then defaulted on the second loan provided by H&H. After H&H filed the 2009 state court case to foreclose on its mortgage, Dr. Sarhan suddenly claimed that the Property was his homestead, and that he was coerced into signing the numerous documents (after having same reviewed by his own attorney) where he stated that the property was not his homestead. Dr. Sarhan also raised predatory lending defenses with regard to the Appellee's loans in H&H Investors, Inc. v. Robert Sarhan, et. al. at Case No.: 09-74988 CA 15.

The Appellants thereafter entered into the underlying Stipulation for Settlement to avoid foreclosure. As a result, Appellants waived any predatory lending defenses to a subsequent foreclosure.

Not long after the parties entered into the Settlement Agreement, Dr. Sarhan defaulted once again. This default served as the catalyst for what would turn into more than seven (7) years of litigation. Dr. Sarhan and his attorneys unduly delayed the litigation for 5 ½ years before trial and for more than two years post-judgement. This baseless appeal is just one of many examples of how the Appellants and their attorneys have been successful in delaying the conclusion of this case for almost eight years.

The Final Judgment was entered for Appellee on July 31, 2017. See Appellants' App. C. Appellant Sarhan then filed motions for reconsideration and

rehearing, all of which were denied. Ultimately, the matter was appealed to the Third District Court of Appeal of Florida under case No. 3D18-89 and the rulings of the trial court were per curiam affirmed. App. 2. Further motions for rehearing and for the issuance of a written opinion were denied. App. 3. An Amended Final Judgment was entered on December 11, 2018 that only amended the amounts due regarding attorney's fees and costs. See Appellants' App. D.

Even though the matter was fully briefed and the decisions of the trial court were upheld on appeal, the Appellants insistance on improperly delaying the conclusion of this case has led to approximately *thirty* post-final judgment filings at the trial court level.

Unfortunately, the Appellants antics do not end there. Since the entry of the Final Judgment, the Appellant Sarhan, now together with Appellant Soury, has filed three (3) separate lawsuits in federal court (two of which were improper removals from state court) that were summarily dismissed. There are also two (2) appeals pending before this Court on this matter, and one (1) appeal pending before the Florida Third District Court of Appeal and a Motion for Sanctions is also pending in the recently *per curiam* affirmed case on this precise matter. Two other appellate matters have been resolved against the Appellants with regard to the Appellee within the last six months.

All of these appeals involve post-trial issues the Appellants raised in an effort to continue to prolong the conclusion of the underlying case. In addition, as a result of the trial court and appellate court proceedings, the Appellants have filed lawsuits against two (2) trial court judges, three (3) appellate court judges, the Governor of Florida, the director of the FBI, two FBI agents, undersigned counsel, and even a court reporter. All to no avail.

When none of the previously mentioned removals, appeals, or bankruptcies worked, the Appellants conveniently reverted back to the false claim that Anabella Sarhan still had an interest in the property. The Appellants make these false claims even though Ms. Soury was left with no interest in the subject property, pursuant to their Marital Settlement Agreement entered into during their divorce over eleven years ago. App. 4. The Marital Settlement Agreement remains in full force and effect until this day. As a result, an order granting summary judgment was entered against Ms. Soury on April 10, 2013 finding that Ms. Soury did not have an interest in the property. That order has never been appealed, and is otherwise still in effect.

Ms. Soury and her attorney seemingly abandoned the case for six (6) years after an Order granting the Motion for Summary Judgment was entered against her. Even so, Mr. Robert Moore, Esq. was served with numerous documents (64

pleadings) concerning this case, including the Trial Order and Dr. Sarhan's first Notice of Appeal. Mr. Robert Moore, Esq. has also represented Dr. Sarhan in the past.

Despite being served with those documents, Mr. Moore did not attend mediation or a single deposition, did not file any pleadings, or otherwise participate in the case. Mr. Moore also did not file so much as a witness list, exhibit list, or other pretrial motion. Mr. Moore failed and/or refused to appear at what would otherwise have been the calendar call. He made no effort to appear at trial, any of the post-judgment hearings prior to the first appeal.

Anabella Soury now files this meritless case without ever claiming that she had a meritorious defense nor claiming that she had the ability to cure the breach of the mortgage, either by having the funds to pay-off the mortgage or that she had a willing buyer to purchase the property, and pay-off the mortgage with the closing proceeds. Anabella Soury does not claim that the amount of the Judgment was calculated incorrectly. In fact Anabella Soury does not even appeal the order granting the Summary Judgment against her setting forth that any interest that she may have is inferior to the Appellee's interest. Ms. Soury simply states that the Judgment is void as she was never served with the actual Final Judgment or was

ever provided an opportunity to raise all of her claims. This statement is simply false.

SUMMARY OF THE ARGUMENT

The lower court properly found that it does not have jurisdiction over the Appellants complaint pursuant to the *Rooker-Feldman* doctrine. The Appellants complaint is simply another incomprehensible attempt at delaying the foreclosure proceedings that have since been affirmed in Florida's Third District Court of Appeal. The Appellants, unhappy with their results in state court, attempted to elicit a different, more favorable result from federal court.

Firstly, the state court acted within its jurisdictional authority at all times throughout the proceeding, since Florida law grants Florida circuit courts jurisdiction over mortgage foreclosures. Furthermore, the *Rooker-Feldman* doctrine precluded the Appellants from raising claims in federal court that are inextricably intertwined with their unsuccessful state court claims.

Second, Anabella Soury was properly served when the state court proceedings commenced and had a reasonable opportunity to raise all of her federal and state court claims, as well as any defenses she may have had. In fact, Ms. Soury litigated against a Motion for Summary Judgment that was granted against her finding she did not have an interest in the property. After that ruling,

Ms. Soury abandoned the case. Neither Ms. Soury nor her counsel made any filings on her own behalf for nearly six (6) years and she otherwise failed to participate in any of the court's proceedings. Nevertheless, she was served with several documents providing notice of a looming trial and pending appeal, among others. Ms. Soury, at any point throughout the nearly eight years of litigation, could have brought up any claims that she wished, but chose not to. As a result, the *Rooker-Feldman* doctrine precludes her from making new arguments in federal court because she was unsuccessful in state court.

Third, Ms. Soury's participation, or lack thereof, in a different improper removal case initiated by the Appellant Robert Sarhan is irrelevant to this Court's *Rooker-Feldman* analysis. Regardless of her participation in that matter, the *Rooker-Feldman* doctrine precludes Ms. Soury and Dr. Sarhan from bringing a new action in federal court that is inextricably intertwined with their state court claims for the sole purpose that they lost in state court.

Fourth, Judge Hanzman's ruling that Dr. Sarhan lacked standing and Mr. Morburger could not argue on behalf of a party that he did not represent was proper. In fact, Judge Hanzman gave Mr. Morburger every reasonable opportunity to elect to appear on behalf of Ms. Soury at the hearing in order to make whatever arguments he deemed necessary. However, Mr. Morburger's refusal to appear on

behalf of Ms. Soury and make arguments on her behalf does not amount to an action restricting the Appellants from raising any claims at that hearing. Anabella Soury was represented by counsel, Robert Moore, Esq.

Furthermore, Judge Hanzman's ruling that Dr. Sarhan could not make any further *pro se* filings and must obtain counsel to make new filings as a result of his abuse of the judicial system is a recognized sanction in Florida courts. Once again, what filing or argument would Dr. Sarhan have made that the attorneys did not make.

As a result, Judge Hanzman's ruling (just as the Third District Court of Appeal determined) was proper, and should not otherwise be set aside. Furthermore, the *Rooker-Feldman* doctrine precluded the federal district court from entertaining the Appellants' action because it lacked jurisdiction.

ARGUMENT

I. ANABELLA SOURY WAS TIMELY SERVED WITH NOTICE OF THE PROCEEDINGS INITIATED AGAINST THE APPELLANTS IN STATE COURT AND THE STATE COURT ACTED WITHIN ITS JURISDICTIONAL AUTHORITY AT ALL TIMES.

The *Rooker-Feldman* doctrine does not allow federal district courts the authority to review state court judgments because that authority rests with state appellate courts, and as a last resort, the United States Supreme Court. *See D. C. Court of Appeals v. Feldman,* 460 U.S. 482. The doctrine applies to both federal claims raised in state court and claims that are "inextricably intertwined" with the state court's judgment. *Id.* Claims are inextricably intertwined if they would "effectively nullify" the state court judgment, *Powell v. Powell*, 80 F.3d 464, 467 (11th Cir. 1996), or they "succeed only to the extent that the state court wrongly decided the issues." *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009).

In Florida, circuit court's by statute, have jurisdictional authority to hear all mortgage foreclosure cases. Fla. Stat. 26.012(g). Fla. R. Civ. Pro. 1.070 controls service of process after the commencement of each action. Lastly, this Court does not recognize an exception to the *Rooker-Feldman* doctrine when the state court's

judgment was void because the state court lacked jurisdiction. *Tillman*, 558 F.3d at 1261.

The instant appeal is more of the same from the Appellants. Incoherent arguments that are difficult to follow and respond to. Nevertheless, this appeal, like the majority of the others filed in this, and related matters, is frivolous and lacks any and all merit.

First, the state court acted under its jurisdictional authority at all times throughout the course of the proceedings. State courts, by statute, are granted exclusive original jurisdiction over "all actions involving the title and boundaries of real property." *See* Fla. Stat. 26.012(g). The underlying action in this case is a simple mortgage foreclosure case involving title to property in Miami-Dade County, Florida. There is not, and never has been, any dispute, as to the state court's jurisdictional authority in this case. On the contrary, the Appellants' use of this nonsensical jurisdictional argument is a product of their lack of success in state court proceedings. In the event that this Court finds that the state court lacked jurisdiction, this Court has never recognized an exception to the *Rooker-Feldman* doctrine on that basis. *Tillman*, 558 F.3d at 1261.

Commencing litigation as a result of a parties lack of success in the state court system is precisely the kind of litigation the *Rooker-Feldman* doctrine disallows. *Feldman,* 460 U.S. at 482; *see also Exxon Mobil Corp. v. Saudi Basic Indus. Corp.,* 544 U.S. 280, 284 (2005) (stating that the *Rooker-Feldman* doctrine continues to apply with full force to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments"). The Appellants' complaint is the perfect example of why the *Rooker-Feldman* doctrine exists. They have attempted to seek relief from Judge Hanzman's order in any way, shape, or form, and have finally gone too far.

The reason the Appellants insist on seeking relief from Judge Hanzman's Order is because they improperly delayed the underlying simple foreclosure case for over seven (7) years. As a result, when Judge Hanzman attempted to put a stop to their irresponsible behavior and waste of judicial resources, the Appellants were left with no other option but to start filing meritless pleadings in another court. They continue to improperly file pleadings in different courts, including this Court, because whenever they attempt to litigate the matter on its merits, they are unsuccessful. In fact, when seeking review of Judge Hanzman's Order using proper

process, in an appeal to Florida's Third District Court of Appeal, the state appellate court *per curiam* affirmed Judge Hanzman's Order. Appeal case No. 3D19-1322. As a result, the Appellants continue to attempt to circumvent the judicial system in any way they can, regardless of merit and ethical considerations.

Therefore, this Court should affirm the lower court's decision that it lacks jurisdiction to adjudicate the Appellants' complaint pursuant to the *Rooker-Feldman* doctrine, and find that the state court acted within the jurisdictional authority prescribed to it by Fla. Stat. 26.012(g) at all times throughout the state court proceedings.

II. THE *ROOKER-FELDMAN* DOCTRINE APPLIES BECAUSE THE APPELLANTS COMMENCED A NEW ACTION IN FEDERAL COURT SEEKING RELIEF FROM A STATE COURT JUDGMENT AND ANABELLA SOURY HAD A REASONABLE OPPORTUNITY TO RAISE ALL OF HER CLAIMS BECAUSE SHE WAS PROPERLY SERVED WITH THE ACTION AND CHOSE NOT TO LITIGATE.

The Appellants, as they often do, attempt to mischaracterize the events that have transpired and the law at issue. Here, the Appellants seem to conflate their Fla. R. Civ. Pro. 1.540(b) motions in state court with the action they commenced in the lower court. The proper forum for the Rule 1.540(b) motion they filed was the state court in which it was litigated. Those motions were summarily denied.

In response, the Appellants appealed Judge Hanzman's order and that Appeal was *per curiam* affirmed. Their lack of success on the merits in those cases led to their attempt to seek redress at the federal level. The commencement of an action that, at its core, seeks a review of Judge Hanzman's order automatically triggers the *Rooker-Feldman* doctrine and does not grant the district court jurisdiction to litigate the matter. However, the Appellants continue to engage in classic "shotgun litigation" and assert any and every issue they can think of and hoping something sticks.

Further, Anabella Soury had a reasonable opportunity to raise any federal claims, appeal the judgment entered against her, and assert any defenses she deemed proper, but failed to. She was properly served on July 30, 2012 (App. 5); and filed an "Objection to Foreclosure" (App. 6) on September 17, 2012. That pleading was adopted by the court as her "Answer to Complaint" via Order dated October 31, 2012. App. 7. Plaintiff filed a Motion for Summary Judgment (App. 8) against Anabella Sarhan on December 31, 2012 that was later granted by Order entered on April 10, 2013, finding that she had no interest in the property. App. 9. Logically, she thereafter seemingly abandoned the litigation and Ms. Soury nor her counsel made any filings on her behalf for nearly six (6) years. Furthermore, Ms.

Soury, otherwise failed to participate in any of the court's proceedings. Nevertheless, Ms. Soury's attorney Robert Moore was served with *sixty-four* (64) different documents, and did not respond to a single one. Among these documents was a trial order, the trial order and Dr. Sarhan's first Notice of Appeal. The state appellate court found that these documents served as sufficient notice of the looming trial and impending appeal. Despite having been served with these documents, Ms. Soury and her counsel refused or otherwise chose not to participate in the litigation. However, Ms. Soury and her counsel's affirmative decision not to participate in the litigation does not equate to a lack of a reasonable opportunity to assert her federal claims in state court. As a result, the *Rooker-Feldman* doctrine does apply and the district court did not have jurisdiction to adjudicate the Appellants' complaint.

III. ANABELLA'S PARTICIPATION IN AN IMPROPER REMOVAL PROCEEDING IS IRRELEVANT TO THE COURT'S DETERMINATION OF JURISDICTION PURSUANT TO THE *ROOKER-FELDMAN* DOCTRINE.

As mentioned previously, Dr. Sarhan has attempted to delay these proceedings in countless ways. After breaching the stipulated agreement Dr. Sarhan concocted numerous delay tactics to prevent the inevitable from happening: a foreclosure judgement. When bankruptcy was no longer an option due to abusive

and continuous bankruptcies filed by the Appellants, Dr. Sarhan found new alternatives to delay. Final Judgement was eventually entered after approximately five years of delays and litigation. Two and a half years have elapsed since the Final Judgement was entered, and Dr. Sarhan continues to delay and frivolously file pleadings in this matter. When Dr. Sarhan and his attorney ran out of options, they decided to bring Mrs. Soury back into the equation falsely as a last ditch attempt to continue to delay the proceedings. The truth is, Dr. Sarhan and his attorney's irresponsible behavior has led to a convoluted and nearly incomprehensible procedural history regarding this case. Nevertheless, Ms. Soury's participation, or lack thereof, in an improper removal case does not change the fact that the Appellants are simply wasting judicial resources while they attempt to use the federal courts to review a state court judgment they disagree with.

IV. JUDGE HANZMAN'S RULING WAS PROPER BECAUSE SARHAN DID NOT HAVE STANDING TO ARGUE A MOTION ON BEHALF OF ANABELLA SOURY AND PRECLUDING SARHAN FROM MAKING ANY *PRO SE* FILINGS IS A RECOGNIZED SANCTION IN FLORIDA.

The Appellants use this section of their brief to, once again, mischaracterize the events that transpired at the state court level and the relevant case law. Judge Hanzman's order that Dr. Sarhan be unable to access the courts on this issue without the assistance of counsel is a recognized sanction in Florida. *See Lomax v.*

Reynolds, 119 So. 3d 562, 565 (Fla. 3d DCA 2013) (holding that a *pro se* litigant's abuse of the judiciary required him to obtain counsel for all future filings). Furthermore, Judge Hanzman did not instruct the Appellants' attorneys to refrain from making any filings, Judge hanzman simply reminded Mr. Moore and Mr. Morburger that any frivolous filings could result in sanctions.

Furthermore, two distinct hearings took place before Judge Hanzman. Neither Dr. Sarhan nor his attorney were allowed to make arguments at the second hearing, since Judge Hanzman found Dr. Sarhan lacked standing on the issue at hand and Mr. Morburger was not appearing on behalf of Ms. Soury. However, in order to grant Mr. Morburger an opportunity to make said arguments, Judge Hanzman gave Mr. Morburger several opportunities to file an appearance on behalf of Ms. Soury at that very hearing. Mr. Morburger, however, refused to do so. Mrs. Soury's attorney who was also present, Mr. Robert Moore, Esq., then proceeded to make the argument on her behalf.

As previously stated, the Appellants have not demonstrated what argument would have been made that would have somehow resulted in a different outcome, or even what prejudice was suffered. As a result, the lower court's refusal to allow Mr. Morburger to argue on behalf of Ms. Soury is not improper, and this Court

should find that Judge Hanzman's ruling did not deprive the Appellants of their opportunity to raise their Federal claims.

CONCLUSION

This is a simple mortgage foreclosure case involving the breach of a Stipulation for an admitted lack of payment on a loan that has by this time matured. The Appellants have no defense on the merits of a predatory loan. For more than seven (7) years, the Appellants have raised every issue imaginable. There are simply no issues left that have not already been litigated. This appeal is simply a ruse conjured by Dr. Sarhan to create more issues, through his former wife, because all other issues have been exhausted.

The Judgment is valid because Ms. Soury was given adequate service of process. Ms. Soury was given sufficient notice that the case had been initiated against her, she was properly named as a Defendant, and she was given every opportunity possible to be heard. Ms Soury was also served with several documents, despite having a Motion for Summary Judgment entered against her, including the Trial Order. Ms. Soury simply chose not to participate in the proceedings. Ms. Soury has not demonstrated how the outcome would otherwise have been different.

Furthermore, The court's alleged failure to serve a copy of the Final Judgment onto Ms. Soury does not affect the validity or finality of the judgment in any way. Even so, there is no mention that Ms. Soury was unaware of the Final Judgment's existence nor that Dr. Sarhan did not tell her of the Final Judgment in this matter. The parties both live in the subject property together. Mr. Moore is also Dr. Sarhan's attorney in other matters.

Lastly, it should be indisputable that this case has met its end. Dr. Sarhan, Ms. Soury, and their legal team have done everything they can to delay this foreclosure case for as long as possible. The Appellants have time and time again shown an utter disregard for the judicial process and seemingly believe that they are above the law. However, the time has come for Dr. Sarhan and his legal team to come to terms with the findings of the judicial system. The litigation at hand must come to an end to allow the Plaintiff, undersigned counsel, and everyone else involved in this baseless case to move on with their lives.

CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (6), and was prepared with a proportionally spaced 14-point Times New Roman font. This brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7) and, excluding those portions exempted under Fed. R. App. P. 32(f), contains 4,156 words.

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document has been furnished by e-service this 21st day of October, 2019 to:

ARTHUR J. MORBURGER
Attorney for Appellant Robert Sarhan
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Fla. Bar No. 157287
Amorburger@bellsouth.net

Respectfully submitted,

/s/ Raul Gastesi, Jr.
RAUL GASTESI, JR.
Florida Bar No.: 825778
GASTESI, LOPEZ & MESTRE, PLLC.
Counsel for Appellee
8105 NW 155th Street
Miami Lakes, Florida 33016
Tel: 305-818-9993 / Fax: 305-818-9997
efiling@glmlegal.com
gastesi@glmlegal.com

EXHIBIT F1

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 19-12676

ROBERT SARHAN and ANABELLA SOURY A/K/A ANABELLA SARHAN,

Appellants,

vs.

H & H INVESTORS, INC.,
A Florida Corporation,

Appellee

APPELLANTS' REPLY BRIEF

ARTHUR J. MORBURGER
Attorney for Appellants
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fla. Bar No. 157287

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel o record for Appellant, certifies that, to the best of their knowledge, the following is a complete list of all judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, & other identifiable legal entities related to a party:

1. Raul Gastesi, Esq. & Gasdtesi, Lopez, & Mestre, PLLC Attorney for Appellees;
2. Judge Darrin P. Gayles U.S. District Judge Southern District of Florida;
3. Judge Jon Gordon, Eleventh Judical Circuit;
4. Ralph Halim, President of H & H Investors, Inc., the Appellee;
5. Judge Michael Hanzman, Eleventh Judicial Circuit;
6. Robert L. Moore, Attorney for Anabella Soury, Appellant;
7. Arthur J. Morburger, Attorney for Robert Sarhan, Appellant;
8. Robert Sarhan, Appellant;
9. Anabella Soury, Appellant;
10. Judge Robert Scola U. S. District Judge Southern District of Florida;
11. Judge Rodney Smith U. S. District Judge Southern District of Florida

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT i

Table of Authorities iii

ARGUMENT 1

A. THE ANSWER BRIEF AND APPELLEE'S APPENDIX ARE *DEHORS* THE RECORD, STRAY OUTSIDE THE FOUR CORNERS OF THE COMPLAINT, AND DO NOT DISPUTE THE COMPLAINT'S ALLEGATIONS 1

B. THE ANSWER BRIEF'S ARGUMENTS ARE MISDIRECTED AWAY FROM APPELLANT'S ARGUMENTS AND THEIR SUPPORTING CITATIONS AND THEREFORE NO REPLY IS DUE 2

Certificate of compliance 4

Certificate of service 5

TABLE OF AUTHORITIES

Casale v. Tillman, 558 F.3d 1258 (11th Cir. 2009) 4

St. George v. Pinellas County, 285 F.3d 1334 (11th Cir. 2002) 1

Sanzone v. Hartford Life Acc. Ins. Co.,
519 F. Supp. 2d 1250 (S.D. Fla. 2007) 1

Scelta v. Delicatessen Support Services, Inc.,
57 F. Supp. 2d 1327 (M.D. Fla. 1999) 1

Waley v. Johnston, 316 U.S. 101 (1941) 1

ARGUMENT

A. THE ANSWER BRIEF AND APPELLEE'S APPENDIX ARE *DEHORS* THE RECORD, STRAY OUTSIDE THE FOUR CORNERS OF THE COMPLAINT, AND DO NOT DISPUTE THE COMPLAINT'S ALLEGATIONS

Appellee's Answer Brief and Appendix violate several basic rules. First of all, the Brief and Appendix impermissibly refer to matters entirely *dehors* the lower-court record. *Sanzone v. Hartford Life Acc. Ins. Co.*, 519 F. Supp. 2d 1250, 1252 (S.D. Fla. 2007) (review is limited to matters within the record); *Waley v. Johnston*, 316 U.S. 101 (1941) (*dehors* the record items may not be considered on appeal).The Brief often purports to summarize records without any citation to the record but occasionally does include multiple curious citations to "R: ___," even though there are no paginated pages include in the record. Indeed, the Brief makes only a single reference, at p. 11, to Appellants' Appendix ("Exhibit C"). Secondly, in that same regard, the Answer Brief and its Appendix also impermissibly stray outside the allegations of the "four corners" of the complaint on this appeal from an order of dismissal of the complaint. *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002) ["'The scope of the review must be limited to the four corners of the complaint. *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000)'"]; *Scelta v. Delicatessen Support Services, Inc.*, 57 F. Supp. 2d 1327, 1335 (M.D. Fla.

1999) held:

> "In deciding a motion to dismiss, the court can only examine ***the four corners of the complaint.*** See *Rickman v. Precisionaire, Inc.*,902 F. Supp. 232, 233 (M.D.Fla. 1995). 'The threshold sufficiency that a complaint must meet to survive a motion to dismiss is exceedingly low.' *Ancata v. Prison Health Serv., Inc.*,769 F.2d 700, 703 (11th Cir. 1985) (citation omitted)." (Italics added)

Indeed, at p. 13 of the Initial Brief, Appellant had already pointed out that review is limited to the "four corners of the complaint." The Answer Brief entirely failed to address that point but nevertheless included a Statement of the Case and an Appendix that were outside those "four corners."

To all of these transgressions add the fact that the Answer Brief still does not point to anything in the instant record that disputes the accuracy of any portion of the complaint's allegations, in general, or any portion of its particular allegation that neither Anabella nor her attorney received any timely notice of the entry or prosecution of the judgment or the amended judgment. Instead, Appellee seeks to formulate a whole new set of events *dehors* the record that somehow leaves a false impression that Anabella and her attorney did have alleged notice.

B. THE ANSWER BRIEF'S ARGUMENTS ARE MISDIRECTED AWAY FROM APPELLANT'S ARGUMENTS AND THEIR SUPPORTING CITATIONS AND THEREFORE NO REPLY IS DUE

The Answer Brief's Arguments are constructed, based on those sets of events dehors the record – *dehors* the "four corners," the allegations of the complaint and Appellants' accompanying Appendix.[1] There is no reason to respond to those bogus Arguments. Those Arguments are not keyed into the Arguments set out in the Initial Brief. By not responding, those Arguments must be deemed as accepted.

Appellee does not focus on the legal consequences of the alleged lack of notice, the resulting lack of state-court jurisdiction, and the resulting inapplicability of the Rooker-Feldman doctrine, analyzed in Appellants' Argument I or to its cited precedents.

In like manner, Appellee did not respond to Appellants' Argument II, that the Rooker-Feldman doctrine does not apply to Rule 1.540(b) motion proceedings or where Anabella allegedly had no reasonable opportunity to raise her federal claims or to its cited precedents.

In regard to Appellants' Argument III, concerning the Court's reliance on Judge Scola's remarks, nowhere in the Answer Brief is there any mention made of

---

[1]By way of example, the Answer Brief places great emphasis on a so-called "Stipulation," not at all mentioned in the allegations of the complaint or in Appellant's Appendix. Indeed, none of the eleven exhibits included in Appellee's Appendix are included in that record.

those remarks.

Already noted is the absence of any Answer Brief response to Appellants' Argument IV, concerning the inapplicablility of the Rooker-Feldman doctrine to Rule 1.540(b) motion proceedings and to Appellants' cited case precedents.

The Answer Brief does in fact not respond to any of Appellants' citations. Appellee's Table of Citations list only one of those citations, *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009), and mistakenly lists it at pages "18" and "19" of the Answer Brief, but those pages have no such citation nor do any of the other pages of the Brief have any such citation.

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Appellants
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fla. Bar No. 157287
/s/Arthur J. Morburger

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface and type-style requirements of Fed. R. App. P. 32a9a) (5) and (6), and was prepared with a proportionally spaced 14-point Times New Roman font. This brief complies with the type-volume limit of

Fed. R. App. P. 32(a)(7) and, excluding those portions exempted under Fed. R. App. P. 32(f) contains 1542 words.

__/s/Arthur J. Morburger_____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been electronically filed by using the Eleventh Circuit Court ECF ystem and has been served by email to Raul Gastesi rgastesi@gastesi.com this 21st day of November, 2019.

__/s/Arthur J. Morburger_____

EXHIBIT G1

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12676
Non-Argument Calendar

D.C. Docket No. 1:19-cv-22588-DPG

ROBERT SARHAN,
ANABELLA SOURY,
a.k.a. Anabella Sarhan,

Plaintiffs-Appellants,

versus

H & H INVESTORS, INC.,
a Florida Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(January 9, 2020)

Before WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

This should be a straightforward foreclosure case. Yet the appellants have done everything in their power to stay the case's resolution. With this opinion, we put a stop to it.

Appellants Robert Sarhan and Anabella Soury used to be married. During their marriage, they owned a tree farm in South Florida. They eventually divorced, and in the separation agreement, Soury divested any interest she had in the tree farm property.

Sometime later, Sarhan grew late on his mortgage payments for the tree farm. So his lender, appellee H & H Investors, foreclosed on the property in Florida state court. Years of litigation followed, with the appellants raising a forest of frivolous claims to delay the foreclosure. Among these arguments were claims that the foreclosure judgment was void since Soury had not received a copy of the judgment or had a chance to raise her defenses in state court.

The state courts of Florida rejected these contentions. Multiple judges considered and rejected Soury's claim that she had an interest in the property. In fact, just a day before the appellants filed this case, a state court held that Soury had no interest in the property, that she had received adequate due process in state court, and that the foreclosure judgment was not void. That court also expressed frustration with the appellants' repeated abuse of the legal system. Florida's Third District Court of Appeal affirmed the trial court's ruling.

Having struck out in state court, the appellants set their sights on federal court. They filed multiple lawsuits in the Southern District of Florida, generally repeating their state court claims that the foreclosure judgment was void and that Soury received insufficient process. The first district court dismissed their claims for lack of subject matter jurisdiction. The second district court dismissed their claims as frivolous and under the *Rooker-Feldman* doctrine. The third district court (from which we hear this appeal) dismissed the claims for the same reasons as the second court in a paperless order.

The appellants now appeal. H & H Investors has moved for sanctions against the appellants and their counsel for their frivolous conduct. On the merits, we affirm the district court under the *Rooker-Feldman* doctrine. And given the appellants' (and their counsel's) unabashed abuse of the legal system, we grant the motion for sanctions. The appellants and their counsel are to pay double costs and reasonable attorneys' fees related to this appeal.

I.

We review de novo a district court's finding that it lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine. *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). We do the same when a court dismisses a case on its own motion without prejudice. *See Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007).

The *Rooker-Feldman* doctrine holds that federal courts cannot review state court final judgments. *Casale*, 558 F.3d at 1260.[1] The doctrine applies even to federal claims raised in state court. *Id.* It also applies to claims "inextricably intertwined" with a state court's judgment. *Id.* A federal court claim is inextricably intertwined if it would "effectively nullify" the state court judgment or if it "succeeds only to the extent that the state court wrongly decided the issues." *Id.* The doctrine does not apply, though, if the party lacked a "reasonable opportunity" to raise the "federal claim in state proceedings." *Id.*

Two district courts have held that the *Rooker-Feldman* doctrine bars the appellants' claims. Both were right. The appellants' federal claims are mere specters of those they have already lost in state court. There, the appellants urged that the foreclosure judgment was void because it was not served on Soury and because Soury did not receive adequate due process. Here, the appellants urge the same thing. The state court gave Soury ample time to raise these issues in that forum. *See id.* In fact, the state court rejected these claims on their merits, noting that Soury had no interest in the property and that she had received whatever process she was due in the foreclosure proceeding. Their federal claims here could succeed "only to the extent that the state court wrongly decided the issues." *See id.*

[1] The doctrine stems from the Supreme Court opinions defining its boundaries. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415–16 (1923).

And since federal relief would "effectively nullify" the state court judgment, *id.*, the *Rooker-Feldman* doctrine bars the appellants' claims.[2]

II.

We may award double costs and reasonable attorneys' fees as a sanction against appellants (and counsel) who bring a frivolous appeal. *See* Fed. R. App. P. 38; *Taiyo Corp. v. Sheraton Savannah Corp.*, 49 F.3d 1514 (11th Cir. 1995) (holding that a party and its appellate counsel were "jointly and severally liable" for costs and fees under Rule 38). This is a frivolous appeal. As the district court told the appellants and their counsel, this case is a carbon copy of an earlier case filed in the Southern District of Florida. That earlier case made the appellants and their attorneys aware that their claims are barred under the *Rooker-Feldman* doctrine. Their appeal to us is simply a request for a second second opinion. And it's just the latest in a line of frivolous arguments made to halt foreclosure in state and federal court. It seems these appellants won't take no for an answer. So sanctions is the only answer we have left.

[2] The appellants' complaint also requests that we enjoin the state court in several ways. Though the district court did not address these claims, we note that this relief would violate the Anti-Injunction Act and that we see no applicable exception. 28 U.S.C. § 2283. So to the extent that these requests fall outside the *Rooker-Feldman* doctrine, we exercise our ability to affirm the district court on any grounds supported in the record. *See Kernel Records Oy v. Mosley*, 694 F.3d 1294, 1309 (11th Cir. 2012).

III.

The district court's order dismissing the case without prejudice is **AFFIRMED**. The case is **REMANDED** to the district court for proceedings to determine costs and reasonable attorneys' fees related to the appellants' frivolous appeal. The appellants and their counsel shall be jointly and severally liable for double costs and reasonable attorneys' fees related to this appeal under Fed. R. App. P. 38.

EXHIBIT H1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12676-AA

ROBERT SARHAN,
ANABELLA SOURY,
a.k.a. Anabella Sarhan,

Plaintiffs-Appellants,

versus

H & H INVESTORS, INC.,
a Florida Corporation,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Florida

Before: WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

BY THE COURT:

The appellee's Motion for Sanctions is **GRANTED**. The case is **REMANDED** to the district court for proceedings to determine costs and reasonable attorneys' fees related to the appellants' frivolous appeal. The district court shall enter an order holding appellants and their counsel, Arthur J. Morburger, jointly and severally liable for double costs and reasonable attorneys' fees related to this appeal under Fed. R. App. P. 38.

EXHIBIT I1

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE NO. 19-12676

ROBERT SARHAN and ANABELLA SOURY A/K/A ANABELLA SARHAN,

Appellants,

vs.

H & H INVESTORS, INC.,
A Florida Corporation,

Appellee

APPELLANTS' MOTION FOR REHEARING AND REHEARING EN BANC

ARTHUR J. MORBURGER
Attorney for Appellants
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fla. Bar No. 157287

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, counsel o record for Appellant, certifies that, to the best of their knowledge, the following is a complete list of all judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, & other identifiable legal entities related to a party:

1. Raul Gastesi, Esq. & Gasdtesi, Lopez, & Mestre, PLLC Attorney for Appellees;
2. Judge Darrin P. Gayles U.S. District Judge Southern District of Florida;
3. Judge Jon Gordon, Eleventh Judical Circuit;
4. Ralph Halim, President of H & H Investors, Inc., the Appellee;
5. Judge Michael Hanzman, Eleventh Judicial Circuit;
6. Robert L. Moore, Attorney for Anabella Soury, Appellant;
7. Arthur J. Morburger, Attorney for Robert Sarhan, Appellant;
8. Robert Sarhan, Appellant;
9. Anabella Soury, Appellant;
10. Judge Robert Scola U. S. District Judge Southern District of Florida;
11. Judge Rodney Smith U. S. District Judge Southern District of Florida

Appellants Robert Sarhan and Anabella Soury, by and through their undersigned counsel, and Attorney Arthur J. Morburger move the Court for rehearing and rehearing *en banc* of the January 9, 2020 Panel decision.

The Panel decision conflicts with decisions of the Eleventh Circuit to which the petition is addressed:

> *St. George v. Pinellas County*, 285 F.3d 1334, 1337 (11th Cir. 2002);
> *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000);
> *U.S. v. Camejo*, 929 F.2d 610 (11th Cir. 1991);
> *Wood v. Orange County*, 715 F.2d 1543, 1548 (11th Cir. 1983);
> *U.S. v. Napper*, 887 F.2d 1528, 1534 (11th Cir. 1989);
> *Thurman v. Judicial Correction Services, Inc.*, 760 Fed. Appx. 733, 737 (11th Cir. 2019)

with decisions of the Fifth Circuit, which the Eleventh Circuit has adopted:

> *Garcia v. American Marine Corp.* 432 F.2d 6 (5th Cir. 1970);
> *United States v. Green*, 487 F.2d 1022 (5th Cir. 1973);
> *Hassenflu v. Pyke,* 491 F.2d 1094 (5th Cir. 1974)

adopted by *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; and

the proceeding involves questions of exceptional importance, involving issues on which the Panel decision conflicts with the following authoritative decisions of the United States Supreme Court and of other United States Courts of Appeals that have addressed the issues:

Stearns v. Hertz Corp. 326 F.2d 405, 408 (8th Cir.), *cert. den.* 377 U.S. 934 (1964);
U.S. v. Hay, 685 F.2d 919, 921(5th Cir. 1982);
U.S. v. Addonizio, 449 F.2d 100, 102 (3rd Cir. 1970);
Hudgins v. Kemp, 59 US 530 (1855);
Ex parte Easton, 96 US 68 (1877)

PANEL OPINION CONSISTS OF MATTERS *DEHORS* THE RECORD AND OUTSIDE THE CORNERS OF THE COMPLAINT

One of the decisional conflicts arises out of the Panel's consistent citation to, and reliance on, matters entirely outside the four corners of the complaint and *de hors* the record. That appears to have adopted Appellee's representations and Appellee's outside-the-record Appendix. Appellee could not cite those matters to any portion of the record and sometimes cited to "R:___," which did of course not refer to the record.The Fifth and Eleventh Circuits and the U.S. Supreme Court rejected this practice. *Hassenflu,* 491 F.2d 1094 (5th Cir. 1974) held that "it is inappropriate to base an appellate opinion on assertions dehors the record," and that holding is cited with approval in *Camejo*, 929 F.2d 610 (11th Cir. 1991). See also *Garcia,* 432 F.2d 6 (5th Cir. 1970) (disallowing "matters dehors the record"); *Ex parte Easton*, 96 US 68 ("matters dehors the record ... cannot be considered"); *Hudgins*, 59 US 530 ("evidence dehors the record cannot be received to impeach the record on appeal"). Moreover, the opinion is replete with records outside the four corners of the complaint that was dismissed. The Eleventh Circuit in *St. George*, 285 F.3d 1334,

1337 (11th Cir. 2002), held that "'the scope of the review must be limited to the four corners of the complaint," quoting *Grossman,* 225 F.3d 1228, 1231 (11th Cir. 2000).

There follows a nonexclusive list of some of the matters *dehors* the record and outside of the four corners of the complaint that are cited in the Panel's opinion:

Nothing in the record or in the complaint suggested that Appellants "owned a tree farm" or were "divorced" or had a "separation agreement" or any "divestiture" of any interest in the tree farm or that "multiple judges" considered Soury's claim that she had an interest in the property. Those recitations were presumably derived from Appellee's Appendix, which was *dehors* the record.

No judge "considered and rejected Soury's claim that she had an interest in the property." State court judge Hanzman included in his order, Appellants' Exhibit G, a footnote, referring to the deed to Soury, but did not declare that deed to be invalid.

The Panel had nothing in the record upon which to base its statement that some state court judges allegedly found that, contrary to Soury's claim, she had notice of the judgment. Rather Judge Hanzman's order merely stated that that claim was "belied " by the record and "would not render the judgment void." Appellants' Exhibit G, page 6. The Panel failed to take note of the allegations of ¶ 11 of the complaint (Appellants' Exhibit B) that Judge Hanzman precluded Sarhan from presenting any argument. The Panel decision entirely ignored the wording of the

judgment itself, that named upon whom the judgment was served – not including Soury or her attorney. Appellants' Exhibit C. Included as an exhibit to the complaint was Soury's Declaration verifying that she did not receive service. Appellants' Exhibit F. In the appeal from the Final Judgment and Amended Final Judgment, Annabella was not a party. She had no notice of the entry of those Judgments. She did not file a notice of appeal. She was not served a copy of the brief. She was not listed as having been served with the appellate decision or the appellate mandate. The Third District had no jurisdiction over non-party Anabella Soury. Its decision was not at all binding on her.

Contrary to the Panel decision, there is nothing in the record or in the complaint regarding the Panel's statement that the Third District allegedly "affirmed the trial court's ruling." Nor was there any "***first*** district court dismissing their claim for lack of subject matter jurisdiction" or any "***second*** district court" dismissal of the claims, as frivolous or otherwise. Nor was there any "paperless order," (such as the docket entries included in Appellants' Exhibit A) allegedly included in this record of a supposed "third district" order "dismissing the claims for the same reasons as the ***second*** court." (Italics added) The Panel refers to the complaint as "a carbon cop of an earlier case filed in the Southern District of Florida" but the only earlier case, referred to in the record, is an inapposite appeal of a removal proceeding filed by

Sarhan alone – not by Soury, to which Judge Gayle makes reference in his "paperless order." (Appellants' Exhibit A, D.E. 5) Since that case is *dehors* the record, Judge Gayles' assessment of that case cannot be reviewed on appeal. Appellant is frankly perplexed as to how the Panel could have surmised (or what there was outside the record upon which the Panel relied) that the distant "first" or "second" district courts could have somehow gotten involved in this third-district-state-court matter.

Those dehors-the-record items were also outside the "four corners" of the complaint. Appellants' Exhibit B. The complaint merely attached Judge Hanzman's order as an exhibit (Appellants' Exhibit G) but did not adopt his recitations and instead challenged the accuracy of those recitations. The Panel treated Judge Hanzman's bare recitations as to matters entirely outside the record as truthful despite the fact that the very purpose of the federal court proceeding was to challenge the propriety of those recitations as infringing on Soury's and Sarhan's federal due process right to a fair opportunity to be heard.

ROOKER FELDMAN DOCTRINE HAS NO APPLICATION TO STATE COURT RULE 1.540(B) RULINGS OR WHERE SOURY HAD NO OPPORTUNITIES TO RAISE HER FEDERAL CLAIMS OR TO APPEAL

Under *Wood*, 715 F.2d at 1548 (11 Cir. 1983), the *Rooker-Feldman* doctrine does not apply to a state-court Rule 1.540(b) ruling on a motion seeking relief from

a judgment on the ground that a claimant did not have a fair opportunity to raise a federal claim in state court. *Wood* was adhered to in *Napper*, 887 F.2d 1528, 1534 (11 Cir. 1989). As previously noted, Soury's claim is alleged in the complaint as a claim that she was denied a fair opportunity to raise her federal claims in state court when the judgment was entered without notice to her, depriving her of federally guaranteed due process (Appellants' Exhibit B, ¶¶ 11, 13) and she was denied the opportunity to appeal and Robert Sarhan was thereby also deprived of due process in being barred by Judge Hanzman from being heard (Appellants' Exhibit B, ¶11) and an opportunity to appeal.

The Panel, and the court below, also overlooked Plaintiffs' position, paraphrasing *Napper*, that they had "no reasonable opportunity to raise the federal claims in state court," Judge Hanzman unconstitutionally prohibited Robert Sarhan's attorney from making any oral argument or rebuttal at the hearing of his Rule 1.540(b)(4) motion for relief from judgment as void, determining that Sarhan had no interest in that motion, and additionally threatened criminal sanctions against him if he or his attorney files anything further in the state court proceeding. Appellants' Exhibit B, ¶¶ 11,13 and Appellants' Exhibit G). The Panel confusingly argues that "the state court gave Soury ample time to raise these issues in that forum" because "the state court rejected these claims on their merits, noting that Soury had no interest

in the property and that she had received whatever process she was due in the foreclosure proceeding." Presumably, the Panel is referring back to its antecedent comments about Judge Hanzman's alleged findings (that were in fact not to be found in the record). The Panel does however not take into account that Judge Hanzman's involvement was at the hearing of Soury's and Sarhan's post-judgment 1.540(b) motions for relief from the judgment, Appellants' Exhibit G, precisely what *Wood* and *Napper* posed as being exempt from *Rooker-Feldman*.

The Panel instead cites *Casale v. Tillman*, 558 F.3d 1258 (11th Cir. 2009) and *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043 (11th Cir. 2007), but fails to note that there was not involved in those cases a Rule 1.540(b) proceeding and that those cases did not recede from either *Woods* or *Napper*. Moreover, in regard to footnote 2 to the Panel opinion, 28 USC § 2283 applies here, since the federal court has jurisdiction under *Woods and Napper*.

The Panel is improperly sanctioning Appellants' counsel for adhering to the ethical standards applicable to him, to prosecute in good faith the valid claims of his clients and his clients are being improperly sanctioned for adhering to the applicable case law cited herein. Accordingly, the Panel decision should be vacated, the matter should be reheard by the Eleventh Circuit *en banc*, and the lower court order of dismissal, here under review, should be reversed.

Respectfully submitted,

ARTHUR J. MORBURGER
Attorney for Appellants
19 W. Flagler St. Ste. 404 Miami, FL 33130
Tel. No. 305-374-3373
Amorburger@bellsouth.net
Fla. Bar No. 157287
__/s/Arthur J. Morburger_____

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface and type-style requirements of Fed. R. App. P. 32a9a) (5) and (6), and was prepared with a proportionally spaced 14-point Times New Roman font. This brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7) and, excluding those portions exempted under Fed. R. App. P. 32(f) contains 2114 words.

__/s/Arthur J. Morburger_____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been electronically filed by using the Eleventh Circuit Court ECF System and has been served by email to Raul Gastesi rgastesi@gastesi.com this 23 day of January, 2020.

__/s/Arthur J. Morburger_____

EXHIBIT J1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12676-AA

ROBERT SARHAN,
ANABELLA SOURY,
a.k.a. Anabella Sarhan,

Plaintiffs - Appellants,

versus

H & H INVESTORS, INC.,
a Florida Corporation,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILSON, MARTIN, and ROSENBAUM, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46